



Crl.O.P.(MD)No.6077 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 13.06.2023**

**Pronounced on : 10.07.2023**

**CORAM:**

**THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN**

**Crl.O.P.(MD) No.6077 of 2021**

**and**

**Crl.MP(MD)No.3485 of 2021**

Zakaria Farah Mohamed

...Petitioner/Sole Accused

**Vs.**

The Inspector of Police,  
Airport Police Station,  
Trichy, Trichy District.  
...Respondent/Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the First Information Report in Crime No.234 of 2007 registered on 03.10.2007 on the file of the Inspector of Police, Airport Police Station, Trichy, Trichy District and quash the same as illegal.



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For Petitioner : Mr.S.Giritharan  
For Respondent : Mr.M.Muthumanikkam  
Government Advocate (Crl.Side)

### **ORDER**

The petitioner has filed this petition to quash the FIR filed against him in Crime No.234 of 2007 on the file of the Inspector of Police, Airport Police Station, Trichy, Trichy District, for the offences under Sections 467, 468, 471 of IPC and Section 3(ii)(c) r/w Section 14 of Foreigners Act and 12(1-A) of Passport Act.

2. According to the prosecution, the petitioner is a citizen of Canada and holds Canada citizenship card. He used to travel to India from 1999 onwards through a business visa. On 21.05.2006, he visited India with his wife and two children and stayed in Pune with a valid visa up to 21.08.2006. After that, he said to have fabricated an exit permit in S.B.No.20015839 N.SB/F 31/1109/RF/2006 dated 24.08.2006. Based on the forged exit permit on 03.10.2007, he was intercepted at Trichy Airport when he attempted to go to



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Srilanka. At that time, the Airport Authorities found that the accused had used an exit permit with knowledge of forgery, so they made a complaint to the respondent police. The respondent police registered a case in Crime No.234 of 2007 for the offences under Sections 467, 468, 471 of IPC and Section 3(ii)(c) r/w Section 14 of Foreigners Act and 12(1-A) of Passport Act.

3. The learned counsel appearing for the petitioner submitted that though FIR was registered in the year 2007, even after a lapse of 13 years, the respondent police have not filed final report. Hence, the delay in investigation affects the rights of speedy trial as contemplated under Article 21 of the Constitution of India. To support his argument, he has relied upon the following judgments:-

- i) **Abdul Rehman Antulay Vs. R.S.Nayak** reported in (1992) 1 SCC 225
- ii) **P.Ramachandra Rao Vs. State of Karnataka** reported in (2002) 4 SCC 578
- iii) **Pankaj Kumar Vs. State of Maharastra and Others** reported in AIR 2008 SC 3077
- iv) **Vakil Prasa Singh Vs, State of Bihar** reported in AIR 2009 SC 1822



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- v) Supreme Court of India in **Lokesh Kumar Jain Vs, State of Rajasthan** in **Crl.A.No.888 of 2013 (09.07.2013)**
- vi) High Court of Delhi in **Dr.Sarbesh Bhattacharjee Vs. State NCT of Delhi** in **W.P(Crl.).781 of 2021 (14.10.2022)**
- vii) Supreme Court of India in **Hashmukhlal D.Vora Vs. State of Tamilnadu** in **Crl.A.No.2310 of 2022 (16.12.2022)**

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that delay in filing the final report is not ground for quashing the FIR. More particularly, the petitioner has been involved in a severe offence relating to the fabrication of an exit permit which attracts the crime under Section 14 of Foreigners Act and other relevant penal provision. He would further submit that the Hon'ble Supreme Court judgments relied upon by the learned counsel for the petitioner is squarely distinguishable from the fact of each case. He relied upon the following precedents to buttress his submission:-

1.2012 9 SCC 241 and

2. 2012 Crl.J 4206 (SC)



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5. The learned Government Advocate (Crl. Side) further submitted that as per the Constitution Bench judgment reported in **AIR 2014 SC 448** when the complaint has preferred within limitation, there is no question of quashing FIR on account of delay in filing the final report. He further submitted that the investigating officer had completed the investigation and filed a final report before the concerned Court on 19.04.2023; hence, he seeks indulgence of this Court to dismiss the quash petition.

6. This Court considered the rival submissions made by both parties and perused the records and precedents cited by both parties.

7. Delay in filing the final report is not a ground to quash FIR when the nature of offence and other relevant circumstances does not warrant in the interest of justice. Further, a crime never dies and would reach its logical end either in acquittal or conviction. The same was considered in detail manner by the Hon'ble Supreme Court in **Japani Sahoo v. Chandra Sekhar Mohanty reported in (2007) 7 SCC 394 held** as follows:-

*“14. The general rule of criminal justice is that “a crime*



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*never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay.*

*52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings."*

8. The above ratio was affirmed by the Hon'ble Constitution Bench of Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases**, reported in **AIR 2014 SC 448**. The Hon'ble Supreme Court has held that only prescribed period for preferring complaint to the respondent police:-

*'51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the*



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*date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.*

8.1. In this case, serious allegation is forgery of exit permit. Using the said forged exit permit, the petitioner tried to go to Sri Lanka from Trichy Airport. So, the Airport authorities seized the documents and made a complaint to the respondent police. Based on the said complaint, the respondent registered the case and concluded the investigation belatedly. In the peculiar circumstances of the case, the quashment of FIR is not in the interest of justice. The Hon'ble Supreme Court reiterated the principle to consider the nature of the offence in like situation. In this case, the petitioner is facing the offence



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under the Foreigners Act, Passport Act and relevant IPC provisions. So, this Court is not inclined to accept the contention of the petitioner.

9. Even in the Hon'ble Supreme Court judgment heavily relied by the learned counsel for the petitioner in **Vakil Prasad Singh v. State of Bihar**, [AIR 2009 SC 1822], the said principle is reiterated in the following manner:-

*“25. Where the Court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the Court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the Court to make an appropriate order as it may deem just and equitable including fixation of time-frame for conclusion of trial.”*

10. In his counter, the Investigation Officer stated that the number of summons issued to the persons suspected in the fabrication of the above document had a residence in Mumbai. Further, the case of the accused is that in Hyderabad, one of his friends arranged the alleged forged exit permit, so the investigation officer issued summons and the said summons were not served to complete investigation. Hence, the delay occurred.



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11. In the said circumstances, there was no intentional delay on the part of the respondent. At this stage, it is the duty of this Court to follow the principle laid down by the Hon'ble Supreme Court reported in **2013 4 SCC 642, 2012 CrI LJ 4206, 2012 9 SCC 241:**

***Ranjan Dwivedi v. CBI, (2012) 8 SCC 495:***

*21. The reasons for the delay is one of the factors which the courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which is occasioned by action or inaction of the prosecution is one of the main factors which will be taken note of by the courts while interjecting a criminal trial. A deliberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution.*

....

*The good cause exception to the speedy trial requirement focuses on only one factor i.e. the reason for the delay and the attending circumstances bear on the inquiry only to the extent to the sufficiency of the reason itself.*

*23. The length of the delay is not sufficient in itself to warrant a finding that the accused was deprived of the right to a speedy trial. Rather, it is only one of the factors to be considered, and must be weighed against other factors. Moreover, among factors to be considered in determining whether the right to speedy trial of the accused is violated, the length of delay is least conclusive. While there is authority that even very lengthy delays do not give rise to a per se conclusion of violation of constitutional rights, there*



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*is also authority that long enough delay could constitute per se violation of the right to speedy trial. In our considered view, the delay tolerated varies with the complexity of the case, the manner of proof as well as the gravity of the alleged crime. This, again, depends on case-to-case basis. There cannot be universal rule in this regard. **It is a balancing process while determining as to whether the accused's right to speedy trial has been violated or not. The length of delay in and itself, is not a weighty factor.***

***Niranjan Hemchandra Sashittal v. State of Maharashtra, [(2013) 4 SCC 642]***

***24. It is to be kept in mind that on the one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time-limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective.***

12. In the said circumstances, this Court cannot accept the petitioner's contention to quash the proceedings on the ground of delay in filing final report. More particularly, now, final report has been filed. Accordingly, this Criminal Original Petition is dismissed with the following directions:-

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“The learned Judicial Magistrate No. As a result of this, VI, Trichy, is directed to take the final report in Crime No.234 of 2007 on file and complete the trial within two months from receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.”

**10.07.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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To

1.The Judicial Magistrate No.VI,  
Trichy.

2.The Inspector of Police,  
Airport Police Station,  
Trichy, Trichy District.

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



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**K.K.RAMAKRISHNAN, J.**

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Pre-delivery order made in  
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**and**  
**Crl.MP(MD)No.3485 of 2021**

**10.07.2023**