



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.03.2021

DELIVERED ON : 18.03.2021

CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CrI.OP.(MD)No.1236 of 2021

and

CrI.M.P(MD)Nos.604 & 606 of 2021

Durai.Chandrasekaran ... Petitioner/Accused
Vs.

Union of India,
represented by
The Assistant Sub Inspector,
Railway Protection Force,
Thanjavur.
(Crime No.32 of 2017)

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.6 of 2020 on the file of the Judicial Magistrate No.II, Thanjavur and quash the same.

For Petitioner : Mr.R.Shanmugasundaram,
Senior Counsel
for Mr.S.Ravi

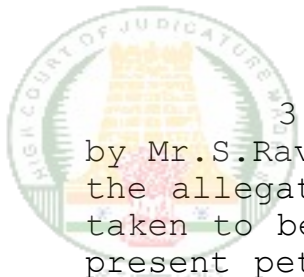
For Respondent : Mr.A.Robinson
Government Advocate (Criminal side)

ORDER

The petitioner / accused in C.C.No.6 of 2020 on the file of the Judicial Magistrate Court No.II, Thanjavur, is facing trial for the offences punishable under Sections 147 and 174(a) of the Railway Act 1989 (Second Amended - 2003).

2.The case of the prosecution in nut-shell is as follows :

On 20.01.2017, Mr.S.Manokaran, Assistant Sub Inspector, Railway Protection Force, Thanjavur along with Mr.T.Ravi, Head Constable attached to the very same police station, were performing Bandobust duty at Thanjavur Railway Station and found the petitioner along with 179 members participating in "Railway Roko agitation" demanding "Jallikattu" and stopped the passenger Train No.56819 (Ex : MV-TJ) at about 9.30 hours at Platform No.4 and on account of this, the Train No.56819 was detained in the track for 15 minutes, from 9.30 to 9.45 hours on 20.01.2017 at Thanjavur Railway Point No.103. A complaint was lodged by the Duty Station Master, Thanjavur Railway Station, based on which, First Information Report in Crime No.32 of 2017 was registered on 20.01.2017, for the offences punishable under Sections 147 and 174(a) of the Railway Act 1989 (Second Amended - 2003).



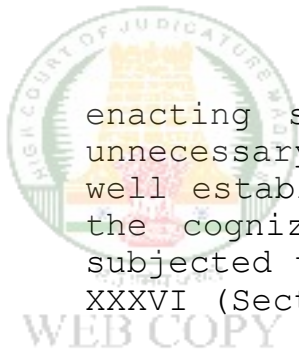
3.Mr.R.Shanmugasundaram, learned Senior Counsel, assisted by Mr.S.Ravi, learned counsel for the petitioner, contended that all the allegations made in the complaint are totally false and even if taken to be true do not constitute any criminal offence against the present petitioner. His further contention is that since the final report is filed beyond the period of limitation, it is barred under Section 468 of the Code of Criminal Procedure. He also relied on the following decisions in

- 1) N.Mohan and Others Vs. State and Others - (Manu/TN/3978/2020)
- 2) Sanapareddy Maheedhar and Others Vs. State of Andhra Pradesh and Others - (2007 13 Supreme Court Cases 165)
- 3) V.Beema Rao and another Vs. The State and Another - (Crl.OP.No.1287 of 2016 dated 04.04.2016)

and contended that if the complaint does not disclose any commission of offence or the prosecution is barred by limitation, the High Court can exercise inherent powers under Section 482 of the Code of Criminal Procedure.

4.In the counter affidavit filed by the first respondent, it is stated that on 20.01.2017, 179 DMK Political Party Members including 14 females, unlawfully gathered inside the Thanjavur Railway Station, demanding Jallikattu and all of a sudden assembled in front of a passenger Train No.56819 (MV-TJ) at Railway Point No.103 detaining the train for about 15 minutes. Therefore, First Information Report in Crime No.32 of 2017 was registered and after completion of investigation, charge sheet was filed in C.C.No.6 of 2020 on the file of the Judicial Magistrate No.II, Thanjavur. The specific contention of the first respondent is that except the present petitioner, other persons could not be identified and therefore, the present petitioner was alone charged for the offences under Sections 147 and 174(a) of the Railways Act 1989 (Second Amended - 2003). His further contention is that the eye witness account is very clear as to the commission of the offence by the present petitioner and therefore, there is no question of quashing the entire complaint.

5. The main objective of Criminal Procedure is to provide a full and fair trial to the accused by taking into consideration the principles of natural justice. Under the Code of Criminal Procedure, there is a separate chapter which talks about "taking the cognizance of offence by the Magistrate". The power empowered on the Magistrate is not absolute and it also puts certain restrictions given under Sections 195 to 197 of the Code of Criminal Procedure. Section 190 and 193 of the Code of Criminal Procedure, talks about the mode for taking the cognizance. It is the power or authority of the Court or taking judicial notice by Court of law having jurisdiction on an action, matter or a cause for the purpose of deciding whether there is any ground for initiation of proceedings and deciding of the matter or cause judicially. The purpose of



enacting such provision is not to extinguish but to avoid the unnecessary delay in filing a complaint by the complainant. It is well established fact that the power vested on a Magistrate to take the cognizance of the offence is not an absolute power and is subjected to the limitations which have been provided in the Chapter XXXVI (Sections 467 to 473) of the Act itself.

6. Section 473 of the Code of Criminal Procedure, is the pivotal section as it focuses on administering justice. It gives a chance to the complainant or the aggrieved person to institute the suit even after the expiry of the prescribed period of limitation. In normal circumstances, the case is not to be instituted after the expiry of the prescribed period but in exceptional circumstances, the Court allows for the institution of the suit. It is the discretion of the Court to extend the period of limitation. This Section does not mandate the Court to extend the period of limitations. When the Court is satisfied with the facts and circumstances of the case that the complainant was prevented by sufficient cause from not appearing before the Court within the prescribed period of limitation and the cause of the delay is properly explained and the Court is satisfied with it, it can extend the period of limitation. Also if the Court is of the opinion that it is necessary to extend the period in the interests of justice, it can do so.

7. The same provision is also found in Section 5 of the Limitation Act. Even in a civil case, the Court has a discretionary power to extend the period of limitation, when the Court is satisfied that there was sufficient cause for not appearing within the prescribed period or that the cause of the reason was sufficiently explained or that it is necessary to do in the interests of justice.

8. The main object of section 468 of the Code of Criminal Procedure, is that with the passage of time the evidence deteriorates, and the accused may become unidentified and the circumstances might be changed. So the case must be brought within the specified period, so that the lawyer can find the evidence. However, the situation of the accused does not change. If it is not possible to file the final report within the appropriate time the period of limitation can always be extended at the discretion of the Magistrate. Only for this purpose Chapter XXXVI was enacted. It is not brought to extinguish the rights of the person but it is brought to avoid unnecessary delay in filing final report.

9. It is appropriate to extract the decision in **Pasupathi Vs. State and Others** reported in **Manu/TN/2266/2017**, wherein, it has been held thus :

"22. A Constitution Bench of the Supreme Court, in Sarah Mathew (supra), has held that for

extending the period of limitation, the date of



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presentation of the charge sheet alone is relevant and not the date on which cognizance was taken by the Court. In the same judgment, the Constitution Bench has approved the law laid down in Vanka Radhamanohari (Smt.) vs. Vanka Venkata Reddy and others [(1993) 3 SCC 4].

18. I ask this question to myself: 'Can the interest of the victim of a crime be sacrificed on the altar of a bureaucratic crossfire between the police and the Court of the Magistrate?'

19. My judicial conscience says that the answer to this question should be an emphatic 'No'. What satisfactory answer can the judicial system provide for Jeyaraj who has lost his wife and son, right under his nose, in the gruesome accident? How is he bothered about these legal niceties and their jurisprudential arabesques?

20. In this case, the police have taken a stand that they will not file an application under Section 473, Cr.P.C. for condonation of delay, because, it is their case that the charge sheet was submitted on 10.12.2013 within the period of limitation."

10. The learned counsel for the petitioner relied on the decision reported in **2014 (2) Supreme Court Cases - 62 in Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherien and others**, and contended that since the complaint is filed beyond the period of limitation, it is liable to be quashed. He also contended that no reason has been assigned by the concerned Judicial Magistrate for condoning the delay before taking cognizance of the offence.

11. In the decision in **Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherien and others (cited supra)** it has been held thus :

"22. Paragraphs 24.13, 24.14, 24.20, 24.22, 24.23, 24.24, 24.25, and 24.26 could also be advantageously quoted :

24.13. Delay by itself no ground for dismissing complaint.- At present no court can throw out a complaint solely on the ground of delay, because, as pointed out by the Supreme Court, the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint."



"5.5. If delay in filing a complaint can be condoned in terms of Section 473 of the Cr.P.C. then, Section 468 of the Cr.P.C cannot be interpreted to mean that a complaint or prosecution instituted within time cannot be proceeded with, merely because the Magistrate took cognizance after the period of limitation.

5.6. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision. However, the same may not by itself be a ground for dismissing the complaint at the threshold. [Udai Shankar Awasthi v. State of U.P. & Another]. In certain exceptional circumstances delay may have to be condoned considering the gravity of the charge.

5.7. The contention that Section 468 should be interpreted to mean that where the Magistrate does not take cognizance within the period of limitation it must be treated as having the object of giving quietus to petty offences in the Indian Penal Code is untenable. Some offences which fall within the periods of limitation specified in Section 468 of the Cr.P.C are serious. It could never have been the intention of the legislature to accord quietus to such offences."

12. As per the Constitutional Bench decision of Apex Court in **Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Churian and others (cited supra)**, the entire proceedings in C.C.No.6 of 2020 on the file of the Judicial Magistrate No.II, Thanjavur, cannot be quashed at the threshold level and only be a circumstance to be taken into consideration while arriving at a final decision.

13. In the result, this Criminal Original Petition is dismissed as devoid of merits. Consequently, connected Criminal Miscellaneous Petitions are closed.

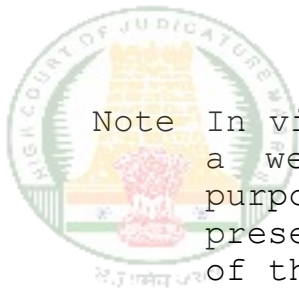
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Assistant Registrar (W)

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Sub Assistant Registrar(CS)



Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1. The Judicial Magistrate No.II,
Thanjavur.
- 2.The Assistant Sub Inspector,
Union of India
Railway Protection Force,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.RAVI, Advocate (SR-12084[F] dated 18/03/2021)

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18.03.2021

TP(CO)
KB(22.04.2021) 6P 5C