



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2021

Pronounced on : 07.04.2021

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**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**CRL.RC(MD).No. 103 of 2017 and  
Crl.M.P(MD).No.890 of 2017**

K.J.Pravinkumar : Petitioner / Accused No.1

Vs.

State rep. by the  
Inspector of Police,  
Central Crime Branch (Cyber Crime),  
Madurai City,  
Madurai.

(Crime No. 37 of 2013) : Respondent / complainant

**PRAYER:-** Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records in Crl.M.P.No. 2449 of 2016 on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai and set aside the order dated 05.11.2016.

For petitioner : Mr. Karthik Ramkumar  
For respondent : Mrs. S.E. Veronica Vincent  
Government Advocate (Crl. Side)

### ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No.2449 of 2016, dated 05.11.2016 on the file of the Court of the Judicial Magistrate, Additional Mahila Court, Madurai, dismissing the petition filed under Section 468 Cr.P.C.,

2. One Devika, the defacto complainant lodged a complaint with the respondent police on 30.06.2013 against the revision petitioner and on that basis, First Information Report came to be registered in Crime No. 37 of 2013 for the offences under Section 66(A) of Information Technology Act, 2008 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The revision petitioner was arrested and was latter released on bail. Thereafter, the revision petitioner has filed a petition under Section 468 Cr.P.C., before the Court of Judicial Magistrate No.I, Madurai, to discharge him, on the ground that the case was time barred, in Cr.M.P.No.2499 of 2016. The learned Judicial Magistrate, after conducting enquiry, has passed the impugned



order on 05.11.2016 dismissing the application for discharge. Aggrieved by the said order, the accused has come forward with the present revision petition.

3. Whether the impugned order, dated 05.11.2016 passed in Crl.M.P.No.2449 of 2016, on the file of the Court of the Judicial Magistrate, Additional Mahila Court, Madurai, is liable to be set aside? is the point for consideration.

4. The main contention of the revision petitioner in the petition filed under Section 468(2) Cr.P.C., is that the First Information Report was registered on 30.06.2013, that even after the lapse of three years charge sheet has not been filed and that therefore, the petitioner is entitled to get discharge. It is pertinent to mention that after dismissal of the discharge petition and after filing of the present revision, the respondent police has filed the final report on 31.01.2017 on the file of the Additional Mahila Court, Madurai and the same was taken on file in C.C.No.30 of 2017. Moreover, though the First Information Report was registered for the offences under Section 66(A) of Information Technology Act, 2008 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, the final report has been filed for the offence under Sections 354(A) and 354(D) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

5. No doubt, Section 468 Cr.P.C., contemplates the period of limitation for taking cognizance of an offence and in case of the offence which is punishable with the imprisonment for a term exceeding one year, but, not exceeding three years, the period of limitation shall be three years.

6. Section 354 (A) IPC deals with Sexual Harassment and the punishment therefor and the offences under Clauses (i)(ii) and (iii) of Sub Section (1) of Section 354(A) would attract the punishment which may extend to three years or with fine or with both and that for the offence under Clause (iv) of Sub Section (1) would attract the punishment which may extend to one year or with fine or with both. Section 354(D) IPC speaks about the stalking and the said offence is punishable on first occasion with imprisonment, which may extend to three years and fine and on second or subsequent conviction, with imprisonment for a period of five years and fine. Section 4 of Tamil Nadu Prohibition of Women Harassment Act provides penalty for harassment of women in any of the places shall be punishable with imprisonment for three years and with fine. In the case on hand, the offences under which the revision petitioner was charged with, are Section 354(A) and 354(D) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, and except the 2<sup>nd</sup> conviction for the offence under Section 354(D) the other offences would attract the maximum



punishment of three years and as such, the period of limitation for taking cognizance is three years.

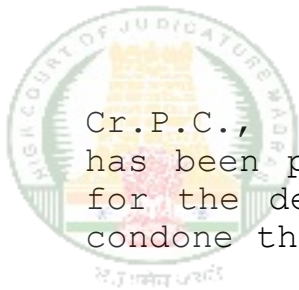
7. Admittedly, First Information Report was registered on 30.06.2013 and the first accused was arrested on 08.08.2013. The charge sheet has been filed on 31.01.2017 after lapse of 3 ½ years. At this juncture, it is necessary to refer Section 473 Cr.P.C.,

*"473. Extension of period of limitation in certain cases.*

*Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."*

8. Section 468 of the Code bars a Court from taking cognizance of any offence, if it is beyond the prescribed period of limitation laid down therein and Section 473 Cr.P.C., prescribes two exceptions and that the Court can take cognizance beyond the period prescribed under Section 468(2) Cr.P.C., if the delay has been properly explained or that it is necessary in the interest of justice. A constitution Bench of the Hon'ble Supreme Court in **Sara Mathew Vs. Institute of Cardio Vascular Diseases rep. by its Director** in **2014(2) SCC 62** has held that for computing the period of limitation, the date of presentation of the final report alone is relevant and not the date on which the Magistrate takes cognizance and the Supreme Court in that Judgment has referred its another decision in **Vanka Radhamanohari Vs. Vanka Venkata Reddy and others** in **1983(3) SCC 4** and in that decision the Hon'ble Apex Court has specifically held that in view of Section 473 Cr.P.C., the Court can take cognizance of an offence not only when it is satisfied on the facts and circumstances of the case, the delay has been properly explained, but, even in the absence of proper explanation, if the Court is satisfied that it is necessary to do so in the interest of justice. Moreover, Section 473 Cr.P.C., has a non-obstante clause and the same has an overriding effect on Section 468 Cr.P.C., if the Court is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice.

9. In the above Judgment, the Hon'ble Supreme Court has compared the above provisions of Cr.P.C., along with Section 5 of the Limitation Act and observed that the burden is on the applicant or the appellant, in the application filed under Section 5 of the Limitation Act to satisfy that there was sufficient cause for the delay. But, whereas, under Section 473



Cr.P.C., it is for the Court to examine as to whether such delay has been properly explained or even in the absence of any reason for the delay, whether it is the requirement of the justice to condone the delay.

10. No doubt, in the case on hand, as already pointed out, the delay is more than 3 ½ years, but the victim / defacto complainant has nothing to do with the said delay. The prosecution has offered an explanation that IMEA Number obtained from the Mobile Service Provider got matched with the revision petitioner's mobile IMEA Number, that the police seized the mobile phone and after getting the details from the defacto complainant, the same was sent to the Forensic Laboratory and there occurred delay. The learned Magistrate, after considering the explanation given by the prosecution, has observed that the delay has been properly explained, dismissed the petition. Hence, the decision of the learned Magistrate, dismissing the petition filed under Section 468 Cr.P.C., cannot be found fault with. The revision petitioner has not canvassed any other reason or ground to impugn the order. Hence, this Court decides that the revision is devoid of merits and the same is liable to be dismissed.

11. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

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/ /2021

Sub Assistant Registrar(CS)

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**To**

- 1.The Judicial Magistrate, Additional Mahila Court, Madurai.
- 2.The Chief Judicial Magistrate, Madurai.

3.The Inspector of Police,  
Central Crime Branch (Cyber Crime),  
Madurai City, Madurai.

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



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The Record Keeper, Criminal Records,  
Madurai Bench of Madras High Court,  
Madurai. (2 copies)

order made in  
CRL.RC(MD) .No. 103 of 2017 and  
Crl.M.P(MD) .No.890 of 2017  
07.04.2021

ns (CO)  
TR(05.05.2021) 5P 7C