



CrI.O.P.(MD) No.16112 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**

CrI.O.P.(MD) No.16112 of 2023

and

CrI.M.P.(MD)No.12824 of 2023

- 1.Samun @ Abdul Kather Ibrahim
- 2.Hasan @ Abdul Kathar Ibrahim
- 3.Thubail @ Abdul Khader Ibrahim
- 4.Abrith @ Askandar Sheriff
- 5.Anwar @ Anwar Hussain

... Petitioners/ Accused 1 to 5

Vs.

The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.
(Crime No.550 of 2020)

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in relating to the FIR in Crime No.550 of 2020 dated 27.05.2020 on the file of the respondent police and quash the same as against the petitioners.

For Petitioners : Mr.S.Thirupathy

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.550 of 2020 on the file of the 1st respondent Police registered against the petitioners / Accused 1 to 4 for the offences punishable under Sections 147, 294(b), 269 IPC r/w 3 of Epidemic Disease Act, 1897.

2.The facts as per the records would go to show that the petitioners and other five accused have resorted to fighting and shouted by violating Covid 19 restriction. Thereby, a case has been registered in Crime No.550 of 2020 for the offences under Sections 147, 294(b), 269 IPC read with Section 3 of Epidemic Disease Act, 1897 against the petitioners/accused.

3.Main ground, on which the petitioners have sought for quashment of FIR, is that the respondent police has failed to file charge sheet in respect of the offence committed in the year 2020, 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 three years have been lapsed from the date of registration of the FIR, under Section 473 of Cr.P.C., the prosecution



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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.

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



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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 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."

10. In the case on hand, the petitioners are charged under Sections 147, 294(b) and 269 IPC r/w Section 3 of Epidemic Disease Act, 1897. It is to be examined as to whether based on the contents of the FIR, a charge sheet can be filed against the petitioners.

11. Section 147 IPC, runs as under:-

"147. Punishment for rioting —

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

12. Considering Section 468(2)(c) Cr.P.C., the charge sheet in respect of Section 147 IPC should have been filed within three years or with fine or with both.

13. Section 294(b) IPC., 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.”

14. Considering Section 468(2)(b) Cr.P.C., the charge sheet in respect of Section 294(b) IPC. should have been filed within one year from the date of offence.

15. Section 269 IPC., runs as under:-

“Negligent act likely to spread infection of disease dangerous to life —

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

16. Considering Section 468 (2)(b) Cr.P.C., the charge sheet in respect of Section 269 IPC should have been filed within one year from the date of offence.

17. Section 3 of the Epidemic Disease Act, 1897, runs as under:-

“Any person disobeying any regulation or order made under this



Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

[(2) Whoever,—

(i) commits or abets the commission of an act of violence against a healthcare service personnel; or (ii) abets or cause damage or loss to any property,

shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.”

18.Considering Section 468 (2)(c) Cr.P.C., the charge sheet in respect of Section 3 of the Epidemic Disease Act, 1897 should have been filed within one year from the date of offence.

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

20.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.



21. 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.”

22. 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 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.



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DR.D.NAGARJUN. J.

Yuva

23.Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.550 of 2020 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

To

- 1.The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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