



Crl.R.C.(MD).No.614 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.06.2023

Pronounced on : 13.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.614 of 2023

and

Crl.M.P.(MD)No.8781 of 2023

Kishore

... Petitioner/Sole Accused

Vs.

1.The State represented by its
The Inspector of Police,
Reddiyarchatram Police Station,
Dindigul.
(Crime No.78 of 2018)

2.Muthu Krishnan

... Respondents/Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 24.05.2023 made in Crl.M.P.No.1399 of 2023 in C.C.No.228 of 2023 on the file of Judicial Magistrate Court, Oddanchatram allowing the condone delay petition under Section 473 of Cr.P.C. filed by the respondent and to set aside the same as illegal and allow the above revision.



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For Petitioner : Mr.K.Althaf Sheriff
for M/s.Ajmal Associates

For R1 : Mr.SS.Madhavan
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.1399 of 2023 in C.C.No.228 of 2023 dated 24.05.2023 on the file of the Court of the Judicial Magistrate, Oddanchathiram, condoning the delay in laying the final report under Section 473 of Code of Criminal Procedure.

2. On the basis of the complaint lodged by the second respondent/ defacto complainant, FIR came to be registered in Crime No.78 of 2018 on 02.04.2018 for the accident held on 02.04.2018 against the petitioner/sole accused for the offences under Sections 279 and 337 IPC. Subsequently, since the victim had died, the case was altered into Sections 279 and 304(A) IPC. The first respondent police has filed the final report dated 30.06.2018 before the jurisdictional Court on 02.03.2023 along with an application under Section 473 Cr.P.C. to condone the delay in filing the



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final report and the said petition was taken on file in Crl.M.P.No.1399 of 2023 on the file of the Court of the Judicial Magistrate, Oddanchathiram.

The petitioner has filed a reply raising serious objections to condone the delay and for taking cognizance consequently. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 24.05.2023 allowing the petition and thereby condoning the delay in filing the final report and consequently, the case was taken on file in C.C.No.228 of 2023 on the file of the said Court. Aggrieved by the order passed in Crl.M.P.No. 1399 of 2023 and consequent order taking cognizance of the case, the accused has preferred the present revision.

3. In the affidavit filed in support of the petition filed under Section 473 Cr.P.C., the Sub Inspector of Police has stated that since the case bundle was mingled with the other records in the police station and that the Government Offices and the Courts were not functioning due to the restrictions imposed for Covid-19, they were not in a position to file the final report before the jurisdictional Court, that the delay in filing the same is not wanton and that the delay has to be condoned considering the interest of justice and the interest of society.



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4. In the counter, the petitioner has taken a stand that since the charge sheet was not filed within 3 years from 01.04.2021, the same is barred by limitation under Section 468 Cr.P.C., that the reasons advanced by the police that the case records got mingled with the other records in the police station and that the Government Offices and the Courts were not functioning due to Covid-19 are untenable and the same cannot be accepted, that since the police has not assigned any valid or acceptable reason for the delay of nearly 2 years, cognizance cannot be taken and that therefore, the above petition is liable to be dismissed as barred by limitation.

5. As rightly pointed out by the learned Government Advocate (Criminal Side), the learned Magistrate, accepting the contention of the petitioner that charge sheet has not been filed within the limitation under Section 468 Cr.P.C., but recording his satisfaction with the reason given for the delay in filing the final report and taking note of the fact that charge sheet was prepared well within the period of limitation i.e., on 30.06.2018, has allowed the petition.



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6. No doubt, as already pointed out, charge sheet is dated 30.06.2018. As rightly pointed out by the learned counsel appearing for the petitioner, Covid-19 restrictions came into force in the month of March 2020. Since the charge sheet was ready to be filed on 30.06.2018, there might be only two reasons for not filing the same, one is to support the accused and the other is to harass the accused.

7. In the absence of any material to show the purpose for which, charge sheet was not filed, despite made ready on 30.06.2018, the observation of the learned Judicial Magistrate that final report has been prepared well within the period of limitation and the reason assigned for the delay in presenting before the Court are satisfactory, cannot be accepted. But at the same time, the Court can take cognizance of an offence after the expiry of the period of limitation, if it is satisfied that it is necessary so to do in the interest of justice, as contemplated under Section 473 Cr.P.C.

8. Now turning to the legal objection raised by the petitioner's side that charge sheet laid was clearly barred by limitation, according to the



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petitioner, FIR came to be registered on 02.04.2018 and charge sheet was filed admittedly on 02.03.2023 after the lapse of 4 years 11 months, that since the offence under Section 304(A) IPC attracts maximum punishment of 2 years and fine, the charge sheet ought to have been filed within 3 years from the date of FIR and that since the same was not filed within the period of limitation, the order of the learned Magistrate condoning the delay and taking cognizance of the case is not only improper, but is illegal.

9. The learned counsel appearing for the petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Tolaram Relumal and another Vs. The State of Bombay*** reported in ***AIR 1954 SC 496*** to stress the point that the penal statutes have to be interpreted strictly. The learned counsel appearing for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in ***State of Jharkhand and another Vs. Ambay Cements and another*** reported in ***(2005) 1 SCC 368***, wherein, it has been held that it is the cardinal rule of interpretation that where a statute provides a particular thing should be done, it should be done in the manner prescribed and not in any other way. There is absolutely no dispute about the above legal position.



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10. Regarding the period of limitation under Section 468 Cr.P.C., the Hon'ble Supreme Court in *Amritlal Vs. Shantilal Soni and others* reported in **2022 LiveLaw (SC) 248** has reiterated the legal position that was declared by the Constitution Bench of the Hon'ble Supreme Court in *Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherian and others* reported in **(2014) 2 SCC 62**.

11. It is pertinent to note that the Hon'ble Supreme Court has settled the legal position that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence and the relevant passages in *Amritlal's case* are extracted hereunder:-

“In Sarah Mathew, the Constitution Bench of this Court examined two questions thus: -

3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the



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complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2. (ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121] or Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] (which is followed in Janani Sahoo [Janani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]), lays down the correct law?

The Constitution Bench answered the aforesaid questions as follows: -

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 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] which is followed in Janani Sahoo [Janani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A.



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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.

(emphasis supplied)

Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt 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 date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.”

12. In the said decision case, the offence was allegedly committed on 04.10.2009 and a complaint came to be lodged on 10.07.2012, that the police, after investigation, has laid the final report on 13.11.2012 and that



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the learned Judicial Magistrate had taken cognizance of the case on 04.12.2012. The Hon'ble Apex Court has observed that since the complaint came to be lodged on 10.07.2012 for the offence alleged to have been committed on 04.10.2009, the same is well within the period of limitation of 3 years.

13. Earlier, another Division Bench of the Hon'ble Supreme Court in ***Darshan Singh Saini Vs. Sohan Singh and others*** reported in **(2015) 14 SCC 570** following the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew's case*** has held as follows,

“Para 9 : In the above view of the matter, we are satisfied, that we are keeping in mind the allegations levelled against the appellant by the respondent, the date of limitation had to be determined with reference to the date of incident and the date when the complaint was filed by the respondent. Since the complaint was filed by the respondent on 24.01.2008, with reference to an incident of 15.01.2008, we are of the view, that Section 468 of the Code of Criminal Procedure would not stand in the way of the respondent, in prosecuting the complaint filed by him”



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14. Previously, I have passed some orders following the old position that the period of limitation is to be computed from the date of FIR till the date of filing the charge sheet. Subsequently, I had an occasion to deal with the question of limitation under Section 468 Cr.P.C. in ***Balasubramanian and others Vs. State and others*** reported in ***MANU/TN/3258/2022*** following the judgment of the Hon'ble Supreme Court in ***Amritlal's case***, wherein, it has been held as follows,

“16. The above decision is squarely applicable to the case on hand. Even assuming for arguments sake that the offence was allegedly committed on 02.01.2003 when the defacto complainant was sent out of the matrimonial home as putforth by the petitioners' side, the second respondent/defacto complainant gave a complaint on 17.04.2013 itself within a period of three months from the date of the alleged offence. Hence, the contention of the learned counsel for the petitioners that since the complaint was filed on 17.04.2013, the charge sheet filed in the year 2018 is barred by limitation under Section 468 Cr.P.C. cannot be accepted as the relevant date is the date of filing of the complaint and the three years limitation period is to be computed from the date of the offence alleged till the lodging of the complaint and not to be computed from the date of the



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complaint till the laying of final report or taking cognizance of the case by the concerned Court.”

15. The learned counsel appearing for the petitioner has also brought to the notice of this Court that some learned Judges of this Court as well as the other Courts have decided the cases following the old legal position. Since the Constitution Bench of the Hon'ble Supreme Court has declared the legal position, which has been subsequently reiterated by two Division Benches of the Hon'ble Supreme Court, all the Courts including this Court are duty bound to follow the dictum laid on by the Hon'ble Supreme Court.

16. In the case on hand, as already pointed out, the accident was allegedly occurred on 02.04.2018 and the complaint came to be lodged on the same day i.e., on 02.04.2018. Hence, this Court has no hesitation to hold that since the complaint was lodged on the date of occurrence itself, the question of invoking Section 468 Cr.P.C. does not arise at all.

17. It is pertinent to mention that the date of charge sheet or the date on which the charge sheet is prepared and the date on which charge sheet



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is filed before the jurisdictional Court and the date on which the cognizance is taken by the jurisdictional Court are totally irrelevant and and are not the decisive factors to compute the period of limitation contemplated under Section 468 Cr.P.C.

18. Though this Court is not in agreement with the reasons given for condoning the delay by the learned Judicial Magistrate, taking note of the settled legal position above referred, the order taking cognizance of the case cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

19. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

13.07.2023

NCC : Yes/No
Index : Yes/No
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K.MURALI SHANKAR, J.

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To

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

Pre-Delivery order made in
Crl.R.C.(MD)No.614 of 2023
and
Crl.M.P.(MD)No.8781 of 2023

Dated : 13.07.2023