



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 15.12.2021
PRONOUNCED ON: 01.02.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Crl.O.P. (MD)Nos.8450 of 2018 and 17454 of 2019
and
Crl.M.P. (MD)No.3770 of 2018

Crl.O.P. (MD)No.8450 of 2018:

K.Arunkumar : Petitioner/Accused

Vs.

1.State represented by
The Inspector of Police,
D-1, Tallakulam Police Station,
Madurai District.
(In Crime No.202 of 2015) : Respondent/Complainant

2.R.Pandi : Respondent / Defacto Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in Crime No.202 of 2015, pending on the file of the first respondent police and quash the same.

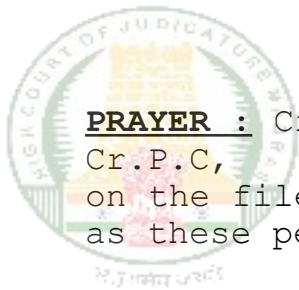
Crl.O.P. (MD)No.17454 of 2019

1.Malairaja
2.Dineshkumar
3.S.Ganeshkumar : Petitioners/Accused 3, 6 and 7

Vs.

1.State represented by
The Inspector of Police,
D-1, Tallakulam Police Station,
Madurai District.
(In Crime No.202 of 2015) : Respondent/Complainant

2.R.Pandi : Respondent / Defacto Complainant



PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in Crime No.202 of 2015, pending on the file of the first respondent police and quash the same as far as these petitioners are concerned.

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For Petitioners
in both cases : Mr.A.Jayaramachandran
For Respondents
in both cases : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1

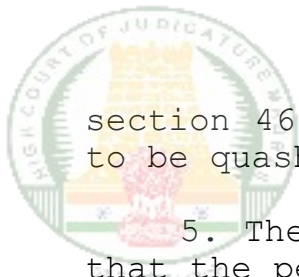
COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in Cr.No.202 of 2015 pending on the file of the first respondent and quash the same.

2. The petitioner in Crl.O.P.(MD)No.8450 of 2018 is the fourth accused and the petitioners in Crl.O.P.(MD)No.17454 of 2019 are the accused Nos.3, 6 and 7 in Cr.No.202 of 2015, pending on the file of the first respondent police.

3. The case of the prosecution is that on 14.02.2015, which was Valentine's Day, at about 03.00p.m., nearly 10 persons entered into Rajaji Children's Park belonging to the Madurai Corporation without buying tickets, that when a staff of the park was restraining them, they indulged in quarrel with him, that when the second respondent/defacto complainant questioned the same, 4 persons among them strangulated his right hand, that Women Constables who were posted for security came to rescue him, that the above said persons abused the Women Constables in filthy language and one among them shoved her by pushing on her chest, that when the Sub-Inspector of Police came to the place, 3 among them, scaled the wall of the Park and fled away and that 7 persons issued life threat to the Women Constables and ran away. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.202 of 2015 for the alleged offences under Sections 147, 294(b), 341, 353, 354, 506(i) I.P.C., and Section 4 of TNPHW Act.

4. The learned Counsel for the petitioners would contend that the impugned F.I.R., was registered on 14.02.2015 for the alleged offences 147, 294(b), 341, 353, 354, 506(i) I.P.C., and Section 4 of TNPHW Act, for which the maximum prescribed sentence is upto 3 years and as such, the failure on the part of the first respondent in completing the investigation and filed final report, which resulted in non-taking of cognizance by the trial Court, has ultimately lead to the above case being barred by the period of limitation under



section 468(2) Cr.P.C., and as such, the impugned F.I.R., is liable to be quashed on this ground alone.

5. The learned Counsel for the petitioners would further submit that the petitioners were students of Law College at that time, that they have completed Law Course at Madurai Law College and already obtained Degree from the Tamil Nadu Dr.Ambedkar Law University, that the Bar Council of Tamil Nadu and Pondicherry has negated to permit them to enroll as Advocates owing to the reason of pendency of the impugned F.I.R., against them and this Court at the time of admission has granted an order of interim stay.

6. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the first respondent, the allegations and the charges levelled against the petitioners are serious. As already pointed out, the petitioners have abused the Women Constables on duty in filthy language and also one of them shoved one Constable by pushing on her chest and that is why F.I.R., came to be registered also for the offences 353, 354 I.P.C., and Section 4 of TNPHW Act. But the main point that was canvassed by the learned Counsel for the petitioners is with respect to limitation under Sections 468 and 473 Cr.P.C.

7. It is necessary to refer the judgment of a learned Judge of this Court in **Crl.O.P.(MD)No.18775 of 2021, dated 07.12.2021 in Thinakaran and Others Vs. State represented by the Inspector of Police, Tirunelveli Junction Police Station and another** and the relevant passage is extracted hereunder:

"6. The learned counsel appearing for the petitioners drew my attention the decision reported in 1987 Cri LJ 360 (Kathamuthu V. Balammal). The Hon'ble Division Bench was called upon to answer the question as to whether the launching of a criminal prosecution after the lapse of the period of limitation prescribed under Section 468 of Cr.P.C, can the Court condone the delay after taking cognizance of the offences or whether such condonation of delay should precede the taking cognizance of the offences. In the aforesaid Judgment, the Hon'ble Division Bench categorically answered and held that any proceeding culminating in the conviction of a person in a criminal case, the cognizance of which has been taken after the expiry of the period of limitation as prescribed under Section 468(2) of Cr.P.C. without first resorting to Section 473 of Cr.P.C., is non est in the eye of law. The decision reported in 1978 Cri.L.J.116 (Sulochana V. State Registrar of Chits, Madras) was specifically disapproved."

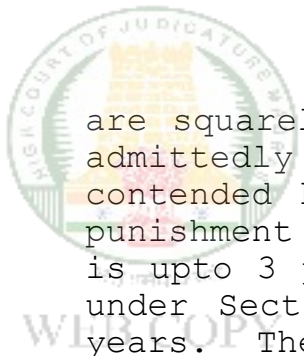
8. Another learned Judge of this Court in **D.Senthilkumar Vs. The Inspector of Police, Prohibition Enforcement Wing, T.Nagar Unit, M.G.R.Nagar Police Station, Chennai - 600 083, (Crl.O.P.No.4307 of**



2017, dated 09.09.2020) has held as follows:

"7. Considering the rival submissions, it is seen that FIR was registered on 25.06.2015 on the same day the vehicle was seized for offence under Section 4(1)(a) Tamil Nadu Prohibition Act, 1937, for this offence the imprisonment is fixed for a term which may extended to three months or with fine which may extended to one thousand. As per Section 468(2) of Cr.P.C, the period of limitation for filing final report expires on or before 24.06.2016. Auto which was seized was ordered to be returned to the petitioner in C.M.P.No. 4384 of 2015 by order dated 26.11.2015 by XXIII Magistrate Court, Saidapet, Chennai, against which Crl.RC.No.74 of 2015 was filed by the respondent Police before the Additional Sessions Judge, Chennai. It is seen that the Additional Deputy Commissioner of Police sent notice for confiscating the Vehicle on 08.10.2015, since the owner of the vehicle failed to make any objection the vehicle was confiscated and is in custody PEW unit and from 26.11.2015 to 31.07.2018 revision case was pending. It is seen that the respondent had filed the original documents during enquiry before them Additional Session Court, Chennai and due to which the charge sheet which was made ready on 21.09.2016, could not be filed before the concerned Magistrate Court. This is an explanation offered by the learned counsel for the respondent. There is no reason given why after disposal of criminal revision on 13.07.2018 till date the charge sheet is yet to be filed and numbered. Though as per 470 of Cr.P.C, exclusion of time in certain cases are available, in this case no such grounds are available. Further, no petition or reason given seeking condonation of delay as per Section 473 Cr.P.C is made. The valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. In any case, the exercise of power under Section 473 Cr.P.C., extending the period of limitation by condoning the delay in launching prosecution should precede the taking cognizance of the offence. This Court following the case of "Kathamuthu Versus Balammal reported in 1985 Crl.L.J 360", finds the facts of the case no cognisance would be taken in Criminal No.205 of 2015 since it would be bar beyond the period of limitation. In view of the same the proceedings in Crime No.205 of 2015 is quashed.

9. In the said judgment, the learned Judge has specifically held that valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. The above decisions



are squarely applicable to the case on hand. In the present case, admittedly F.I.R. came to be registered on 14.02.2015. As rightly contended by the learned Counsel for the petitioners, the maximum punishment for the offences under which the petitioners are charged, is upto 3 years and hence, the period of limitation as contemplated under Section 468 Cr.P.C., for laying the final report will be 3 years. The fourth accused has filed the petition on 15.05.2018 and whereas the other accused Nos.3, 6 and 7 have filed the petition on 14.11.2019. Admittedly, the charge sheet has not been filed till 15.05.2018. This Court, at the time of admission of the first Criminal Original Petition, by observing that the delay would only be termed as inordinate, has granted the order of interim stay of the proceedings. Thereafter, the accused Nos.3, 6 and 7 have filed the second petition and also obtained interim orders.

10. When the matter was taken up on 18.11.2021, considering the submission made by the learned Government Advocate(Crl.Side) that final report has already been filed before the Court of the Judicial Magistrate No.II, Madurai, this Court directed the Registry to get a report from the learned Judicial Magistrate No.II, as to the stage of the case in Cr.No.202 of 2015, on the file of the first respondent. In pursuance of the same, the learned Judicial Magistrate No.II, Madurai has submitted a report dated 03.12.2021 stating that the case in Cr.No.202 of 2015 is not pending before that Court and the same is pending before the Additional Mahila Court (Magisterial Level), Madurai. The learned Judicial Magistrate, Additional Mahila Court has also submitted a report stating that no final report has been filed before that Court till date in Cr.No.202 of 2015.

11. As already pointed out, though some of the charges laid against the petitioners are serious as stated by the learned Government Advocate (Crl.Side), this Court is at loss to understand as to why such a case was kept pending in FIR stage itself and charge sheet has not been filed for more than 3 years since the registration of the case. Even now, the first respondent has not offered any acceptable reason or explanation for inordinate delay.

12. As rightly held by the learned Single Judge in the second decision above cited, the right accrued to the accused person, by not filing the final report within the limitation period, cannot be allowed to be defeated except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. Moreover, it is not the case of the first respondent that any petition seeking condonation of delay under Section 473 Cr.P.C., was made. Considering the above, this Court has no hesitation to hold that the impugned proceedings are liable to be quashed.

13. In the result, both the Criminal Original Petitions are allowed and the impugned proceedings in Cr.No.202 of 2015, pending on the file of the first respondent are quashed. The benefit of this order will accrue in favour of the non-petitioning accused also.



Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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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 Inspector of Police,
D-1, Tallakulam Police Station,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)Nos.8450 of 2018 and 17454 of 2019
01.02.2022

MGJ(25.02.2022) 6P 3C