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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.7047 of 2023

and

Cr1.MP(MD)No.6097 of 2023

Ibrahim Shaw : Petitioner/A8

Vs.

1.State rep. by
The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.
(Crime No.268 of 2018) : R1/Complainant

2.Naren Gopi : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.271 of 2021 with regard to the petitioner/A8 on the file of the Judicial Magistrate No.IV, Madurai and quash the same in respect of the petitioner/A8 and pass such further or other orders.

For Petitioner : M/s.A.Rajini

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition is filed seeking quashment of the case in CC No.271 of 2021 on the file of the Judicial Magistrate No.IV, Madurai.

2.The case of the prosecution in brief:-

The de-facto complainant residing in Door No.B15A, Pandian Street, Alagappan Nagar, Madurai for about 34 years. He is also running a building construction Company. On 29/04/2018 at about 05.00 am, he went to Karnataka to see their daughter by locking the house. On coming to know that the house is locked, A1, A2 and A8 informed the other accused and conspired to commit theft by breaking open the wind, A3, A5, A6 and A7 went inside the house by removing the wind bar and committed the theft of 68 sovereigns of jewels, 10.900 grams of silver and Rs.13,000/- cash. On the basis of the above said occurrence, a case in Crime No.268 of 2018 was registered for the offences under sections 457, 380, 120(B) and 34 IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.271 of 2021 by the Judicial Magistrate No.IV, Madurai.



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3.Now seeking quashment of the same, this petition has been filed on the ground that except the confession statement of the co-accused, no other material has been collected during the course of investigation; Apart from that, it is also stated that the offence said to have been taken place, on 29/04/2018; Even after a lapse of five years, there is no progress in the trial process, so, taking cognizance itself is barred by limitation.

4.Heard both sides.

5.It is a case of house breaking by night and committed a theft of gold jewels, silver articles and cash as detailed above.

6.The occurrence said to have been taken place, on 29/04/2018 and well within a period of limitation I.e., on 29/03/2021, final report has been filed and taken cognizance in CC No.271 of 2021 by the trial court. Now the trial is yet to commence.



7.The entire CD file has been called for and perused.

8.Perusal of the CD file shows that this petitioner namely Ibrahim Shaw was arrested on the charge of murdering his relative called 'Yasin'. When he was in bail, the co-accused namely Kumar and Prabakaran became friends and after their release from the bail, all of them conspired to commit robbery. In pursuance of the plan, this petitioner and another accused Prabakaran went to Kodaikanal, joined with them in Kodaikanal. On that day of night, they committed robbery by breaking open the house. So, this is the implication of this petitioner in the above said occurrence.

9.It is seen that the petitioner is actively involved in the above said robbery.

10.Apart from that, the learned Additional Public Prosecutor would also submit that this petitioner is facing the charges such as murder, dacoity with murder. Indian Explosives Act, Theft, etc. So, the habitual nature of the petitioner is also been brought on record



during the course of investigation. When such being the position, without any proper, basic reason and ground, this petition has been filed simply stating that only based upon the confession statement of the co-accused, this petitioner has been arrayed as an accused.

11. But reading of the entire CD file shows that the petitioner also shared the profit of crime. How much amount, he shared it and in what way, he was benefited are all the matters for consideration by the trial court.

12. The petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of ***State of U.P Vs. Rapi Deo Shukla (1972 Supreme Court Cases (Cr1) 597]***. In that case, the trial was dragged on for more than 10 years, without any progress. That was also taken into account by the Hon'ble Supreme Court. Considering the fact the accused therein was placed under suspension for more than 20 years, the trial was quashed by the Hon'ble Supreme Court, not on the ground of delay, but on the ground that statutory violations. But here there is no statutory violations. The crime is of the year 2014 and the co-accused have been arrested only on 07/02/2020.



13.No ground worth considering has been made out by the petitioner. The offence of such nature and magnitude should not be quashed without any basic ground. So, I find no merit in this petition.

23/06/2023

<https://www.mhc.tn.gov.in/judis>



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To,

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- 1.The Judicial Magistrate No.IV,
Madurai.
- 2.The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J



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