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Crl.O.P.No.11074 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.06.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.11074 of 2020

and

Crl.M.P.No.4545 of 2020

T.Siva

... Petitioner

Vs.

1. State By;

The Inspector of Police,
Law and Order,
Gudiyattam Town Police Station,
Gudiyattam.

2. K.Balaraman

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to S.T.C.No.3 of 2019 on the file of the Judicial Magistrate, Gudiyattam, now pending trail so as to quash the Charge sheet.

For Petitioner : Mr.B.Leninbalu

For Respondent 1 : Mr.A.Gopinath
Government Advocate
(Crl.side)



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ORDER

This petition has been filed to quash the proceedings in S.T.C.No.3 of 2019 on the file of the Judicial Magistrate, Gudiyattam, for the offences under Sections 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act 1959, in Crime No.166 of 2016, as against the petitioner.

2. Heard both sides and perused the materials available on record.

3. Based on the complaint lodged by the second respondent, the first respondent Police had registered the F.I.R., in Crime No.166 of 2016 for the offences under Sections 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act 1959, alleging that without obtaining permission from the local authorities, the petitioner made advertisements in the jurisdiction of Gudiyattam Local Legislative Constituency. Even after information given to the party, they failed to take any steps to remove the said advertisements.



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4. The learned counsel appearing for the petitioner submitted that based on the complaint lodged by the second respondent, first respondent Police had registered the F.I.R., on 14.03.2016 in Crime No.166 of 2016. The maximum punishment for the offences under Sections 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act 1959, is one year. Therefore, for taking cognizance and for filing charge sheet, the provision under Section 468 of Cr.P.C. provides only one year i.e., on 13.03.2017 whereas, the first respondent after completion of investigation, filed the final report only on 07.02.2019 and same has been taken cognizance on 21.02.2019. Therefore it is clearly barred by limitation as contemplated under Section 468 of Cr.P.C. He further submitted that the Act is applicable to all the local bodies except the village panchayat. Therefore, the first respondent has no jurisdiction to file the final report, since the occurrence took place within the jurisdiction of Seevur Village panchayat area.

5. The learned Government Advocate (Crl.side) appearing for the first respondent Police submitted that the Hon'ble Supreme Court of India held that for the purpose of computing the period of limitation



under Section 468 of Cr.P.C., the relevant date for filing the complaint or the date of initiation of prosecution and the date on which the Magistrate takes cognizance in the case.

6. Admittedly, in the case on hand, the first respondent registered the F.I.R., in Crime No.166 of 2016, on 14.03.2016, for the offences under Sections 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act. 1959, which contemplates the maximum punishment is one year. Therefore the first respondent ought to have filed the final report within one year from the date of registration of the F.I.R. whereas, the first respondent filed the final report only on 07.02.2019. Therefore, it is clearly barred by limitation under Section 468 of Cr.P.C.

7. It is relevant to extract the provisions under Sections 4(A) and 4(B) of Tamil Nadu Open Space Disfigurement Act, 1959, which reads as follows;-

"5. To appreciate the above, the penal provision is to be considered. The charge sheet is filed for an offence under Section 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act 1959 The same reads as follows:-



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Section 4 (1) of the Tamil Nadu Opens Places (Prevention of Disfigurement) Act, 1959, provides for penalty for unauthorised disfigurement by advertisement. The said provision is extracted hereunder: ?

*4.(1) Penalty for unauthorised disfigurement by advertisement- **Subject to the provisions of Section 4-A,** whoever affixes to or inscribes or exhibits on, any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both.*

(A) reading of the above Section would clearly show that whoever affixes to or inscribes or exhibits on, any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both

(B) Penalty

"Whoever contravenes the provisions of Section 4-A shall be punished with imprisonment of either



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description, for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both".

8. Accordingly, the maximum punishment for the offences punishable under Sections 4(A), 4(B) of Tamil Nadu Open Space Disfigurement Act 1959 is only one year. Further, the period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year as per Section 468 of Cr.P.C. Therefore, the Charge Sheet filed by the first respondent is clearly barred by limitation. Therefore, the impugned proceedings cannot be sustained as against the petitioner and it is liable to be quashed.

9. Accordingly, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.3 of 2019, on the file of the Judicial Magistrate, Gudiyatham, is hereby quashed. Consequently, connected miscellaneous petition is closed.

24.06.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

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1. The Judicial Magistrate,
Gudiyattam.
2. The Inspector of Police,
Law and Order,
Gudiyattam Town Police Station,
Gudiyattam.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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