



Crl.O.P.No.27450 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.27450 of 2019

and

Crl.M.P.No.14607 of 2019

Kailasam @ Nagaraj

... Petitioner

-Vs.-

1.The State represented by
The Inspector of Police,
Hogenakkal Police Station,
Dharmapuri District.
Crime No.459 of 2012

2.Kalaiarasi

.. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records pertaining to the Charge Sheet in C.C.No.59 of 2017 under Section 188 and 153A IPC on the file of the learned Judicial Magistrate, Pennagaram, Dharmapuri District in Crime No.459 of 2012 on the file of first respondent police and quash the same.



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For Petitioner :Mr.A.Suresh Sakthi Murugan
For Respondents :Mr.N.S.Suganthan,
Government Advocate (Criminal side)
for R1
No appearance for R2

ORDER

This Criminal Original Petition has been filed to quash the final report filed by the first respondent police and taken on file in C.C.No.59 of 2017 by the learned Judicial Magistrate, Pennagaram.

2. This petition to quash has been filed on a short ground that for the occurrence alleged to have taken place on 16.11.2012, a case was registered in Crime No.459 of 2012 by the respondent police for alleged offences under Sections 188 and 153A IPC. Though the final report is dated 18.09.2013, it was returned on its first presentation and represented after four years on 08.06.2017. The delay in filing the final report, beyond the limitation period prescribed, render the case liable to be quashed.



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3. Further it is also contended that for taking cognizance of the offences under Section 188 IPC, the State has to grant prior sanction whereas in this case, there is no sanction to prosecute is obtained from the State Government. However, the trial Court has taken cognizance of the offences in violation of Section 195 of the Code of Criminal Procedure [hereinafter referred to as “CrPC”].

4. The learned Government Advocate (Criminal side) on perusal of the CD files, informs this Court that no prior sanction under Section 195 of CrPC, was obtained to prosecute the accused herein. Considering the records and submissions made, this Court finds that the final report has been taken cognizance on 08.06.2017, for offences under Sections 188 IPC and 153A IPC. The occurrence, alleged to have attracted the said offences, occurred on 16.11.2012. Section 153A IPC deals with the offences relating to promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., which is punishable with imprisonment which may extend to three years or with fine or with both. Section 188 IPC deals with offence of disobedience to



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order duly promulgated by public servants, which is punishable with simple imprisonment for a term which may extend one month or with fine which may extend to Rs.200/- or both. Section 195 CrPC mandates that no Court shall take cognizance of any offence punishable under sections 172 to 188 (both inclusive) of IPC, except on a complaint in writing of a public servant concern or on some other public servant to whom he is administratively subordinate and no Court shall take cognizance of any of the offences punishable under Section 153A IPC except with previous sanction of of Central Government or State Government.

5. Therefore, this is a case which is apparently taken cognizance by the learned Judicial Magistrate after 4 years of the occurrence of an offence, which is punishable for a term upto three years and which cannot be taken cognizance without previous sanction of the Central Government. While there is a Bar for taking cognizance after lapse of period of limitation as prescribed under section 468 CrPC and Bar to take cognizance without previous sanction of the Central Government or State Government, as the case may be, the learned Judicial Magistrate has taken



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cognizance of these two offences contrary to the mandate prescribed under the Code of Criminal Procedure.

6. In view of the above, the C.C.No.58 of 2017 on the file of the learned Judicial Magistrate, Pennagaram, is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

11.11.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa

To



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- 1.The Judicial Magistrate,
Pennagaram,
Dharmapuri District.
- 2.The Inspector of Police,
Hogenakkal Police Station,
Dharmapuri District.
Crime No.459 of 2012
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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