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Crl.O.P.No.22882 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.22882 of 2021

Thiyagaraj

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Kilpauk PS,
Chennai – 600 007.

... Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the case pending investigation in Crime No.230 of 2018 on the file of the Respondent Police and quash the same.

For Petitioner : Mr.C.Vidhusan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original petition is filed to quash the FIR in Crime No.230 of 2018 on the file of the respondent Police.

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2. The case of the prosecution is that during night rounds on 13.05.2018, the respondent Police got information that the restaurant by name 'Robusta Hyglow Cafe' was serving Hookah to the students and hence, the Police went to the restaurant. As soon as they entered, some of the customers, who were using Hookah, left the premises. The Police enquired about the details of the Restaurant Management, the Manager of the Restaurant, who is the petitioner herein, abused Police in filthy language and prevented them from executing their public duties. Thereafter, the petitioner was arrested and on his confession, some of the material objects used for the offence was recovered. On the basis of the above report, a case was registered against the accused for the offence under Sections 294 (b), 353, 506 (1) of I.P.C., Section 24 of the Cigarette and other Tobacco Products Acts 2003 and Section 4 (3) of the Tamil Nadu Prohibition of Smoking and Spitting Act, 2003.

3. Heard Mr.C.Vidhusan, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner would submit that despite



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registering the FIR as early as on 13.05.2018 and the maximum punishment for the offences for which the petitioner was booked, was just three years, the charge sheet has not been filed so far and hence the case is barred by limitation.

5. The learned Additional Public Prosecutor on instruction, would submit that earlier the petitioner has filed the Criminal Original Petition in Crl.O.P.No.7884 of 2019 seeking to quash the FIR on merits and the said petition was dismissed on the ground that there are *prima facie* materials available and the allegations that the petitioner was serving Hookah to the students are serious in nature.

6. The records would show that the FIR has been registered as early as on 13.05.2018 in Crime No.230 of 2018 on the file of the respondent Police. Apart from that in the earlier Crl.O.P.No.7884 of 2019 which was filed by the petitioner, an order has been passed on 25.03.2019 by this Court, directing the respondent Police to complete the investigation and to file a final report within a period of three months. Despite having the



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direction of this Court dated 25.03.2019, the respondent Police has not chosen to finish the investigation and file the charge sheet.

7. On perusal of the earlier order passed by this Court in Crl.O.P.No.7884 of 2019, dated 25.03.2019, it is seen that due to the pendency of the cases, the petitioner is not able to go abroad for employment opportunities. In that case, the respondent Police ought to have shown every reason for the delay on the part of the respondent and complete the investigation within a prescribed time limit. Even if the investigation is not completed within the time as directed by this Court vide order dated 25.03.2019 in Crl.O.P.No.7884 of 2019, the investigation ought to have been completed atleast within the statutory time contemplated under Section 468 of Cr.P.C., The petitioner has been charged for the offences under Sections 294 (b), 353, 506 (1) of I.P.C., Section 24 of the Cigarette and other Tobacco Products Acts 2003 and Section 4 (3) of the Tamilnadu Prohibition of smoking and spitting Act, 2003. The maximum punishment for each of the above is under:



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S.No.	Offence	Punishment
1	Section 294 (b) of I.P.C.,	Imprisonment of either description for a term which may extend to three months or with fine, or with both
2	Section 353 of IPC	Imprisonment of either description for a term which may extend to two years, or with fine, or with both
3.	Section 506 (1) of IPC	Imprisonment of either description for a term which may extend to two years, or with fine, or with both
4	Section 4 of the Tamilnadu Prohibition of Smoking & Spitting Act, 2003	With fine which may extend to one hundred rupees
5	Section 24 (1) Cigarette and other Tobacco Products Acts 2003	With fine which may extend to two hundred rupees

8. The above table would show that the maximum punishment for the offences for which the petitioner was booked is two years. The FIR has been registered on 13.05.2018. Section 468 of Cr.P.C., would prescribe 3 years of limitation for the offences punishable with term of one year but not exceeding 3 years. In any case, the period of limitation for the present case would be three years from 13.05.2018. Section 468 of Cr.P.C., is extracted



hereunder for better appreciation:

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468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

9. Thus the period of limitation would expire on 12.05.2021. Since



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the petitioner has not chosen to file the charge sheet, it is a clear case which is barred under Section 468 of Cr.P.c., and hence the FIR is liable to be quashed.

10. In the result, this Criminal Original Petition is allowed. The FIR in Crime No.230 of 2018 on the file of the respondent Police is hereby quashed.

20.09.2022

vum
Index:yes/No
Speaking order / Non speaking order

To

1. The Inspector of Police,
Kilpauk PS,
Chennai – 600 007.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA,J.

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