



CrI.O.P.(MD)No.15677 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.15677 of 2023

and

CrI.M.P.(MD) No.12458 of 2023

Panneerselvam

... Petitioner

Vs.

1.State represented by
Inspector of Police,
Alangudi Police Station,
Pudukottai District.
(Crime No.363 of 2016)

2.J.Mathiyalagan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case in First Information Report in Crime No.363 of 2016 on the file of the first respondent and quash the same.

For Petitioner : Mr.J.Lawrance

For R1 : 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.363 of 2016 on the file of the first respondent police.

2.The facts, in brief, would go to show that on 25.09.2016 at about 10.00 pm., there was quarrel between the petitioner/accused No.1 and others in respect of parking of the Car in the middle of the road. At about 10.30 pm., on the same day, the petitioner along with other accused went to the defacto complainant's house and beat him. They also went to the 2nd respondent's brother house and threatened his mother with dire consequences. A complaint has been preferred before the respondent No. 1 police by the petitioner, on which a case in Crime No.363 of 2016 was registered against the petitioner and other accused for the offences punishable under Sections 294(b), 323 and 506(i) IPC.

3.It is submitted by the learned counsel for the petitioner that the respondent No.1 police without conducting preliminary enquiry have



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registered the FIR against the petitioner. The respondent police failed to file charge sheet in respect of the offence committed in the year 2016, thereby there is a bar under 468 Cr.P.C., from taking cognizance.

4.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.

5.Heard both sides and perused the record.

6.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 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.



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7.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



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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 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



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10. In the case on hand, the petitioner is charged under Sections 294(b), 323 and 506(i) 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 after the lapse of more than 7 years.

11. Section 294(b) I.P.C. runs as under:-

“(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

12. Considering Section 468(1)(b) of Cr.P.C., the charge sheet in respect of Section 294(b) I.P.C. should have been filed within one year from the date of offence.

13. Section 323 I.P.C. runs as under:-

“323. Punishment for voluntarily causing hurt —

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or



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with fine which may extend to one thousand rupees, or with both.”

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14.Considering Section 468 (1)(b) of Cr.P.C., the charge sheet in respect of Section 323 I.P.C. should have been filed within one year from the date of offence.

15.Section 506(i) I.P.C. runs as under:-

“506. Punishment for criminal intimidation —

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;.”

16.Considering Section 468 (1)(c) of Cr.P.C., the charge sheet in respect of Section 506(i) I.P.C. should have been filed within two years from the date of offence.

17.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 quashed on the ground of limitation.



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18.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.

19. 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.”

20.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 Section 468 of Cr.P.C. on the ground that they can file a petition for condonation of delay under Section 473 of Cr.P.C. Further, it is the



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discretion of the concerned Court whenever an application is filed under Section 473 of Cr.P.C. to grant or refuse to condone the delay. Section 473 Cr.P.C., cannot be used as a defence, when a petition seeking quashment is filed under Section 482 of Cr.P.C., on the ground of delay in investigation. 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.

21. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.363 of 2016 on the file of the respondent No.1 police is quashed. Consequently, connected Miscellaneous Petition is closed.

15.09.2023

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

1. Inspector of Police,
Alangudi Police Station,
Pudukottai District.

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



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DR.D.NAGARJUN,J

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