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Crl.O.P.(MD)No.22023 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2023

Delivered on : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.22023 of 2022

and

Crl.M.P.(MD)No.15524 of 2022

1.R.Mohamed Elias @ Mohamed Eliyas

2.S.Mohamed Ali @ Bakrudeen Ali Ahamed

3.S.Nazir Hussain @ Najeer

4.A.Mohamed Thoufeek

5.M.Sheik Dawood @ Sheik

... Petitioners/
Accused 1 to 5

vs.

1.State represented through
The Inspector of Police,
Town South Police Station,
Dindigul District.
(Crime No.1617 of 2020)

... Respondent/
Complainant

2.Suppuraj

... Respondent/
Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to
call for the records of impugned Charge Sheet in S.T.C.No.939 of 2022



on the file of the Judicial Magistrate No.III, Dindigul and quash the same as illegal as against the petitioners.

For Petitioners : Mr.A.Mohamed Riyaz

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

For R2 : No appearance for R2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.939 of 2022 pending on the file of the Court of the Judicial Magistrate No.III, Dindigul and quash the same.

2. The petitioners are the accused 1 to 5 in S.T.C.No.939 of 2022 pending on the file of the Court of the Judicial Magistrate No.III, Dindigul.

3. On the basis of the complaint lodged by one Suppuraj, Village Administrative Officer, Adiyanuthu Village, FIR came to be registered in Crime No.1617 of 2020 on 31.07.2020 for the alleged offences under Sections 143, 341, 283 and 269 IPC against the accused including the petitioners herein.



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4. The first respondent, after completing the investigation, has laid a final report dated 24.11.2021 under Section 173 Cr.P.C. against the petitioners for the alleged offences under Sections 143, 341 and 283 IPC and the case was taken on file in S.T.C.No.939 of 2022 and the same is pending on the file of the Judicial Magistrate No.III, Dindigul.

5. The case of the prosecution is that the Municipality staffs have announced that there shall be a prohibitory order for sacrificing the cattle near Anguvilas area and that on 31.07.2020, the petitioners and others have assembled unlawfully at about 05.00 p.m. and conducted an agitation to the said announcement and thereby caused disturbance to the traffic.

6. According to the prosecution, the High Court has passed an order prohibiting slaughtering of cattle in open places and the Municipality authorities in order to implement the said order had announced on 31.07.2020 evening that there shall be a prohibitory order for slaughtering the cattle for the Bakrid festival instead of saying in public places and that the petitioners and others, though the prohibitory order was in force, had assembled unlawfully and blocked the road and caused disturbance to the traffic.



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7. Regarding the offence under Section 143 IPC, it is necessary to refer the judgment of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in **2018(2) LW (Crl.) 606**, and the relevant passage is extracted hereunder:-

“32.....

2. In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

8. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

9. The learned counsel appearing for the petitioners would submit



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that even according to the prosecution, since the Municipality authorities had announced that there shall be a prohibitory order for slaughtering of cattle for the Bakrid festival, the petitioners and others had assembled peacefully and raised objections for the above said announcement, that the prosecution itself has admitted the grave mistake committed by the Municipality authorities in making announcement that there shall be a prohibitory order for slaughtering of cattle for the Bakrid festival instead of there shall be a prohibitory order for slaughtering of cattle in open places, that there was no untoward incident at that time and that since the petitioners and others have raised their objections and protest in a democratic way, the same would not constitute an offence under Section 143 IPC.

10. As rightly contended by the learned counsel appearing for the petitioners, the Municipality authorities have committed a blunder mistake while making the announcement for allegedly implementing the order of this Court that slaughtering of cattle in open places should be prohibited and that since the announcement was very much against their religious faith, they were constrained to raise their objections and that too in a democratic way. It is not the case of the prosecution that some untoward incidents had happened on that day. As rightly contended by



the learned counsel appearing for the petitioners, the prosecution does not even state as to how the demonstration or the protest conducted by the petitioners and others is an unlawful protest and as such, this Court has no other option, but to say that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

11. Now turning to the Section 341 IPC, it is necessary to refer the following passages in ***Jeevanandham's case***, above referred,

“32.....

2. A reading of the Final Report also does not make out an offence under Section 341 Cr.P.C. since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.”

12. The prosecution in order to invoke Section 341 IPC has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the present case, as already pointed out, the petitioners and others had assembled and conducted an agitation protesting the announcement made by the Municipality authorities and



that there is absolutely no material or evidence to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in *Jeevanandham's case* that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the prosecution case does not make out any offence of the wrongful restraint.

13. According to Section 283 IPC, whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, caused danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees. Though the prosecution has alleged that the petitioners had caused disturbance to the traffic, they have not produced any material or evidence to show that they have caused any danger, obstruction or injury to any person in that place. As rightly contended by the learned counsel appearing for the petitioners, the prosecution has been miserably failed to prove the existence of ingredients to attract Section 283 IPC.

14. The learned counsel appearing for the petitioners would



contend that though the FIR was registered on 31.07.2020, the charge sheet came to be filed only on 31.01.2022 and that therefore the impugned charge sheet is clearly hit by Section 468(2) Cr.P.C.

15. It is necessary to refer the judgment of this Court in ***Rajasekar Vs. State represented by Inspector of Police and another*** reported in ***(2022) 2 MLJ (Crl) 396***,

“15. Now coming to the other ground of attack raised by the learned counsel for the petitioner that the very filing of the charge sheet after lapse of four years since the registration of the case is illegal as it is time barred and that the learned Judicial Magistrate ought not to have taken cognizance of the case, as the final report is clearly barred under Section 468 Cr.P.C.

*16. It is necessary to refer the judgment of the learned Single Judge of this Court in Crl.O.P.(MD)No.18775 of 2021, dated 07.12.2021 in ***Thinakaran and Others Vs. State represented by the Inspector of Police, Tirunelveli Junction Police Station and another*** and the relevant passage is extracted hereunder:*

“6. The learned counsel appearing for the petitioners drew my attention the decision



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reported in 1987 Cri LJ 360 (Kathamuthu V. Balammal). The Hon'ble Division Bench was called upon to answer the question as to whether the launching of a criminal prosecution after the lapse of the period of limitation prescribed under Section 468 of Cr.P.C, can the Court condone the delay after taking cognizance of the offences or whether such condonation of delay should precede the taking cognizance of the offences. In the aforesaid Judgment, the Hon'ble Division Bench categorically answered and held that any proceeding culminating in the conviction of a person in a criminal case, the cognizance of which has been taken after the expiry of the period of limitation as prescribed under Section 468(2) of Cr.P.C. without first resorting to Section 473 of Cr.P.C., is non est in the eye of law. The decision reported in 1978 Cri.L.J.116 (Sulochana V. State Registrar of Chits, Madras) was specifically disapproved.”

17. Another learned Judge of this Court in *D.Senthilkumar Vs. The Inspector of Police, Prohibition Enforcement Wing, T.Nagar Unit, M.G.R.Nagar Police Station, Chennai – 600 083, (CrI.O.P.No.4307 of 2017,*



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dated 09.09.2020) has held as follows:

“7. Considering the rival submissions, it is seen that FIR was registered on 25.06.2015 on the same day the vehicle was seized for offence under Section 4(1)(a) Tamil Nadu Prohibition Act, 1937, for this offence the imprisonment is fixed for a term which may extended to three months or with fine which may extended to one thousand. As per Section 468(2) of Cr.P.C, the period of limitation for filing final report expires on or before 24.06.2016. Auto which was seized was ordered to be returned to the petitioner in C.M.P.No. 4384 of 2015 by order dated 26.11.2015 by XXIII Magistrate Court, Saidapet, Chennai, against which Crl.RC.No. 74 of 2015 was filed by the respondent Police before the Additional Sessions Judge, Chennai. It is seen that the Additional Deputy Commissioner of Police sent notice for confiscating the Vehicle on 08.10.2015, since the owner of the vehicle failed to make any objection the vehicle was confiscated and is in custody PEW unit and from 26.11.2015 to 31.07.2018 revision case was pending. It is seen that the respondent had filed the original documents during enquiry before them



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Additional Session Court, Chennai and due to which the charge sheet which was made ready on 21.09.2016, could not be filed before the concerned Magistrate Court. This is an explanation offered by the learned counsel for the respondent. There is no reason given why after disposal of criminal revision on 13.07.2018 till date the charge sheet is yet to be filed and numbered. Though as per 470 of Cr.P.C, exclusion of time in certain cases are available, in this case no such grounds are available. Further, no petition or reason given seeking condonation of delay as per Section 473 Cr.P.C is made. The valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. In any case, the exercise of power under Section 473 Cr.P.C., extending the period of limitation by condoning the delay in launching prosecution should precede the taking cognizance of the offence. This Court following the case of “Kathamuthu Versus Balammal reported in 1985 CrI.L.J 360”, finds the facts of the case no cognisance would be taken in Criminal No.205 of 2015 since it would be bar beyond the period of limitation.



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In view of the same the proceedings in Crime No.205 of 2015 is quashed.”

18. It is evident from the records that the incident was alleged to have occurred on 05.10.2007 and FIR came to be registered on 16.11.2007 and admittedly the charge sheet has been laid on 14.07.2011. Section 468 Cr.P.C. contemplates the period of limitation for taking cognizance of an offence and in case of the offence which is punishable with imprisonment for a period of term exceeding one year, but, not exceeding three years, the period of limitation shall be three years. In the present case, the major offence with which the accused were charged with, is under Section 506 (1) IPC and the same would attract the maximum punishment of two years imprisonment and as such, the period of limitation for taking cognizance is three years. In the case on hand, admittedly, charge sheet was filed after the expiry of three years. No doubt, Section 473 Cr.P.C. prescribes two exceptions and that the Court can take cognizance beyond the period prescribed under Section 468 (2) Cr.P.C., if the delay has been properly explained or that it is necessary in the interests of justice.”

16. In the case on hand, as already pointed out, FIR came to be registered on 31.07.2020, but the charge sheet dated 24.11.2021 came to be filed before the jurisdictional Court on 31.01.2022. Even assuming



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that the charge sheet was filed on 24.11.2021 itself, even then according to the learned counsel appearing for the petitioners, the same is hit by Section 468(2) Cr.P.C. It is not in dispute that Section 143 IPC attracts the maximum punishment of six months or with fine or with both, whereas, Section 341 IPC attracts the maximum punishment of one month or with fine which may extend to five hundred rupees or with both, but the offence under Section 283 IPC attracts the punishment with fine only, which may extend to two hundred rupees. Since the offences under Sections 143 and 341 IPC attract the maximum punishment of six months, final report should have been filed within a year. But in the case on hand, admittedly, charge sheet came to be filed only on 31.01.2022. It is not the case of the prosecution that they have obtained necessary permission from the jurisdictional Court for filing the charge sheet with delay. Hence, this Court has no hesitation to hold that the impugned charge sheet is barred by limitation.

17. Viewed from any angle, the impugned proceedings in S.T.C.No.939 of 2022 are liable to be quashed.

18. In the result, this Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.939 of 2022 pending on the file of



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the Judicial Magistrate No.III, Dindigul are quashed. Consequently,
connected Miscellaneous Petition is closed.

05.04.2023

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

To

- 1.The Judicial Magistrate No.III,
Dindigul.
- 2.The Inspector of Police,
Town South Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl.O.P.(MD)No.22023 of 2022
and
Crl.M.P.(MD)No.15524 of 2022

Dated : 05.04.2023