



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.18775 of 2021 and

CRL.M.P.(MD)Nos.10403 & 10406 of 2021

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1. Thinakaran
 2. Naven Jeyaprakash
 3. Esakiappan
 4. Gnanadurai
 5. Baskar Arul Raj
- ... Petitioners/Accused Nos.1 to 5

Vs.

1. State rep. By,
The Inspector of Police,
Tirunelveli Junction police station,
Tirunelveli City,
Tirunelveli.
(Crime No.104 of 2019) ... Respondent / Complainant
2. Ananthakumar,
Agriculture Department Tirunelveli,
Executive Magistrate SST-03,
38224 SST 03,
Tirunelveli District ... Respondent / Defacto Respondent

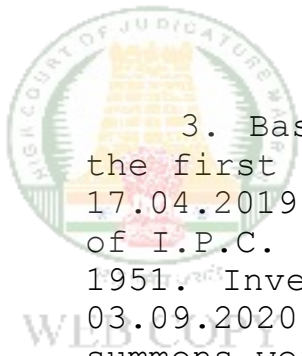
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.748 of 2020 on the file of the learned Judicial Magistrate No.IV, Tirunelveli District, in Crime No.104 of 2019 dated 17.04.2019 on the file of the first respondent and quash the same as illegal as against the petitioner alone.

For Petitioners : Mr.T.Lajapathi Roy
For R-1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

2. This criminal original petition has been filed to quash the impugned proceedings in C.C.No.748 of 2020 on the file of the Judicial Magistrate, Tirunelveli.



3. Based on the information lodged by the second respondent, the first respondent herein registered Crime No.104 of 2019 on 17.04.2019 for the offences under Sections 171(H), 171(E), and 109 of I.P.C. and Section 128 of the Representation of the People Act, 1951. Investigation was conducted and final report was filed on 03.09.2020. Cognizance of the offences was taken on 24.11.2020 and summons were issued to the petitioners herein.

4. The offences in question are punishable with the following terms of imprisonment:-

Accused Nos.1 to 5	Offences	Punishment & Sections	Limitation	Date of Charge Sheet or Final Report	Date of Cognizance
A1 to A5	Sections 171H & E IPC. r/w. 109 IPC.	One year or fine or both	One year. Ought to have filed on 17.04.2020	03.09.2020	24.11.2020
A6 to A17	Sections 128 of RP Act r/w. 109 IPC.	Maximum of 3 months or fine or both	One year. Ought to have filed on 17.04.2020	03.09.2020	24.11.2020

5. Final report should have been filed on or before 17.04.2020. It is relevant to mention here that the petitioners herein had earlier filed Crl.O.P.(MD)No.8365 of 2019 and vide Order dated 27.09.2019, the first respondent was directed to file final report within a period of three months, thereafter. It is beyond dispute that the final report was filed after the expiry of the limitation period prescribed under Sections 468 and 473 of Cr.P.C. The jurisdictional Magistrate can condone the delay, if he is satisfied that sufficient cause was made out and thereafter take cognizance of the offences. But in this case, cognizance of the offences was taken straightaway. The delay occasioned in filing the final report was not condoned at all.

6. The learned counsel appearing for the petitioners drew my attention the decision reported in 1987 Cri LJ 360 (Kathamuthu V. Balammal). The Hon'ble Division Bench was called upon to answer the question as to whether the launching of a criminal prosecution after the lapse of the period of limitation prescribed under Section 468 of Cr.P.C, can the Court condone the delay after taking cognizance of the offences or whether such condonation of delay should precede the taking cognizance of the offences. In



the aforesaid Judgment, the Hon'ble Division Bench categorically answered and held that any proceeding culminating in the conviction of a person in a criminal case, the cognizance of which has been taken after the expiry of the period of limitation as prescribed under Section 468(2) of Cr.P.C. without first resorting to Section 473 of Cr.P.C., is non est in the eye of law. The decision reported in 1978 Cri.L.J.116 (Sulochana V. State Registrar of Chits, Madras) was specifically disapproved. This decision was followed by a learned Judge of this Court vide Order dated 09.09.2020 in Crl.O.P.(MD)No.4307 of 2017 (D.Senthilkumar V. The Inspector of Police). The learned Judge held that the valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 of Cr.P.C. It was specifically laid down in categorical terms that the exercise of powers under Section 473 of Cr.P.C. extending the period of limitation by condoning the delay in launching prosecution should precede the taking cognizance of the offence. Since this was not done in this case, the impugned proceedings are quashed.

7. This criminal original petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

PMU

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.

To:

1. The Judicial Magistrate No.IV,
Tirunelveli District.
2. The Inspector of Police,
Tirunelveli Junction police station,
Tirunelveli City, Tirunelveli.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+17 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-37723[F] dated
08/12/2021)

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07.12.2021

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