



CrI.O.P.(MD)No.2509 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.02.2023

Delivered on : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.2509 of 2023

and

CrI.M.P.(MD)No.2246 of 2023

1.Karthic @ Karthickraja

2.Deiventhiran

3.Nagaraj

... Petitioners/
Accused Nos.
2, 3 & 5

vs.

1.The Inspector of Police,
Ambathurai Police Station,
Dindigul.
(Crime No.578 of 2020)

...1st Respondent/
Complainant

2.N.Rajalakshmi
Village Administrative Officer,
Keelakottai VAO Office,
Athoor Taluk,
Dindigul District.

...2nd Respondent/
Defacto
Complainant



PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in FIR in Crime No.578 of 2020 dated 21.07.2020 on the file of the respondent police and quash the same.

For Petitioners : Mr.S.Sivaprakash

For R1 : Mr.M.Muthumanikkam
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the case in Crime No.578 of 2020 on the file of the first respondent police and quash the same.

2. The petitioners are the accused Nos.2, 3 and 5 in the case registered in Crime No.578 of 2020 on the file of Ambathurai Police Station, Dindigul.

3. On the basis of the complaint lodged by one Rajalakshmi, Village Administrative Officer of 22 Thoppampatti Group, Keelakottai, Athoor Taluk, FIR came to be registered in Crime No.578 of 2020 for the



alleged offences under Sections 143, 269 IPC r/w Section 3 of Epidemic Disease Act against six persons including the petitioners herein.

4. The case of the prosecution is that on 21.07.2020 at about 10.30 a.m., the DMK political party members including the petitioners conducted protest against Tamilnadu Government for hiking electricity tariff, near Chettiyapatty old panchayat office and that the accused, without considering the restrictions imposed due to Covid-19 and without following the social distancing and without wearing masks, had conducted agitations against the Government.

5. The learned counsel appearing for the petitioners would submit that the first petitioner had studied B.E. Civil Engineering, the second petitioner is a B.Sc. IT graduate and the third petitioner had studied DME and applied for the post of driver in BDO office.

6. The learned counsel appearing for the petitioners would further contend that though FIR was registered on 21.07.2020, the respondent police has not chosen to file a final report so far and that therefore, the impugned FIR is hit by Section 468 (2) Cr.P.C.



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7. The learned counsel appearing for the petitioners would further contend that the petitioners did not involve in any offence as alleged in the FIR, that it was a trivial matter in which no offence of grievous nature was involved, that the allegations levelled against the petitioners are vague, bald, frivolous and vexatious and that there is no specific averment against the petitioners attracting ingredients of the offences charged.

8. Regarding the offence under Section 143 IPC, it is necessary to refer the judgment of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, and the relevant passage is extracted hereunder:-

“32.....

2. In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”



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9. As rightly held in *Jeevanandham's case*, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

10. In the case on hand, admittedly, it is not the case of the prosecution that the petitioners had indulged in any act of violence, but on the other hand, the petitioners and the other accused had assembled to raise their protest for hiking the electricity tariff, in a peaceful manner. As rightly contended by the learned counsel appearing for the petitioners, the prosecution does not even state as to how the demonstration or the protest conducted by the petitioners and the others is an unlawful protest and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

11. Regarding the offences under Sections 269 IPC and Section 3 of Epidemic Disease Act, it is not the case of the prosecution that the petitioners were suffering from any infectious disease and it is also not their case that the petitioners had contributed to its spread. As rightly contended by the learned counsel appearing for the petitioners, the



respondent police could not have invoked Section 269 IPC and Section 3 of Epidemic Disease Act against the petitioners and as such, the very registration of FIR is not proper.

12. Now turning to the plea of limitation, it is necessary to refer the decision of this Court in ***Rajasekar Vs. State represented by Inspector of Police and another*** reported in (2022) 2 MLJ (Crl) 396,

“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.



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CrI.O.P.(MD)No.2509 of 2023

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 – 600 083, (CrI.O.P.No.4307 of 2017, dated 09.09.2020)* has held as follows:



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Crl.O.P.(MD)No.2509 of 2023

“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 Cr.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



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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.”

13. In the case on hand, as already pointed out, FIR came to be registered as earlier as on 21.07.2020 for the offences under Sections 143, 269 IPC r/w Section 3 of Epidemic Disease Act. It is not in dispute that the offences under Sections 143 and 269 IPC attract the maximum



punishment of six months or with fine or with both and Section 3 of Epidemic Disease Act contemplates that any person disobeying any regulation or order made under the said Act shall be deemed to have committed an offence punishable under Section 188 IPC. As per Section 188 IPC, if disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, the punishment of simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

14. Considering the above, final report should have been filed within a year. As already pointed out, final report has not been filed so far. The prosecution has not offered any reason or explanation for the delay. Hence, this Court has no other option, but to hold that the case is barred by limitation.

15. Viewed from any angle, this Court is of the view that the



Crl.O.P.(MD)No.2509 of 2023

pending of the impugned FIR is legally unsustainable. Hence, this Court concludes that the impugned FIR is liable to be quashed.

16. In the result, this Criminal Original Petition stands allowed and the impugned FIR in Crime No.578 of 2020 on the file of the first respondent is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
csm

To

- 1.The Inspector of Police,
Ambathurai Police Station,
Dindigul.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.2509 of 2023



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Crl.O.P.(MD)No.2509 of 2023

K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl.O.P.(MD)No.2509 of 2023
and
Crl.M.P.(MD)No.2246 of 2023

Dated : 26.04.2023