



WEB COPY



Crl.OP.No.22563 of 2021

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.No.22563 of 2021

and

Crl.MP.No.12267 of 2021

Yohann J.Setna

... Petitioner

Vs.

1.State of Tamilnadu,

Represented by the Inspector of Police, Cyber Crime Cell,

Chennai City Police Station,

Central Crime Branch,

Chennai

2.Vivek Ponnusamy

... Respondents

PRAYER:

Criminal original petition is filed under Section 482 of Cr.P.C. to call for records in CC.No.3365 of 2020 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai herein and to quash the same.

For Petitioner

: Mr.G.Nicul Anand
for M/s.Geetha Vijay Anand

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(Crl.side)



WEB COPY



Crl.OP.No.22563 of 2021

For R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.3365 of 2020 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai thereby taken cognizance for the offences under Sections 465 and 469 of IPC as against the petitioner.

2. The second respondent lodged complaint alleging that he had assisted as a co-driver in Targa rallies held in Australia and participated in the rally of Coimbatore part of Indian Rally Championship from 19th to 21st July 2013. The entire rally video duration is 60 minutes. The video camera installed inside the car driven by one, Samir Thapar and co-driven by the complainant. The said Samir Thapar uploaded the entire 60 minutes video on 04.08.2013 by sharing in a website and you tube. On 09.08.2013, the second respondent noticed that a video titled as “The Lighter Side of Rallying” posted on you tube under the user name of 'Yohan Setna'. He found that the accused working as Sporting Manager for JA Motorsport has digitally altered, forged and edited the 60 minutes video into a 3.5 minutes video and had uploaded the said video



Crl.OP.No.22563 of 2021

into video sharing website. He also shared the video from the face book page

of JA Motorsport by lining the 3.5 minutes video in you tube having remark

'This is a funniest onboard rally video I have ever seen'. It was seen by nearly four lakhs people all around globe and most of the viewers had posted hostile comments ridiculing the expertise of the co-driver. It is malicious and with the malafide intention and also to defame him as a co driver. Therefore, he had lost his name and reputation in the car rally community in India and abroad. Therefore, he incurred heavy loss and not participating as co driver in the car rally. Hence, the complaint. On receipt of the complaint, the first respondent registered FIR in crime No.330 of 2013 for the offence under Sections 465, 469 & 500 of IPC and Section 66A of Information Technology Act on 23.08.2013. After completion of investigation, the first respondent filed final report and the same has been taken cognizance for the offence under Sections 465 & 469 of IPC.

3. The learned counsel for the petitioner would submit that even according to the second respondent, it is a funny video and it was edited one. It was not morphing or videographed one. It was edited from the original video and both the videos were very much available in the you tube at the time of



Crl.OP.No.22563 of 2021

occurrence. Therefore, no offence is made out for forgery. He also had given illustration like 'funny video'. The first respondent filed final report only on 05.10.2020 i.e. after period of seven years from the date of registration of FIR. Therefore, it is barred by limitation. The main person who uploaded the video was not examined by the prosecution to support the case of the prosecution. He further submitted that the second respondent caused notice and on receipt of the same, the petitioner replied by his reply dated 16.08.2013. He categorically stated that he never morphed any videograph and he edited the original video into 3.5 minutes, that too without any malicious intention and posted the same. However, they also sought for unconditional apology and immediately removed from the social media.

4. Per contra, the learned Government Advocate(crl.side) appearing for the first respondent submitted that the petitioner is the sole accused. Admittedly, he only posted the video by morphing the original video reducing into 3.50 minutes video and posted the same into you tube. Therefore, he committed offence under Sections 465 and 469 of IPC. There are ingredients to attract those offences. Therefore, the grounds raised by the petitioner can be considered only before the trial court during trial.



Crl.OP.No.22563 of 2021

5. The second respondent lodged complaint as a co-driver to one, Samir Thappar. The main driver of the rally posted his video of 60 minutes in the website and you tube on 04.08.2013. After seeing the said video, the petitioner is also being the manager of JA Motorsport, edited the said video and edited into 4.35 minutes video and had uploaded the said video in website and you tube which was seen on 09.08.2013. Though the second respondent alleged that the petitioner digitally altered the real sequences and forged the original video as funny one and edited the sixty minutes car rally video into 3.50 minutes video, the petitioner did not morph or did not alter the original video. He simply edited the original video of 60 minutes into 3.50 minutes and posted in the you tube. That apart, both videos were very much available. It is not the case of the complainant that the original video was deleted from the you tube and the petitioner posted the edited video. FIR was registered on 23.08.2013 on the complaint dated 23.08.2013. Even according to the second respondent, he had seen the video on 09.08.2013 itself. The alleged video was posted by the petitioner on his name. Therefore, there was delay in lodgment of complaint. That apart, after completion of investigation, the first respondent filed final report only on 05.10.2020 after period of seven years from the date of registration of FIR. It is relevant to extract the provision under Section 468



Crl.OP.No.22563 of 2021

of Cr.P.C. hereunder:

WEB COPY

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 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.

6. Accordingly, the first respondent ought to have filed final report within a period of three years from the date of registration of FIR. There was delay of more than seven years, that too without any explanation for the huge delay. Therefore, the trial court ought not to have taken cognizance since it is



CrI.OP.No.22563 of 2021

barred by limitation. It is the bounden duty of the court and the prosecution to prevent unreasonable delay. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch. The prosecution failed to initiate the trial proceedings for the past seven years without there being any lapse on behalf of the petitioner. Thus, permitting the first respondent to continue with the prosecution and trial any further would be total abuse of process of law.

7. Further, as rightly pointed by the learned counsel for the petitioner, when the main driver uploaded his video, his statement has to be recorded under Section 161 of Cr.P.C. In the case no hand, admittedly the first respondent failed to examine the main driver who uploaded his video. It is also fatal to the case of the prosecution.

8. As discussed above, no offence is made out under Sections 465 and 469 of IPC. As such, the impugned proceedings cannot be sustained and it is liable to be quashed. Accordingly, the entire proceedings in CC.No.3365 of 2020 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai



CrI.OP.No.22563 of 2021

is quashed and this criminal original petition is allowed. Consequently,
connected miscellaneous petition is closed.

15.11.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok



Crl.OP.No.22563 of 2021

To

WEB COPY

- 1.The learned Chief Metropolitan Magistrate Court,
Egmore, Chennai
- 2.The Inspector of Police, Cyber Crime Cell,
Chennai City Police Station,
Central Crime Branch,
Chennai
- 3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.



WEB COPY



CrI.OP.No.22563 of 2021

lok

CrI.OP.No.22563 of 2021

15.11.2023