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Crl.O.P.(MD)No.16590 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	22.09.2023
Delivered on	.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.16590 of 2023
and Crl.M.P.(MD) Nos.13214 and 12847 of 2023

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

... Petitioners/
Accused 1 – 5

Vs.

1. The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.

... Respondent/Complainant

2. Ahamad Imbrahim @ kipla

... 2nd respondent/
defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in relating to FIR in Crime No.551 of 2020 dated 27.05.2020 on the file of the first respondent police and quash the same against the petitioners.



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For Petitioner : Mr.S.Thirupathy
For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R1

ORDER

This petition is filed seeking quashment of FIR filed against the petitioners 1 to 5 for the offences under Sections 147, 294(b), 323 and 269 of IPC r/w. Section 3 of Epidemic Disease Act, 1897.

2. According to the prosecution, on 26.05.2020 at about 10.15 p.m. during the Covid-19 pandemic restriction period when the Covid-19 was in full spate on the day of Ramzan festival, the defacto complainant had exchange of words in respect of bike ride, during the course of which, the petitioner assaulted the defacto complainant on his face and abused him with filthy language thereby basing on a complaint given by him on 27.05.2020 a case has been registered against the petitioners in Crime No.551 of 2020 for the offences punishable under Sections 147, 294(b), 323 and 269 of IPC r/w. Section 3 of Epidemic Disease Act, 1897.



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3. It is submitted by learned counsel for the petitioners that the petitioners are students studying in an Engineering College and that the petitioners 1 and 2 are preparing to go abroad for their higher studies. It is also submitted that the FIR have been registered on 27.05.2020 however, the first respondent police has not registered charge sheet even after a lapse of three years thereby submitted that taking cognizance is hit by Section 468 of Cr.P.C.

4. Heard both sides and perused the record.

5. The petitioners/accused were charged for four offences. The punishment for the offence under Section 147 of IPC is imprisonment for a term which may extend to two years; the punishment for the offence under Section 294(b) of IPC is imprisonment for a term which may extend to three months; the punishment for the offence under Section 323 of IPC is imprisonment for a term which may extend to one year; the punishment for the offence under Section 269 of IPC is simple imprisonment for a term which may extend to six months; finally, the punishment for the offence under Section 3 of Epidemic Disease Act,



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1897 is concerned, the investigation shall be completed within a period of thirty days and thereby on this count alone the respondent police cannot file the charge sheet against the petitioners/accused. Even otherwise, the maximum sentence that can be awarded is one year for the offence under Section 323 of IPC.

6. Section 468 of Cr.P.C. runs 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



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may be, the most severe punishment.

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7. Considering the above provisions, the charge sheet under Sections 294(b) and 323 of IPC, should have been filed within one year whereas, the charge sheet under Section 269 of IPC should have been filed within one year. The offences are committed on 26.05.2020, therefore, the charge sheet should have been filed on or before 25.05.2020. However, in the present case, the charge sheet has not been filed as of today which is beyond three years thereby taking cognizance for the offences are barred under Section 468 of Cr.P.C also.

8. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of 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 constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police



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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."

9. In view of the above principles laid down by the Hon'ble Apex Court, if the continuation of proceedings are barred by any statute or law, such proceedings required to be quashed. In the case on hand, taking cognizance under all the offences alleged against the petitioners are



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specifically barred under Section 468(2)(b) of Cr.P.C. Thereby all the charges levelled against the petitioners shall not sustain.

10. In the result, this criminal original petition is allowed and the proceedings in Crime No.551 of 2020 on the file of the first respondent police, are hereby quashed. Consequently, connected miscellaneous petition is closed.

.09.2023

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

PKN/mvs.

To

1. The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.

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

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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
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Dated: .09.2023