BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.12.2021

Delivered on : 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16462 of 2018

and

Crl.M.P.(MD)Nos.7292 & 7293 of 2018

Rajasekar ... Petitioner/ Accused No.1

vs.

1.The State represented by
The Inspector of Police,
Oomatchikulam Police Station,
Madurai.
in Crime No.527 of 2007 ... 1st Respondent/ Complainant

2.P.Muthuramalingam ... 2nd Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in pursuant to the charge sheet in C.C.No.23 of 2016 on the file of the Judicial Magistrate Court No.IV, Madurai and quash the same as against the petitioner concerned.

For Petitioner : Mrs.Chamundi Bose

For Respondents : Mr.B.Thanga Aravindh
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 relating to the charge sheet in C.C.No.23 of 2016 pending on the file of the Judicial Magistrate Court No.IV, Madurai and quash the same.

2.The petitioner is the first accused in C.C.No.23 of 2016 pending on the file of the learned Judicial Magistrate No.IV, Madurai.

3.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.527 of 2007 for the offences under Sections 341, 384, 506(1) and 504 IPC against four persons including the petitioner herein. After completing the investigation, the first respondent has laid the final report for the offences under Sections 341, 506(1) and 109 IPC against the same four persons by arraying the present petitioner as the first accused and that the learned Judicial Magistrate No.II has taken the case on file in C.C.No.706 of 2013 and subsequently the case was transferred to the file of the Judicial Magistrate Court No.IV, Madurai and the case was taken on file in C.C.No.23 of 2016.

4.The case of the prosecution in short is as follows:-

(i) The second respondent/defacto complainant and his brother Karuppiah have got a property through power deed dated 25.07.2007 from Chinnathan @ Chinniah, Palraj, Swaminathan and Karikalan. The learned Principal District Munsif Court in O.S.No.225 of 2007 has granted permanent injunction against the accused Nos.2 to 4. Since the accused had tried to construct a building and to get an electricity connection with respect to the disputed land, Karikalan gave a petition before the electricity office on 05.10.2007 at about 13.00 hours.

(ii) When the defacto complainant came to the office of the Village Administrative Officer and while standing nearby the office, the third accused at the instigation of the present petitioner and the other accused 2 and 4 had restrained the defacto complainant and abused him in filthy language and also threatened him with dire consequences. The defacto complainant has preferred a complaint on 16.11.2007 and the case was registered against the petitioner and three others in Crime No.527 of 2007. Subsequently the respondent police has filed a charge sheet on 14.07.2011 before the jurisdictional Court. After transfer from the Court of the Judicial Magistrate No.II, the case is now pending on the file of the Judicial Magistrate Court No.IV, Madurai.

5.The learned counsel for the petitioner would submit that all the charges and allegations were levelled only against the third accused, that no specific overt act was alleged against the other accused including the present petitioner and that the only charge levelled against them is that they had abetted the offences.

6.As rightly contended by the learned counsel for the petitioner, the defacto complainant has specifically alleged that the third accused alone had restrained him and abused him in filthy language and threatened him with dire consequences.

7.It is not the specific case of the prosecution that the defacto complainant and the witnesses have specifically alleged that the other accused including the petitioner had restrained the defacto complainant and abused him and also threatened him. But the only allegation is that the third accused had committed the above offences only at the instigation of the petitioner and the accused 2 and 4 and only on the basis of which, the prosecution has filed the charge sheet for the alleged offence under Section 109 IPC to implicate the other accused including the petitioner along with the third accused.

8.Section 107 IPC defines the abetment and it has three clauses and if an act of a person falls within the purview of any of them, it would amount to abetment. As per Section 107 IPC, abetment is constituted by 1) instigating a person to commit an offence; or 2) engaging in a conspiracy to commit an offence; or 3)intentionally aiding a person to commit an offence.

9.It is pertinent to note that in order to proceed against a person for the offence under Section 107 IPC, it is the duty of the prosecution to prove the element of *mens rea.* To put it in short, an act of abetment may take place in one of the three ways 1) Instigation 2) Conspiracy or 3)Intentional aid. Any person can be charged with abetment only if he instigates another to do a criminal act or intentionally aids by any act or illegal omission for the doing of a thing or engages somebody with a purpose to do an illegal act.

10.It is pertinent to mention that by mere association of the accused persons in the case, who are charged for an offence of abetment of the main offender, in the absence of any material to show that there was an instigation by the petitioner or that there was any intention either in aiding or in commission of an offence committed by the accused, it cannot be said that he has committed the offence of abetment. It is well settled law that mere presence at the commission of a crime cannot amount to intentional aid, unless it was intended to have that effect.

11.As already pointed out, in the absence of any evidence about the commission of an offence of abetment by instigation or abetment by conspiracy, mere presence of the alleged abettor at place of occurrence, does not by itself amount to abetment and it is for the prosecution to prove that some aid must have been given by the abettor to the main offender in order to facilitate the commission of an offence.

12.In the case on hand, there is absolutely no averment or material to show that the petitioner and the accused 2 and 4 had instigated the third accused or engaged in a conspiracy to commit the alleged offence or intentionally aided the third accused to commit the offence.

13.As rightly contended by the learned counsel for the petitioner, though the petitioner and the accused 2 & 4 were present at the occurrence place, it is not their case that the said accused while standing nearby, abetted the commission of the alleged offences.

14.It is evident from the records that after filing of the charge sheet, the main offender/third accused had died. It is further evident that when the case was taken up for hearing on 24.02.2020 it was represented that a false case was lodged pursuant to the civil dispute, that a compromise was moved in the year 2011 and that based on which a sum of Rs.60,000/- was paid to the defacto complainant and he had also agreed to withdraw the complaint and that meanwhile, the respondent police has laid a final report and the case was taken on file. It is further evident that the second respondent, despite the receipt of Court notice twice, has not turned up.

15.Now coming to the other ground of attack raised by the learned counsel for the petitioner that the very filing of the charge sheet after lapse of four years since the registration of the case is illegal as it is time barred and that the learned Judicial Magistrate ought not to have taken cognizance of the case, as the final report is clearly barred under Section 468 Cr.P.C.

16.It is necessary to refer the judgment of the learned Single 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."*

17.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 08***3, (***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."

18.It is evident from the records that the incident was alleged to have occurred on 05.10.2007 and FIR came to be registered on 16.11.2007 and admittedly the charge sheet has been laid on 14.07.2011. Section 468 Cr.P.C. contemplates the period of limitation for taking cognizance of an offence and in case of the offence which is punishable with imprisonment for a period of term exceeding one year, but, not exceeding three years, the period of limitation shall be three years. In the present case, the major offence with which the accused were charged with, is under Section 506 (1) IPC and the same would attract the maximum punishment of two years imprisonment and as such, the period of limitation for taking cognizance is three years. In the case on hand, admittedly, charge sheet was filed after the expiry of three years. No doubt, Section 473 Cr.P.C. prescribes two exceptions and that the Court can take cognizance beyond the period prescribed under Section 468 (2) Cr.P.C., if the delay has been properly explained or that it is necessary in the interests of justice.

19.In the instant case, it is not the case of the prosecution that they have moved before the concerned Court under Section 473 Cr.P.C. and obtained necessary orders.

20.As rightly contended by the learned counsel for the petitioner, the prosecution has not offered any acceptable reason or explanation for the delay. The prosecution has not shown that delay in filing the charge sheet has already been condoned by the trial Court or that the case was taken on file in the interests of justice. Hence, this Court has no hesitation to hold that the final report filed after the expiry of the period of limitation is clearly barred by limitation.

21.Considering the above, on merits as well as on the ground of the limitation, the proceedings in C.C.No.23 of 2016 are liable to be quashed.

22.In the result, this criminal original petition is allowed and the proceedings are quashed and order of the quashment will enure to the benefit of the other accused 2 and 4 also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

csm

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 No.IV,
Madurai.

2.The Inspector of Police,
Oomatchikulam Police Station,
Madurai.

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

Crl.O.P.(MD)No.16462 of 2018
and
Crl.M.P.(MD)Nos.7292 & 7293 of 2018
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