



Crl.R.C.No.1468 of 2023
and Crl.M.P.No.12978 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1468 of 2023
and Crl.M.P.No.12978 of 2023

1.D.Gandharuban
2.M.Mariappan

... Petitioners

Vs.

State Rep. by the

Inspector of Police,

Sooramangalam Police Station,

Salem.

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the entire records pertaining to the order dated 11.07.2023 made in Crl.M.P.No.3878/2022 (Register) in Crl.M.P.No.999/2023 (Online) in C.C.No.96/2019 on the file of the Judicial Magistrate No.II, Salem, and to set aside the same.

For Petitioners : Mr.J.Ram Krishnan

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)

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ORDER

Challenge in this criminal revision case is made to the orders dated 11.07.2023 in C.C.No.96/2019 passed by the learned Judicial Magistrate No.II, Salem.

2.The revision petitioners are the accused in C.C.No.96/2019 and they filed Crl.M.P.No.3878/2022 in C.C.No.96/2019 under Section 468 r/w.258 Cr.P.C. contending that the Magistrate cannot take cognizance of the offence under Section 180 of the Motor Vehicles Act, since the final report was filed beyond the period of limitation.

3.The case of the prosecution in a nutshell is as follows :

The defacto complainant in this case is one Sengodan, Son of Raj Gounder. On 29.09.2017, at about 11.15 pm, the wife of the defacto complainant and his son, who is aged about four years, were standing in front of their house. A Maruthi Car bearing Reg.No.TN07-AK-0717 which was driven rashly and negligently by a 13 year old minor Nikilesh



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dashed against the defacto complainant's wife and his son Master Sarvesh, as a result of which, his wife sustained grievous injuries all over her body and his son died in Manipal Hospital, Salem at about 12.10 pm on the same day. Thereafter, the defacto complainant lodged a complaint with the Inspector of Police, Sooramangalam Police Station, Salem, based on which, an FIR in Crime No.843/2017 was registered against the driver of the vehicle and inmates of the vehicle who allowed the minor to drive the vehicle for the offences under Sections 279 & 304A IPC. After completion of investigation, final report was filed by the Inspector of Police, Sooramangalam Police Station on 20.11.2018, in which Minor. Nikhilesh was shown as first accused. Since minor was shown as A1, the said final report was returned by the Court to the concerned police. Thereafter, Minor. Nikhilesh was removed from the FIR and the final report against the present revision petitioners were filed by the concerned police for the offence punishable under Section 180 of the Motor Vehicles Act. At that point of time, the present petitioners filed a petition under Section 468 r/w.258 Cr.P.C. stating that the Magistrate has no jurisdiction to take cognizance of the offence as final report was filed



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Learned Judicial Magistrate No.II, Salem, vide his orders dated 11.07.2023 in Para 20 had observed thus :

"20. For the offence u/s.304A of IPC, 1860 the period of limitation as per Section 468(2)(c) and Section 468(3) of the Code of criminal Procedure, 1973 is three years from the date of the alleged occurrence. In the present case, the date of occurrence is 29.09.2017 and the final report was filed for the first time by the complainant before this Court on 18.12.2018 i.e. well within three years from the date of the alleged occurrence. Therefore, the Final Report in Crime No.843 of 2017 has been filed well within a period of limitation as per Section 46 of the Code. It has been time and again held by the Constitutional Courts in various cases that the power vested with the Judicial Magistrate u/s.258, Cr.P.C., 1973 should be exercised sparingly and judiciously. The discretion cannot be used in mechanical manner resulting in gross injustice."

4. It is to be pointed out that previously the case was filed against all the accused for the offence punishable under Sections 304(A) IPC and Section 180 of M.V.Act and charge sheet was filed against all



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the accused and later it was deleted and final report was filed only against the present revision petitioners who were also inmates of the car at the time of the accident. In this regard, it is relevant to extract Section 473 Cr.P.C.

“473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

5. In the instant case, the Magistrate had gone into facts of the case and had also held that there is no delay in filing the charge sheet. Even assuming that there was delay in filing the final report the Magistrate by taking cognizance of offence had condoned the delay. I therefore do not see any reason to interfere with the orders passed by the Magistrate.



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6. Accordingly, the Criminal Revision is dismissed.

Consequently, connected Criminal Miscellaneous Petition is closed. The orders dated 11.07.2023 in C.C.No.96/2019 passed by the learned Judicial Magistrate No.II, Salem, is confirmed.

28.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Inspector of Police, Sooramangalam Police Station, Salem.
2. The Judicial Magistrate No.II, Salem.



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R. HEMALATHA, J.
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