



Crl.O.P.No.5419 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

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and

CRL.MP.No.3510 of 2021

1. Kameshwaran
2. Karthick
3. Sridharan
4. M.Karthick
5. M.Anadhageethan

...Petitioners

-Vs-

1. The Inspector of Police,
M-2, Milk Colony Police Station,
Madhavaram, Chennai-600 060.

2. S.SanthoshBabu (late)

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records relating in C.C.No.69 of 2020 on the file of the Judicial Magistrate, Madhavaram and quash the same.

For Petitioners : Mr.G.Mohammed Aseef

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side) for R1



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ORDER

This Criminal Original Petition has been filed to call for the records relating to C.C.No.69 of 2020 on the file of the learned Judicial Magistrate, Madhavaram and quash the same.

2. The petitioners are the accused 1 to 5. The case of the prosecution is that the deceased *defacto* complainant/second respondent was working at A.C.C Cement Company at Karnataka. He used to come home during weekends. On 12.05.2016, when he came to his home, his brother's children complained to him that they were beaten up by the 6th accused (who was a minor then) along with other accused. Immediately, the 2nd respondent went to the house of the 6th accused and asked him about the same. At that time, all the accused came to his house at about 8.00 p.m and abused him in filthy language and assaulted him with hands and bricks. The deceased 2nd respondent/*defacto* sustained grievous injuries over his left eye, for which he had to undergo a surgery.

3. After completing the investigation, the charge sheet has been filed against the accused 1 to 5 before the Regular Court and as against the 6th accused before the Juvenile Justice Board for the offences under Sections 147, 294(b), 323, 324 and 506(ii) IPC.



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4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the first respondent. Perused the entire materials available on record.

5. The learned counsel for the petitioners submitted that the prime witness namely the *defacto* complainant himself died by committing suicide and with his death, the important materials available in the case is lost. There is no material available on record to show that the injuries sustained by the deceased is a grievous one. Except the offence under Section 506(ii) IPC, all the offences are barred by limitation. Even though the occurrence is said to have taken place on 12.05.2016, the charge sheet was not filed until 03.06.2019. Since the maximum punishment for the offences (except the offence under Section 506(ii) IPC) would be three years, the charge sheet has been filed after a period of three years, which is barred by limitation. The medical evidence does not disclose any details about the nature of the injury sustained by the deceased 2nd respondent. By taking into consideration the delay involved in filing the charge sheet and the death of the prime witness namely the 2nd respondent, the charge sheet should be quashed as against the petitioners.

6. The learned Government Advocate (Crl. Side) appearing on behalf



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of the first respondent submitted that the charge sheet witnesses LW-2 to 5 are the mother and neighbours of the deceased 2nd respondent/*defacto* complainant and they are eye-witnesses for the occurrence. Even if the *defacto* complainant died, the materials are available to prove the alleged occurrence that had taken place on 12.05.2016 at the house of the 6th accused. Hence, the petitioners should be subjected to trial.

7. On perusal of the records, it is seen that the case has been registered for the offences under Sections 147, 294(b), 323, 324 and 506(ii) IPC. The 2nd respondent/*defacto* complainant is no more now. The primary allegation made by the deceased 2nd respondent is that on 12.05.2016 he was beaten up by the accused and that they have caused grievous injuries over his eyes. Though the evidence of injured witnesses are essential, his death will not absolve the petitioners from the criminal liability of assaulting the deceased/ 2nd respondent in the manner stated by them. The charge sheet contains the statement of other witnesses, who witnessed the occurrence. No doubt there is a delay of nearly three years for filing the charge sheet. However, the delay cannot be the sole reason to quash the proceedings especially when the charges are made for the offences including the offence under Section 506(ii) IPC, for which the punishment prescribed is upto 7 years. If the petitioners

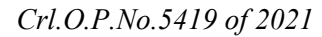


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claim that the offence under Section 506(ii) IPC will not be made out or proved, the same can be established only through the process of trial. When there are materials to show that the deceased 2nd respondent was assaulted and he had suffered injuries, it is for the prosecution to establish before the trial Court about the nature of the injuries sustained by him. Again this fact is a matter for trial and it cannot be foreclosed now even without subjecting the accused to undergo trial.

8. The learned counsel for the petitioners submitted that when the *defacto* complainant, who is the prime witness had already died and if he alone is the material witness, there is no point in filing the charge sheet and filing of the charge sheet after a delay of 3 years in such cases is abusing the process of law. In support of his contention, he relied on the case of ***Abdul Malick and Another Vs. State***, wherein it is held as under:-

“6.More importantly, I am informed that, the defacto complainant had unfortunately expired. A perusal of the list of witnesses, filed along with the final report shows that it is only the de-facto complainant who is the material witness. LW-2 is an employee and he only speak about the records, but he cannot speak about the motive or about the inter se



9. In the above case, except the deceased witness, who happened to be the *defacto* complainant as well, no one can speak about the facts surrounded the case. The other important witness, who is LW-2 was an employee of the deceased *defacto* complainant and whatever he knew was only from the records. But in the case on hand, there are other eye-witnesses available and their witness cannot be kept aside without allowing them to depose evidence while participating the trial. Since the materials available are sufficient enough to frame charges against the accused under relevant provisions of law and there is a scope for trial, I feel that there is no necessity to invoke the powers of this Court under Section 482 Cr.P.C to quash the proceedings.



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10. In view of the above discussion, this Criminal Original Petition is dismissed. Taking into consideration the long pendency of the case, the learned trial Judge shall endeavour the case as expeditiously as possible. Consequently, connected MP is closed.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation Case: Yes/No

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To

1. The Inspector of Police,
M-2, Milk Colony Police Station,
Madhavaram,
Chennai-600 060.

2. The Public Prosecutor,
High Court of Madras,
Chennai-600 104.



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R.N.MANJULA, J

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