



Crl.O.P.(MD) No.16120 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **20.09.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

Crl.O.P.(MD) No.16120 of 2023

and

Crl.M.P.(MD)No.12831 of 2023

1.M.Eswaran

2.C.Selvakumar

3.N.Nagarajan

4.Pushparaj @ Pushpakumar

5.S.Manirajan

6.VPM.Senthilkumar

... Petitioners/ Accused 1 to 6

Vs.

1.The State rep.by

The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
Crime No.21/2022.

2.P.Rajamani

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the entire records in Crime No.21 of 2022 dated 09.02.2022 pending on the file of the respondent and quash the same as illegal.

For Petitioner : Mr.R.Santhanam

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

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This petition is filed seeking quashment of FIR in Crime No.21 of 2022 on the file of the 1st respondent Police registered against the petitioners / Accused 1 to 6 for the offences punishable under Sections 4A (1a) of the Tamil Nadu Open Places (Disfigurement) Act, 1959.

2.The facts as per the records would go to show that Hence, the case has been registered in Crime No.21 of 2022 for the aforesaid offences.

3.Apart from other grounds, the major ground, on which the petitioners have sought for quashment of FIR, is that the respondent police could not file the charge sheet in respect of the offence committed in the year 2022, thereby there is a bar under Section 468 Cr.P.C., from taking cognizance.

4.The learned Additional Public Prosecutor for the 1st respondent, on the other hand, submitted that even though one year has been lapsed from the date of registration of the FIR, under Section 473 of Cr.P.C., the prosecution can seek for condonation of delay in filing the charge sheet and thereby, at this stage, the FIR cannot be quashed.



5. Heard both sides and perused the record.

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6. While considering the application under Section 482 of Cr.P.C., the Courts are required to be very cautious in quashing 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 an abuse of process of law, this Court can certainly intervene and stop the proceedings.

7. The Hon'ble Supreme Court of India has laid down some guidelines for quashing the criminal proceedings by exercising inherent powers under Section 482 Cr.P.C., in the case of *State of Haryana vs. 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 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."

8.Now, it is to be considered as to whether the case on hand falls in any one of the categories of the judgment cited above.

9.Section 4A(1a) of the Tamil nadu Open Places (Prevention of Disfigurement) Act, runs as under:-

“(b) Whoever affixes to, or inscribes or exhibits on any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which shall not be less than one thousand rupees but which may extend to two thousand rupees, or with both.”

10.Considering Section 468(2)(b) Cr.P.C., the charge sheet in respect of Section 4A(1a) of the Tamil nadu Open Places (Prevention of Disfigurement) Act should have been filed within one year from the date of offence.



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11.Further, the punishment for the offence under Section 4A(1a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act is up to one year imprisonment or with fine or with both. The maximum punishment that can be imposed for any of the above offence is three years.

12.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."

13.In the case on hand, the petitioner is charged under Sections 4A(1a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act,



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1959. It is to be examined as to whether based on the contents of the FIR, a charge sheet can be filed against the petitioners.

14. In view of the above, since the charge sheet has not been filed even beyond one year of the alleged date of occurrence, the FIR can be quashed on the ground of limitation.

15. However, the learned Additional Public Prosecutor for the respondent Police submitted that there is a possibility for the respondent police to seek condonation of delay under Section 473 Cr.P.C.

16. Section 473 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.”

17. Section 473 Cr.P.C. applies where the Police files charge sheet after expiry of limitation under Section 468 Cr.P.C. but, it does not mean that



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the Police can withhold the filing of the charge sheet any number of years, even after expiry of limitation. The benefit of Section 473 Cr.P.C. can be availed, while filing the charge sheet, but the Police cannot circumvent Section 468 Cr.P.C. on the ground that they filed condonation of delay petition under Section 473 Cr.P.C. Further, it is the discretion of the learned Judge concerned, whenever an application is filed under Section 473 Cr.P.C. to grant or refuse to condone the delay. Hence, the contention of respondent Police that since Section 473 Cr.P.C. is available, the FIR cannot be quashed on the basis of Section under 468 Cr.P.C., is not convincing.

18. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.21 of 2022 on the file of the 1st respondent Police is quashed. Consequently, connected Miscellaneous Petition is closed.

20.09.2023

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

Yuva



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- To
- 1.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar 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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