



Crl.O.P.(MD)No.14210 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14210 of 2023

1.Alagu Thevar
2.P.Pitchai

... Petitioners

Vs.

1.State represented by
The Inspector of Police,
Aastinpatti Town Police Station,
Madurai, Madurai District.
(Crime No.50 of 2015)

... 1st Respondent/
Complainant

2.N.Ponrajan

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connection with Crime No.50 of 2015 on the file of the Inspector of Police, Aastinpatti Police Station, Madurai District and subsequently quash the same as devoid of merits and illegal.

For Petitioner : Mr.S.Palani Velayutham

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition is filed by the petitioners seeking quashment of FIR in Crime No.50 of 2015 on the file of the first respondent police.

2. The facts would go to show that during the Maasi festival celebration of Arulmigu Virumandi Swamy Kovil at Thanakkankulam there was an issue in respect of worshipping the deity, accordingly a petition was allegedly filed before this Court wherein this Court stated to have directed the petitioner and others to have dharshan between 6.00 a.m. and 8.00 a.m. on 17.02.2015 and directed the persons belonging to other group to worship on the very same day between 8.00 p.m. and 10.00 p.m.

3. According to the FIR, the petitioners and other family members have worshipped the deity between 8.00 a.m. and 8.30 a.m. instead of 6.00 a.m. to 8.00 a.m. as directed by this Court thereby exceeded for about 30 minutes in worshipping the lord Arulmigu Virumandi Swamy.



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Accordingly a case has been registered against the petitioner in Crime No.50 of 2015 for the offences punishable under Sections 353 and 188 of IPC and the same is challenged before this Court.

4. It is submitted by learned counsel for the petitioner that the allegations levelled against the petitioner in respect of violation of the Court directions are incorrect and submitted further that more than seven and a half years have been lapsed from the date of registration of the FIR but police have not completed the investigation and charge sheet not filed thereby even if charge sheet is filed now cognizance cannot be taken on account of lapse of limitation.

5. Learned Additional Public Prosecutor, on the other hand, submits that even though seven and a half years have been elapsed from the date of registration of the FIR under Section 473 of Cr.P.C., the prosecution can seek for condoning the delay in filing the charge sheet and thereby at this stage, the FIR cannot be quashed.

6. Heard both sides and perused the record.



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7. It all started with the complaint filed by one N.Ponrajan making allegations against the petitioners stating that in violation of the directions of this Court, the petitioners have worshipped at the temple from 8.00 a.m. to 8.30 a.m. instead of 6.00 a.m. to 8.00 a.m.

8. While considering the application under Section 482 of Cr.P.C., the Courts are required to be very cautious in quashing the FIRs because it is not safe and proper to throttle the investigation at the inception level itself instead of allowing the investigating agency to complete the investigation. However, whenever material placed before this Court to show that continuation of investigation is abuse of process of law, this Court can certainly intervene and stop the proceedings.

9. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceeding in the case of *State of Haryana v. Bhajanlal* reported in *1992 SCC (Cri) 426*, which reads as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the



principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not



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constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is to be considered whether the case on hand falls in any one of the categories of the judgment cited above.



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10. Section 468 of Cr.P.C reads as under:

"468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section

(2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

11. In the case on hand, the petitioners are charged under Sections 353 and 188 of IPC, it is to be examined as to whether basing on the contents of the FIR a charge sheet can be filed against the petitioners.

Section 353 I.P.C. runs as under:-



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“353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Considering Section 468 of Cr.P.C., the charge sheet in respect of Section 353 I.P.C. should have been filed within three years from the date of offence.

12. Section 188 I.P.C. runs as under:-

“188. Disobedience to order duly promulgated by public servant.-- Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a



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certain act, or to take certain order with certain property in his possession or under his management. disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with 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.”

Considering Section 468 of Cr.P.C., the charge sheet in respect of Section 188 I.P.C. should have been filed within one year from the date of offence. In view of the above, since charge sheet has not been filed even beyond three years of alleged date of occurrence, the FIR can be



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quashed on the ground of limitation.

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13. However, learned Additional Public Prosecutor submits that there is a possibility for the respondent police to seeks condonation of delay under Section 468 of Cr.P.C.

14. Section 473 of Cr.P.C. runs as under:-

“Extension of period of limitation in certain cases:

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

Section 473 of Cr.P.C. applies where police files charge sheet after expiry of limitation under Section 468 of Cr.P.C. but, it does not mean that police can withhold filing of charge sheet any number of years, even after expiry of limitation. The benefit of Section 473 of Cr.P.C. can be availed while filing the charge sheet but police cannot circumvent



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Section 468 of Cr.P.C. on the ground that they filed condonation of delay petition under Section 473 of Cr.P.C. Further, it is the discretion of the concerned Judge whenever an application is filed under Section 473 of Cr.P.C. to grant or refuse to condone the delay. Hence, the contention of respondent/police that since Section 473 of Cr.P.C. is available, the FIR cannot be quashed on the basis of Section under 468 of Cr.P.C. is not convincing.

15. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.50 of 2015 dated 17.02.2015 is quashed.

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



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To

1. The Inspector of Police,
Aastinpatti Town Police Station,
Madurai, Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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