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Crl.O.P.(MD)No.16001 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	11.09.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.16001 of 2023
and Crl.M.P.(MD) Nos.12706 and 12707 of 2023

- 1.Pounraj
- 2.Mohan
- 3.Gunamani
- 4.Sundaresan
- 5.Kabali Pandi @ Pandithurai
- 6.Ananthan

... Petitioners/
Accused 1 – 5 & 7

Vs.

1. The Inspector of Police,
Bodinayakanur Rural Police Station,
Theni District.

... Respondent/Complainant

2. Muppidathi Muthu

... 2nd respondent/
defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.415 of 2022 on the file of learned Judicial Magistrate, Bodinayakanur and quash the same.



CrI.O.P.(MD)No.16001 of 2023

For Petitioner : Mr.M.Kaliraj

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

ORDER

This petition is filed seeking quashment of charge sheet for which cognizance was taken against the petitioners 1 to 5 and 7 for the offences under Sections 147, 294(b), 323, 324 and 506(i) of IPC.

2. According to the prosecution, on 12.04.2018 at about 05.15 p.m. the defacto complainant and his community people were taken sprout procession to Sri Madhu Kaliyamman Temple and at that time the petitioners and others quarrelled stating that the temple belongs to their community people and thereby, the people belonging to the defacto complainant could not be entered into the temple. During the course of altercation, the accused persons abused the defacto complainant with filthy language and threatened with dire consequences. During the process, the petitioners attacked the husband of the defacto complainant and thereby he sustained injuries. Basing on a complaint lodged by the defacto complainant, police have registered a case in Crime No.239 of 2018 and on completion of investigation charge sheet has been filed in



CrI.O.P.(MD)No.16001 of 2023

C.C.No.415 of 2022 on the file of learned Judicial Magistrate,
Bodinayakanur.

3. It is submitted by learned counsel for the petitioners that the alleged incident took place on 12.04.2018. The police have received complaint on 15.04.2018, however proper explanation has not been offered by the defacto complainant for delay in filing the complaint. It is also submitted that the charge sheet has filed on 04.07.2022 which is more than three years from the date of alleged occurrence 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 five 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



CrI.O.P.(MD)No.16001 of 2023

punishment for the offence under Section 324 of IPC is simple imprisonment for a term which may extend to three years; finally, the punishment for the offence under Section 506(i) of IPC is imprisonment for a term which may extend to two years. Considering the above period of sentences that can be awarded in case the offences are proved against the petitioners/accused, the maximum sentence that can be awarded is three years for the offence under Section 324 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.



CrI.O.P.(MD)No.16001 of 2023

(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.

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 Sections 147, 324 and 506(i) of IPC should have been filed within three years. The offences are committed on 12.04.2018, therefore, the charge sheet should have been filed on or before 11.04.2021. However, in the present case, the charge sheet is filed on 04.07.2022 which is beyond three years thereby taking cognizance for the offences are barred under Section 468 of Cr.P.C.

8. Further, there is no record before this Court to show that the prosecution has filed the application under Section 473 of Cr.P.C. seeking condonation of delay. According to learned counsel for the petitioner, no notice is received in respect of the application and that the petitioner has not received with any notice in respect of application filed under Section 473 of Cr.P.C. and brought the delay condoned.



CrI.O.P.(MD)No.16001 of 2023

WEB COPY

9. 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.



CrI.O.P.(MD)No.16001 of 2023

(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."

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

11. In the result, this criminal original petition is allowed and the proceedings in C.C.No.415 of 2022 on the file of learned Judicial Magistrate, Bodinayakanur, are hereby quashed.



Crl.O.P.(MD)No.16001 of 2023

29.09.2023

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

PKN/mvs.

To

1. The Inspector of Police,
Bodinayakanur Rural Police Station,
Theni District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.16001 of 2023

DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.16001 of 2023

Dated: 29.09.2023