



Crl.R.C.(MD).No.714 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	28.07.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.714 of 2023

and

Crl.M.P.(MD).No.9919 of 2023

1.Nagaraj

2.Kumar

... Petitioners/ Respondents

Vs.

The State rep by
The Inspector of Police,
Prohibition and Excise Wing,
Sattur, Virudhunagar District.
(Crime No.460 of 2015)

... Respondent/ Petitioner

PRAYER: Criminal Revision Case filed under Section 392 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the Judicial Magistrate Court No.II, Virudhunagar District, in Crl.M.P.No.5378 of 2021 on 12.04.2023.

For Petitioner : Mr M.Jothi Basu

For respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.Side)



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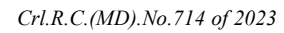
ORDER

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The Criminal Revision Case has been filed against the impugned order passed by the learned Judicial Magistrate No-II, Virudhunagar, in Crl.M.P.No.5378 of 2021, dated 12.04.2023.

2. According to the prosecution, on 01.10.2015 at about 09.00 p.m., the respondent police intercepted the vehicle bearing registration No.TN-67-J-0370, said to have been driven by the first petitioner along with the second petitioner. In the said vehicle, without any permission, the petitioners transported 1812 bottles of the Government TASMAL Liquor and hence they were arrested by the respondent police and a case was registered for alleged offence punishable under Section 4(1)(aaa) (Transport) of Tamil Nadu Prohibition Act, 1937. Thereafter, the investigation officer, completed the investigation on 18.12.2016.

3. Due to misplacement of the case bundle, the same was not traced within the stipulated time and it was traced out only in the year 2021, at the time of inspection. Thereafter, the respondent herein had



4. The learned counsel for the petitioners submitted that as per Section 473 of Cr.P.C., the learned trial Judge ought to have considered whether the reasons stated by the investigating officer is correct or not and mechanically accepted the reasons stated by the investigating officer. By condoning the said delay, the petitioners' right of speedy trial is infringed and hence, there is an infraction of Article 226 of Constitution of India. Therefore, they seek to allow this case by setting aside the order passed by the learned trial Judge for condonation of delay in filing the report which does not even state the number of days of delay and by allowing the application by the learned trial Judge is total non-application of mind. In support of his contention, he relied the judgment of Hon'ble Supreme Court reported in **2015 (3) MWN (Cr.) 171 SC**,



in the case of ***priyanka Srivastava and another Vs.State of U.P. And others*** and stated that the petition is not supported with the affidavit and only a petition was filed. Therefore, as per the judgment of the Hon'ble Supreme Court, any petition should be supported with the affidavit and was sworn by the investigating officer.

5. The learned Government Advocate (Criminal Side), on the other hand, supported the reasoning of the learned trial judge and submitted that this case, the offence punishable under Section 4(1)(aaa) (Transport) of Tamil Nadu Prohibition Act, 1937. The petitioners have illegally transported huge quantity of liquor bottles and the offence is also very serious in nature. In the said circumstances, the reasons assigned by the investigating officer are without any malafide. Further, the investigating officer has specifically stated that the entire final report got mixed up with some other case bundles and the said reason was accepted by the Jurisdictional Magistrate and the acceptance of delay was in accordance with law and hence, there was no perversity in the order passed by the learned trial Judge. Further, the learned Government Advocate submitted that as per the judgment of the constitution Bench, in ***Mr.s.Sarah***



Mathew Vs. Institute of Cardio Vascular Diseases & Ors, [AIR 2014

SC 448] once a complaint is preferred within the time limit prescribed, there is no bar to take cognizance on the belated filing of the final report. The delay in filing the final report is not a ground to quash the petition when the offence is very serious in nature. To substantiate the same, the learned Government Advocate has placed reliance on the judgments of the Apex Court reported in (2012) 8 SCC 495 in the case of ***Ranjan Dwivedi Vs. Central Bureau of Investigation*** and reported in (2013) 4 SCC 642 in the case of ***Niranjan Hemachandra Sasthittal and another Vs. State of Maharashtra*** and also placed reliance on the judgment reported in (2007) 7 SCC 394 in the case of ***Japani Sahoo Vs. Chandra Sekhar Mohanty*** stating that the crime never dies. Hence, the learned Government Advocate submitted that there is no bar under Section 468 of Cr.P.C., and no shelter can be provided to the accused to escape from the legitimate prosecution. Therefore, he seeks for dismissal of this criminal revision case.

6. This Court has considered the rival submissions made on either side and perused the materials available on record and the precedents



relied upon by them.

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7. Admittedly, there is an allegation against the petitioner that he has illegally transported 1812 bottles of liquor in the vehicle without any license and against the permitted level of quantity fixed by the State Government. Therefore, the investigating agency seized the vehicle. According to the investigating officer, the investigation was already completed on 18.12.2016, but the case bundle got mixed up with some other case diaries and therefore, the same was not presented before the trial Court in stipulated time. The said reasoning of the investigation officer is a *bona fide* one. It is common that in each police station, more number of cases have been filed. The reasoning of the investigating officer that this case bundle got mixed up with the other case bundles is a probable one. In the said circumstances, the reasoning of the investigating officer is *bona fide* and more particularly, when the offence is relating to the illegal transportation of the liquor bottles, the acceptance of the reasons by the learned trial Judge cannot be found fault with.



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7.1 It is a well settled principle that the length of the delay is immaterial and explanation for the delay is relevant. If bona fide reason is given, the Court has to accept the same. Further, if the trial Court accepted the *bona fide* reason, the revisional Court in all fairness has no jurisdiction to enter into the finding of the learned trial Judge in condoning the delay. To fortify the same, it is relevant to point out the following principles of law laid down by the Hon'ble Supreme Court in the case of ***N. Balakrishnan v. M. Krishnamurthy***, reported in (1998) 7 **SCC 123**, wherein it is stated as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should



not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

7.3. As per the judgment of the Hon'ble Supreme Court, the learned trial Judge has accepted the reasons stated by the Investigating Officer to condone the delay. Therefore, the same cannot be interfered with by the appellate Court or the revisional Court without any



perversity. Therefore, in this case, this Court does not find any perversity in the order of the learned trial Judge in accepting the reasons submitted by the investigation officer.

8. The learned Government Advocate Criminal Side has rightly made an alternative submission to sustain the impugned order stating that a crime never dies and it should reach its logical end either in acquittal or conviction. The said fact was considered in detail by the Hon'ble Supreme Court in ***Japani Sahoo v. Chandra Sekhar Mohanty*** reported in (2007) 7 ***SCC 394*** . In the said judgment, the Hon'ble Supreme Court has held as follows:-

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

9. The above ratio was also affirmed by the Hon'ble Constitution Bench in ***Sarah Mathew v. Institute of Cardio Vascular Diseases***, reported in ***AIR 2014 SC 448***. In the said judgment, the Hon'ble Supreme Court has prescribed the period is limitation for preferring complaint by the respondent police. In this aspect, it is relevant to extract the following paragraph of the said judgment:

“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. Rajendran, 1990 Supp



SCC 121] 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.”

In this case, the complaint was made on the date of the occurrence ie., on 01.10.2015, and the same was registered on the same day and the investigation was completed on 08.01.2016 itself. But, the report was presented before the trial Court with a delay. Hence, the application under Section 473 of Cr.P.C., is not at all necessary, but, by way of abundant caution, the investigating agency filed a petition to condone the delay and the same was accepted by the Court below. Therefore, there is no reason to interfere with the order.

10. In this case, admittedly 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. 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,



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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.

11. Hence, applying the above principle and considering the fact that the FIR was registered within the stipulated time and the nature of the offence, which affects the society at large, this Court is not inclined to accept the plea of the petitioner. Hence, with the above reasoning, I am on the view that the impugned order of the learned trial Judge is in order.

12. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected Criminal Miscellaneous Petition is also closed.

02.11.2023

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

sbm

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To

1. The Inspector of Police,
Prohibition and Excise Wing,
Sattur, Virudhunagar District.



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K.K.RAMAKRISHNAN, J.

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