



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.20371 of 2021

and

Crl.M.P(MD)Nos.11568 & 11569 of 2021

WEB COPY

R.Manickaraj

... Petitioner/Accused No.2

Vs.

A.Elavarasan

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records bearing in S.T.C.No.1839 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same as against the petitioner and devoid of merits.

For Petitioner : Mr.M.Jegadeesh Pandian

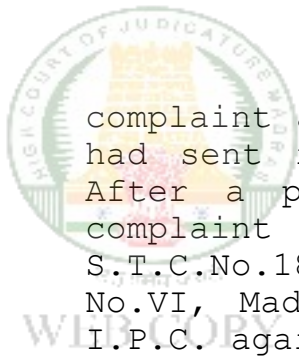
For Respondent : Mr.M.Suri

ORDER

This Criminal Original Petition has been filed to quash the private complaint in S.T.C.No.1839 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai.

2.There are totally two accused, in which the petitioner is arraigned as second accused. The respondent herein lodged a complaint alleging that he had long standing property dispute with one Sathish/Accused No.1, who is none other than the co-brother of the respondent and the petitioner herein/Accused No.2, who is an Advocate, appearing on behalf of accused No.1 and he was aware of the family disputes between them. With regard to the same, civil suits are pending in O.S.No.1120 of 2010 on the file of the learned III Additional Sub Court, Madurai and O.S.No.463 of 1994 on the file of the learned II Sub Court, Madurai.

3.While being so, on 05.07.2015, the respondent and his brothers were in their house, the accused persons came in a vehicle along with henchmen and prevented the respondent and attempted to enter into the land adjacent to their house. They also attempted to lay sand over the property, despite the fact that the civil suit is pending in respect of the said property. Hence, he lodged the complaint before the Inspector of Police, Anna Nagar Police Station. However, the concerned police personnels refused to receive the same. Therefore, the petitioner had sent the complaint by registered post on 06.07.2015, even then, no action has been taken on his



complaint and as such, on 26.04.2016 and 08.11.2016, the respondent had sent representations to the Commissioner of Police, Madurai. After a period of three years, the respondent filed a private complaint on 28.03.2019 and the same has been taken cognizance in S.T.C.No.1839 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai for the offences under Sections 294(b) and 447 of I.P.C. against the petitioner and another.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent.

5.As per the above allegations, the offence under Section 294 (b) of I.P.C would not attract, since the accused persons did not spell out any abusive words against the respondent. Therefore, the necessary ingredients to attract the offence under Section 294(b) of I.P.C are missing in the complaint.

6.Further, the said complaint has been taken cognizance, after a period of five years from the date of occurrence. Though the respondent stated that he lodged a complaint and thereafter sent it by registered post, there is no proof to show that he lodged a complaint. That apart, there is also no proof to show that he sent the complaints by RPAD on 26.04.2016 and 08.11.2016 to the Commissioner of Police, Madurai.

7.The learned counsel appearing for the petitioner vehemently contended that the complaint itself is barred by limitation, since it was filed only on 18.10.2019. The learned Magistrate while taking cognizance stated that the respondent lodged the complaint before the Commissioner of Police on 08.11.2016. Thereafter, he filed a private complaint on 18.10.2019 and the same was within the period of three years. Therefore, the learned Magistrate has taken the complaint that it is not barred by limitation.

8.It is relevant to extract the provisions under Sections 468 and 469 of Cr.P.C, which read as follows:-

"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;

(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 a 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.]

469. Commencement of the period of limitation.-(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

These provisions are self-explanatory and there is no necessity for this Court to amplify anything on the same subject to the term of punishment and limitation for taking cognizance.

9. Admittedly, the respondent was having the knowledge of the said offence when it took place. Therefore, as per Section 469(a) of Cr.P.C., the period of limitation commences from the date of offence and as such, the impugned proceeding is barred by limitation and it cannot be sustained as against the petitioner.

10. Accordingly, the impugned proceedings in S.T.C.No.1839 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai is quashed as against the petitioner and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

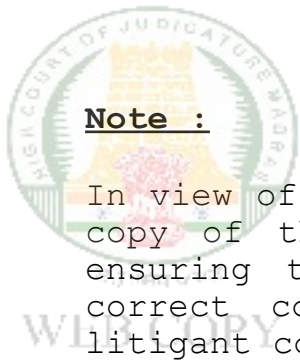
Sd/-

Assistant Registrar (Crl side)

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Sub Assistant Registrar(CS)



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

The Judicial Magistrate No.VI,
Madurai.

+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-12671[F] dated 17/03/2022)

+1 CC to M/s.M.SURI, Advocate (SR-12415[F] dated 16/03/2022)

**Crl.O.P(MD)No.20371 of 2021
15.03.2022**

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