



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.03.2021
DELIVERED ON : 18.03.2021

CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
Crl.OP.(MD)Nos.15697 & 15699 of 2019

WEB COPY

and
Crl.M.P(MD)Nos.10129, 10130, 10135, 10136 of 2019
1620 & 1623 of 2021

S.V. Pradeep Kumar,
S/o.S.S.Vijayakumar,
Proprietor and Manager,
The Ratna Fire Works Company
Naranapuram Village,
Sivakasi Taluk,
Virudhunagar District.

... Petitioner/Accused
(in Both Cases)

Vs.

The Inspector of Factories,
Circle - I,
Sivakasi,
Virudhunagar District.

... Respondent/Complainant
(In Both Cases)

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.Nos.340 and 341 of 2019 on the file of the Chief Judicial Magistrate Court, Srivilliputtur, and quash the same.

In both petitions

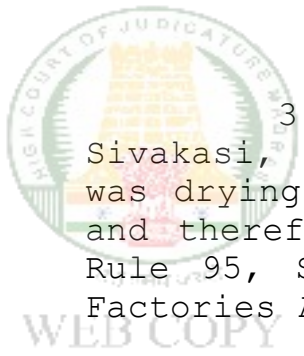
For Petitioner : Mr.J.Jeyakumaran

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

COMMON ORDER

The Criminal Original Petitions are filed seeking to quash all further proceedings in C.C.Nos.340 and 341 of 2019 on the file of the Chief Judicial Magistrate Court, Srivilliputtur.

2.The petitioner is the accused in C.C.Nos.340 and 341 of 2019 on the file of the Chief Judicial Magistrate Court, Srivilliputtur. The petitioner / accused is running a Fire Cracker Unit under the name and style of M/s.Ratna Fire Works Company, Sivakasi.



3.The case of the Inspector of Factories, Circle -I, Sivakasi, Virudhunagar District is that the petitioner / accused was drying the crackers outside the place prescribed for the same and therefore, committed an offence punishable under Sections 87 Rule 95, Schedule XXIV, item 3(F), item 4(C) and item 10(D) of Factories Act and Section 41 Rule 61(F) of Factories Act.

4.The present petition is filed to quash the final report filed by the Inspector of Factories, Circle - I, Sivakasi, on the following grounds :

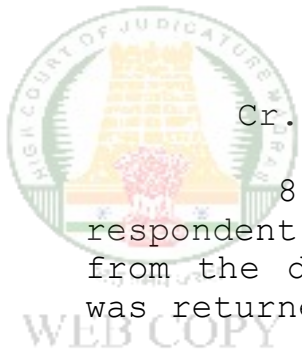
- 1) There is a delay of 9 years in filing the final report before the Chief Judicial Magistrate, Srivilliputtur.
- 2) The Chief Judicial Magistrate, Srivilliputtur, while taking cognizance of the offence, did not state any reason for condoning the delay.

5.In the counter affidavit, it is stated that the final report was filed within three months from the date of commission of the offence before the Chief Judicial Magistrate Court, Srivilliputtur and that the Chief Judicial Magistrate, without taking cognizance of the offence, returned the final report.

6.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.Chерian and others**, and contended that since the complaint is filed beyond the period of limitation, the private complaint filed by the respondent is liable to be quashed. He also contended that no reason has been assigned by the Chief Judicial Magistrate for condoning the delay before taking cognizance of the offence.

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

"we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the



Cr.P.C."

8. In the instant case the specific contention of the respondent is that he filed the final report within three months from the date of commission of offence and that the charge sheet was returned by the concerned Chief Judicial Magistrate.

9. The main object 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.

10. 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.

11. 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.

12.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.

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

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

14. In the decision in **Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Churian 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."



15. In the instant case, the specific stand taken by the respondent is that the final report was filed within the period of limitation.

16. In view of the above, I hold that there is no reason to quash the entire proceedings in C.C.Nos.340 and 341 of 2019 on the file of the Chief Judicial Magistrate, Srivilliputtur. The Chief Judicial Magistrate, Srivilliputtur, is directed to proceed with trial of the cases in C.C.Nos.340 and 341 of 2019 and dispose of the same within a period of six months from the date of receipt of a copy of this order / uploading of the order.

17. With the above observation, these Criminal Original Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CRL SIDE)

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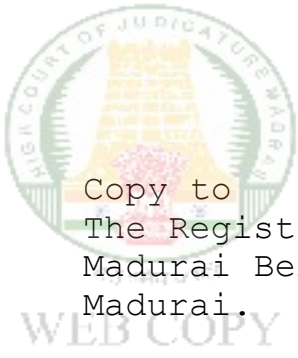
Sub Assistant Registrar(CS)

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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 Chief Judicial Magistrate,
Virudhunagar District at srivilliputhur.
2. The Inspector of Factories,
Circle - I,
Sivakasi,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

Order in
Crl.OP.(MD)Nos.15697 & 15699 of 2019
18.03.2021

TP (CO)
TR(17.05.2021) 7P 5C