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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2021

Pronounced on : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 285 of 2017
and
Crl.M.P(MD).No.2651 of 2017

Sekar ... Petitioner

Vs.

The State rep. by its
Inspector of Police,
Kulithalai Police Station,
Karur District,
(FIR No.520 of 2011) ... Respondent

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records pertaining to the order passed in Crl.M.P(MD).No.3796 of 2016 in C.C.No.193 of 2016 dated 09.01.2017 by the Judicial Magistrate No.II, Kulithalai, Karur District and quash the same.

For petitioner : Mr.R.Murugappan
For Respondent : Mrs.S.E.Veronica Vincent
Government Advocate (Criminal Side)

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No.3796 of 2016 in C.C.No.193 of 2016 dated 09.01.2017 by the learned Judicial Magistrate No.II, Kulithalai, Karur District, dismissing the petition filed under Section 468 Cr.P.C.,

2. It is not in dispute that one Ponnuchamy has lodged a complaint with the respondent police for the death of his son in an accident alleged to have occurred on 20.12.2011, that on the basis of the said complaint, First Information Report came to be registered in Crime No.520 of 2011, on the file of the respondent Police against the revision petitioner for the offence under Sections 279 and 304(A) IPC, that the respondent police after investigation has laid a final report and the same was taken on file on 12.08.2016 as C.C.No.193 of 2016 on the file of the Judicial Magistrate Court No.II, Kulithalai.

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3. It is also not in dispute that the revision petitioner / accused, after entering into appearance before the learned Judicial Magistrate No.II, Kulithalai has filed an application under Section 468 Cr.P.C., alleging that though the First Information Report was registered on 20.12.2011, the charge sheet was filed after a lapse of more than 4 years and 10 months and without getting an opinion of the Public Prosecutor, that though the Section 468 Cr.P.C., provides a limitation period of three years for filing the final report, the same was filed after expiry of the period of limitation and that therefore, the case taken on file in C.C.No.193 of 2016 was liable to be dismissed. The prosecution has filed a reply objecting the petitioner's contentions and prayed for dismissal of the petition. The learned Judicial Magistrate, after conducting an enquiry, passed the impugned order on 09.01.2017 dismissing the said application. Aggrieved by the said order, the accused has come forward with the present revision.

4. The learned counsel appearing for the revision petitioner would contend that the impugned order dated 09.01.2017 was very much against the provision of Section 468 Cr.P.C., as the cognizance was taken after three years from the date of registration of the First Information Report.

5. It is pertinent to mention that except the said ground, the revision petitioner has not canvassed any other reason or ground to impugn the order passed by the learned Magistrate. 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. In the present case, the major offence with which the revision petitioner was charged with is under Section 304(A) IPC and the same would attract the maximum punishment of two years imprisonment and as such, the period of limitation for taking cognizance is three years. In the case on hand, admittedly, charge sheet was filed after the expiry of three years and the case was taken on file on 12.08.2016 after the lapse of more than 4 ½ years. Now, it is time to refer Section 473 Cr.P.C., and the same is extracted hereunder for better appreciation;

> *"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."*

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6. Section 468 of the Code bars a Court from taking cognizance of the 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 the legal dictum laid down 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.

7. 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.

8. In the case on hand, a poor father has knocked the door of the Court seeking justice for the death of his son, who died in the accident alleged to have been committed by the revision petitioner,

9. No doubt, the delay is more, but the victim / defacto complainant has nothing to do with the said delay. No doubt, the prosecution has not offered any acceptable reason or explanation for the delay, but, that cannot be considered as a ground or reason to allow the revision petitioner to go scot tree on the ground of limitation. No doubt, finding of the learned Magistrate that the reasons for the delay can only be ascertained after examination of the witnesses and that therefore, this case is liable to be tried fully is not good in law, but at the same time, the decision of the

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learned Judicial Magistrate in dismissing the petition filed under Section 468 Cr.P.C., cannot be found fault with.

10. The revision petitioner, by seeking the order allowing the petition filed under Section 468 Cr.P.C., has impliedly claimed the relief of discharge. It is pertinent to note that in a summons case, after taking cognizance of the case and ordering for the issuance of summon to the accused, the Magistrate has no power or jurisdiction to recall the earlier order or to discharge the accused on the ground that there was no ground for taking cognizance of the case. The Hon'ble Supreme court in ***Adalat Prasad Vs. Rooplal Jindal and others*** reported in ***2004(7) SCC 338*** has held that the decision in ***K.M.Mathew Vs. State of Kerala and another*** that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law. In the case on hand, since the learned Magistrate had already taken cognizance of the case and issued summons to the accused, on applying the law laid down by the Hon'ble Apex Court in Adalat Prasad case, he has no power or jurisdiction to review his own order or recall the process. Hence, the final decision of the learned Judicial Magistrate cannot be found fault with and consequently, this Court decides that the above 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 (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TRP

To

The Judicial Magistrate No.II,
Kulithalai, Karur District.

Order made in
CRL.RC(MD).No. 285 of 2017 and
Crl.M.P(MD).No.2651 of 2017
16.03.2021

PM(CO)
SRS (23/03/2021) 4P : 2C

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