



CrI.O.P.(MD)No.21329 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.21329 of 2022

and

CrI.M.P.(MD) No.14930 of 2023

R.Mathavan

... Petitioner

Vs.

1. The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
(Crime No.252/2019).

2. D. Selvakumar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Impugned First Information Report in Crime No.252/2019 dated 30.10.2019 under Sections 153(A), 298, 500, 504, 505(2) of IPC on the file of the Respondent No.1 and Quash the same as illegal.

For Petitioner : Mr.I.Pinaygash



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

ORDER

This petition is filed seeking quashment of FIR in Crime No.252 of 2019 dated 30.10.2019 which is registered for the offences punishable under Sections 153(A), 298, 500, 504, 505(2) of IPC pending on the file of the first respondent police.

2. It is submitted by learned counsel for the petitioner that the petitioner has been seeking for relief of quashment of FIR on two grounds, firstly on the ground that the respondent police has no limitation in filing the charge sheet in respect of offences alleged and thereby, the investigation is to be declared as void under Section 498 of the Code of Criminal Procedure. It is also submitted that even on the merits also there are no ingredients to conclude that the petitioner committed the offence. It is the case of the petitioner that on 25.09.2019 one Aadhimoolam Nadar, a member of Hindu Munnadi Ruling Party, allegedly posted a message in the Facebook against the petitioner as if



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the petitioner is promoting enmity between the religious groups in respect of conversions. The petitioner aggrieved by the same has lodged a complaint before Mukkudal Police Station against the said Aadhimoolam Nadar, accordingly, a case has been registered in Crime No.253 of 2019 for the offences under Sections 153(A), 298, 500, 504, 505(2) of IPC and in order to get over the same, the false case has been foisted against the petitioner.

3. It is submitted that the petitioner has not made any single word against or gesture which promotes enmity between the two groups and thereby, Section 153(A) of IPC will not attract and so also he has not done anything which will create tension among the religious groups and also submitted further that even the offences alleged against the petitioner under Sections 500 and 504 of IPC will also not attract.

4. Learned Additional Public Prosecutor, on the other hand, submits that on going through the 161 Cr.P.C. statements and entire evidence, it cannot be said that there is no case against the petitioner and unless the trial is conducted to prove or otherwise of the submissions



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made by the petitioner cannot be appreciated. He further submitted that the police have completed the investigation and filed charge sheet.

5. Now, therefore, it is to be examined as to whether initially the prosecution has got limitation to file charge sheet so far as the offences alleged against the petitioner. Since the learned counsel for the petitioner has taken the plea that prosecution has no limitation to prosecute the petitioner, the question as to on which date charge sheet is filed and on which date cognizance was taken on relevant, thereby this Court has asked the learned Magistrate to submit a report in respect of filing of date of filing charge sheet and date of taking cognizance. Accordingly, learned Magistrate has submitted a report dated 09.12.2022 stating that the charge sheet in Crime No.252 of 2019 dated 30.10.2019 was filed on 10.10.2019 by Mukkudal Police Station, Tirunelveli District, alleging that the accused have committed offences under Sections 153(A), 298, 500, 504, 505(2) of IPC and charge sheet was taken on file on 07.12.2022 and on the very same day, the charge sheet was taken on file and numbered as C.C.No.723 of 2022.



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6. Therefore, basing on the dates of registration of FIR and the dates on which the charge sheet is filed and cognizance is taken itself to be examined as to whether the charge sheet filed by the prosecution against the petitioner will sustain.

7. Section 468 of Cr.P.C. runs as under:-

"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



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which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

8. According to the charge sheet, the petitioner stated to have committed offence under Sections 153(A), 298, 500, 504, 505(2) of IPC. The punishment for Section 153(A) of IPC is up to three years, the punishment for Section 500 of IPC is two years, the punishment for Section 504 of IPC is two years and the punishment for Section 504(ii) of IPC is three years, that means, maximum punishment for any of the above offences even if they are proved is three years. As per Section 468 of Cr.P.C., the charge sheet in respect of the offences is to be filed within three years from the date of registration of the case. In the case on hand, the case was registered against the petitioner on 30.10.2019 thereby, the charge sheet should have been filed on or before 29.10.2022. However, as per the letter of learned Magistrate, the charge sheet was filed on 07.12.2022, i.e. Beyond the period of three years. Once the charge sheet is filed beyond three years, in fact, learned Magistrate should not taken the case on file. Thereby, on this ground the charge sheet will not lie against the petitioner.



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9. Learned Additional Public Prosecutor representing the State has submitted that even though there is a delay in completion of investigation, still the prosecution can file an application under Section 473 of Code of Criminal Procedure and seek for condonation of delay in filing the charge sheet.

10. It is true that Section 473 of Cr.P.C., permits the investigating agency to file an application to condone the delay. In case if the charge sheet is filed beyond the period of limitation, as prescribed under Section 468 of the Code of Criminal Procedure, however, Section 473 of Cr.P.C., is not an exception to 468 of Cr.P.C. The investigating agency cannot use 473 of Cr.P.C., in order to circumvent the restrictions imposed by the Statute under Section 468 of Cr.P.C. Even otherwise, merely because 473 of Cr.P.C is there, it is not by default, the Court shall accept the delay in filing the charge sheet. It is again the discretion of the learned Magistrate whether to accept or not to accept the reason for filing the charge sheet with delay. Even further, the learned Magistrate is expected to issue notice to the accused and pass reasoned order. If submission of the prosecution is accepted which amounts by keeping the



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weapon of 473 of Cr.P.C., the investigating agency cannot continuously keep the investigation pending. If the charge sheet is filed by the prosecution, they can make an attempt by filing an application under Section 473 of Cr.P.C. However, without filing a charge sheet, they cannot resist the application under Section 482 of Cr.P.C., which is filed on the ground of delay in filing the charge sheet stating that they have got a remedy under Section 473 of the Code of Criminal Procedure to seek for condonation of delay. Therefore, the submission of the learned Additional Public Prosecutor that the Police can file an application or investigating agency can file an application under Section 473 of the Code of Criminal Procedure and seek for condonation of delay thereby, First Information Report cannot be quashed on the ground of delay in application cannot be appreciated.

11. In *State of Haryana Vs. Bhajanlal, reported in 1992 SCC (Cri) 426*, it has been held that



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“(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;



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(e) 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;

(f) 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;

(g) 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.”

12. A bare perusal of the above, it is clear that the proceeding in Crime No.252 of 2019 is hit by Section 468 Cr.P.C and hence, they can be quashed.



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13. In view of the above, FIR and consequently the charge sheet filed shall not lie against the petitioner for the offences under Sections 153(A), 298, 500, 504, 505(2) of IPC and thereby, this petition is allowed and the FIR in Crime No.252 of 2019 dated 30.10.2019 and consequent charge sheet in C.C.No.723 of 2022 are quashed.

16.08.2023

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

PKN/mvs.



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DR.D.NAGARJUN,J

PKN/mvs.

To

- 1.The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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