



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.12.2021

Delivered on : 09.02.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.20743 of 2018

and Crl.M.P.(MD)Nos.9588 & 9589 of 2018

- 1.Mareeswari
- 2.Mariammal
- 3.Kamalraj
- 4.Gurumoorthy
- 5.Paramasivam
- 6.S.Pandi
- 7.Ravi
- 8.Medaiyan
- 9.Thangaraj
- 10.Malaiarasan
- 11.Selvaraj
- 12.Kalimuthu
- 13.Pandi
- 14.Nagapandi
- 15.Nagendran
- 16.Kannan
- 17.Ilayaraja
- 18.Ragavan
- 19.Chelladurai

... Petitioners/Accused Nos.1 to 19



vs.

1.The State represented by its
The Inspector of Police,
Masarpatti Police Station,
Thoothukudi,
Thoothukudi District.
(Crime No.99 of 2014)

... 1st Respondent/Complainant

2.M.Mariappan

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the impugned charge sheet in S.T.C.No.737 of 2016 on the file of the learned Judicial Magistrate, Vilathikulam, dated 21.10.2016 and to quash the same.

For Petitioners : Mr.R.Murugan

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl. side) for R1
No appearance for R2

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.737 of 2016 pending on the file of the Judicial Magistrate Court, Vilathikulam, and quash the same.

2.The petitioners are the accused Nos.1 to 19 in S.T.C.No.737 of 2016 on the file of the Judicial Magistrate Court, Vilathikulam.

3.The second respondent has registered a case in Crime No.99 of 2014 against thirteen (13) named persons and others for the alleged offences under Sections 143, 147, 188 and 353 IPC and Section 4(1) of Tamilnadu Open Place Disfigurement Act.

4.The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C. dated 01.07.2015 against the petitioners herein for the alleged offences under Sections 143, 147, 188 and 353 IPC r/w Section 4(1) of Tamilnadu Open Place Disfigurement Act and the case was taken on file in S.T.C.No.737 of 2016 and the same is pending on the file of the Judicial Magistrate Court, Vilathikulam.

5.The case of the prosecution is that on 29.10.2014, at about 18.00 hours, the petitioners erected a 40 feet height Thevar cut-out with serial lights, that since the same was erected without any permission from the police, the petitioners were directed to remove the cut out,



that they have assembled unlawfully and staged a road block and disturbed the general public and transport and also prevented the Government officials from discharging their duties.

6.The learned counsel for the petitioners has mainly raised a legal issue that since the first respondent has violated the mandatory requirements contemplated under Section 167(5) Cr.P.C., the impugned charge sheet is legally unsustainable and the same is liable to be quashed.

7.The learned counsel for the petitioners would submit that the accused were arrested on 29.10.2014 and the charge sheet was filed on 01.07.2015 after the expiry of more than 8 months, that though the charge sheet was ordered to be returned by the learned Judicial Magistrate on 22.09.2016, the same was resubmitted and the case was taken on file on 21.10.2016, that though the Investigation Officer ought to have completed the investigation within a period of 6 months from the date of arrest of the accused, and without seeking any extension of time, has filed the charge sheet beyond the statutory period and that therefore, the very filing of the charge sheet is nothing but abuse of process of law and the same is liable to be set aside.

8.No doubt, as rightly pointed out by the learned counsel for the petitioners, since all the offences alleged against the petitioners are punishable with imprisonment up to two years and as such, the said case can only be considered as a summons case as contemplated under Section 2(w) r/w 2(x) Cr.P.C.

9.Before entering into further discussion, it is necessary to refer the Section 167(5) Cr.P.C which reads as follows:-

"167(5) - If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary."

10.A perusal of the above provision makes it clear that if the offence is relating to summons case and the investigation is not concluded within a period of 6 months from the date of arrest of the accused, then the Investigating Officer shall satisfy the learned Magistrate by giving special reasons for the continuation of investigation beyond the period of 6 months and in case of the failure to make such a requisition, the learned Magistrate shall make an order stopping further investigation into the offence.



11. In the case on hand, as rightly pointed out by the learned counsel for the petitioners, investigation is not completed within a period of 6 months and admittedly, no order extending the period was taken from the jurisdictional Magistrate.

12. The learned counsel for the petitioners has relied on some of the decisions of our Madras High Court and argued that since the charge sheet has been laid after the expiry of 6 months contemplated under Section 167(5) Cr.P.C., the charge sheet is liable to be quashed.

13. It is pertinent to mention that in the judgments referred by the learned counsel for the petitioners, this Court has not at all accepted the legal position, canvassed by the learned counsel for the petitioners.

14. At this juncture, it is necessary to refer the judgment of **Hon'ble Justice Ratnavel Pandian** reported in **1983 Crl. L.J. 1748, (Jagannathan and others vs. State)** wherein, the learned Judge, after considering the decision of the Hon'ble Supreme Court and after various High Courts, has concluded thus:-

"23. From the decisions of the Supreme Court and the various High Courts referred to above, it is clear that once a case is taken cognizance of by a competent Court and the proceedings of the case has commenced, the mere antecedent illegality or irregularity in the investigation, on the basis of which the final report has been filed will not invalidate or vitiate the proceedings unless it is shown that prejudice has been caused thereby to the accused or any miscarriage of justice has resulted thereby. Hence, with respect, I am unable to share the view taken by the learned Judges of the Calcutta High Court in the three decisions referred to above viz that the illegal investigation conducted beyond the prescribed period of six months without the order of the Magistrate would vitiate the taking cognizance of the offence and the subsequent proceedings. Of course if a petition is filed by the accused before the taking cognizance of the offence by the Magistrate, challenging the validity of the investigation conducted beyond the prescribed period of six months without obtaining the permission of the Magistrate, the position would be different."

15. It is pertinent to mention that the law laid down in the above **Jagannathan's case** has been approved and followed by a Division Bench of the Kerala High Court in **C.Baskaran Nair vs. State of Kerala and others** reported in **1987 Crl. L.J. 170**. Moreover, another learned Judge of this Court, in **Andi and others vs. The State and others** reported in **2008 2 LW(Crl) 741**, after referring the various decisions, has held as follows:-

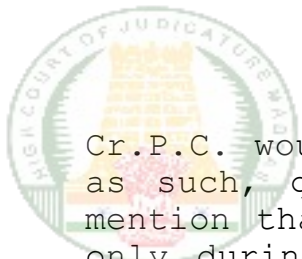


"16. Therefore, it is very clear that if any irregularities have been done in taking cognizance of a particular offence, the said irregularities do not vitiate the entire proceedings as per Section 460(e) of the Code of Criminal Procedure.

17. It has already been pointed out that in the instant case, the respondent has conducted investigation beyond the period of six months as contemplated under Section 167(5) of the Code of Criminal Procedure. The concerned Magistrate has also failed to invoke the mandatory requirement of the said Section. But, the respondent has filed a final report and the same has been taken on file in Calendar Case No.51 of 2007 under Sections 424, 447 & 294 (b) of Indian Penal Code. It has already been pointed out that once a case has been taken cognizance of by a competent Court, the antecedent illegality or irregularity would not invalidate or vitiate the subsequent proceedings and further the Division Bench of the Kerala High Court (in 1987 Cri.L.J. 170) has clearly held that the investigation conducted after six months without an order from the Magistrate, at any rate, will not vitiate that part of the investigation, in the absence of prejudice or miscarriage of justice being shown. It is not an exaggeration to say that the entire mistake has been committed by the concerned Magistrate as well as the concerned investigating officer and for the mistake committed by them, the innocent person viz., the defacto complainant, should not be penalised and further the authorities cited by the learned counsel appearing for the petitioners are not suited to the facts and circumstances of the present case and under the said circumstances, the same cannot be relied upon.

18. Even at the risk of jarring repetition, the Court would like to point out that the Division Bench of the Kerala High Court (in 1987 Cri.L.J. 170) has clearly held that the investigation conducted after six months without an order from the Magistrate, at any rate, will not vitiate that part of the investigation. Therefore, it is very clear that the case registered in Crime No.108 of 2007, cannot be quashed."

16. No doubt, in another judgment cited by the learned counsel for the petitioners in **Azalea Veronica vs. State represented by Inspector of Police, Airport Police Station, Chennai** reported in **(2007) 1 MLJ (Cr1) 1046**, a learned Judge of this Court by holding that allowing the proceedings to continue in respect of the specific



Cr.P.C. would amount to a clear case of abuse of process of law and as such, quashed the entire proceedings. But, it is pertinent to mention that in the said decision case, the charge sheet was filed only during the pendency of the petition to quash the FIR on the ground of limitation under Section 167(5) Cr.P.C., the proceeding was ordered to be quashed.

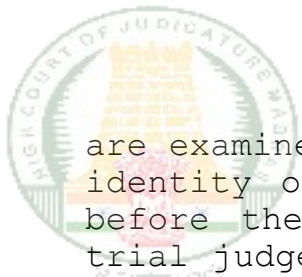
17.In the case on hand, it is not the case of the petitioners that they have invoked Section 482 Cr.P.C. for quashing the FIR on the ground of bar under Section 167(5) Cr.P.C. during the pendency of the investigation.

18.Admittedly, the above criminal original petition has been filed only after the jurisdictional Court had taken cognizance of the case in S.T.C.No.737 of 2016 and as such, the decision of this Court in **Azalea Veronica vs. State represented by Inspector of Police, Airport Police Station, Chennai** reported in **(2007) 1 MLJ (Cr1) 1046**, cannot be applied to the case on hand.

19.The learned counsel for the petitioners would submit that the ninetieth (19) petitioner Karuppasamy was not at all available in India and he was in abroad at the time of the alleged occurrence, that the respondent police had compelled the ninetieth (19) petitioner Karuppasamy to appear in the name of Chelladurai S/o.Vanniya Thevar, and that due to the compulsion, the ninetieth (19) petitioner has been appearing in the name of Chelladurai. He would further submit that the petitioners have been implicated without conducting any test identification parade as the petitioners were not known to the second respondent and that charge sheet has been filed only on the basis of fake allegations without specifying the names of the persons and the specific overt act said to have been attributed by each of them.

20.As rightly contended by the learned Government Advocate (Criminal Side), these factual aspects in dispute cannot be gone into the petition filed under Section 482 Cr.P.C. and it is matter for trial. Except the above, the petitioners have not raised any other ground to impugn the proceedings pending against them. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

21.However, the personal presence of the petitioners 1 and 2 before the trial Court is ordered to be dispensed with, on conditions that they shall appear at the time of questioning under Section 313 of Cr.P.C., and at the time of passing judgment and on all the hearings, specifically directed by the trial court. The petitioners 1 and 2 are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them



are examined in chief. The petitioners 1 and 2 shall not dispute the identity of the witnesses. The petitioners 1 and 2 shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioners 1 and 2 adopts any dilatorial tactics, it is open to the Trial Court to insist for their appearance and deal with the petitioners 1 and 2 in accordance with the judgment of Supreme Court of India, **in State of Uttar Pradesh Vs. Shambunath Singh**, reported in **2001 (4) SCC 667**.

22.In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (As)

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/ /2022

Sub Assistant Registrar(CS)

csn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate,
Vilathikulam,Thoothukudi District.

2.The Inspector of Police,
Masarpatti Police Station,
Thoothukudi, Thoothukudi District.

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

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and Crl.M.P.(MD)Nos.9588 & 9589 of 2018
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MGJ(10.03.2022) 7P 4C