



Crl.M.P.(MD)No.1317 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2024

Pronounced on : 28.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.M.P.(MD)No.1317 of 2024
in Crl.R.C.(MD)SR.No.3465 of 2024
and
Crl.R.C.(MD)SR.No.3465 of 2024

S.Nisanth

... Petitioner

Vs.

1.Selvam moris

2.Moris

3.Murugan
Head Constable,
Anjugramam Police Station,
Kanyakumari District.

4.Radhakrishnan
Special Sub Inspector,
Anjugramam Police Station,
Kanyakumari District.

5.Arul
Police Constable,
Anjugramam Police Station,
Kanyakumari District.

...Respondents



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Prayer in Crl.M.P.(MD)No.1317 of 2024 : The Criminal Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 572 days of filing in the present revision petition against the order passed in Crl.M.P.No.1669 of 2015 in S.T.C.No.233 of 2013 dated 28.03.2022 by the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District.

Prayer in Crl.R.C.(MD)No.SR3465 of 2024 : The Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the order passed in Crl.M.P.No.1669 of 2015 in S.T.C.No.233 of 2013 dated 28.03.2022 by the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District and further direct the concerned Court to frame additional charges of 506(2) IPC, Section 4 of TamilNadu Prevention of Women Harassment Act and Section 7 of Protection of Civil Rights Act for the offence committed by the respondents.

(in both cases)

For Petitioner : Mr.V.Rajiv Rufus

For R2 : Mr.G.Anto Prince

For R1 & R3 to R5 : No appearance

COMMON ORDER

The Criminal Miscellaneous Petition has been filed seeking orders to condone the delay of 572 days in filing the revision petition, challenging the order passed in Crl.M.P.No.1669 of 2015 in S.T.C.No.233 of 2013 dated 28.03.2022 by the Judicial Magistrate No.III, Nagercoil.



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2. It is evident from the records that the petitioner has filed a private complaint under Section 200 Cr.P.C. before the learned Chief Judicial Magistrate, Nagercoil and the learned Magistrate, after conducting enquiry under Section 202 Cr.P.C. in Crl.M.P.No.3717 of 2012, had taken cognizance in S.T.C.No.233 of 2013 for the offences under Sections 294(b) and 323 IPC against the respondents/accused 1 to 5 and thereafter, the petitioner has filed a petition under Section 215 Cr.P.C. to frame additional charges against the accused under Section 506(2) IPC, Section 4 of TN Prohibition of Harassment of Women Act and Section 7 of Protection of Civil Rights Act and the same was taken on file in Crl.M.P.No.1669 of 2015 and the learned Magistrate, after conducting enquiry, has passed the impugned order dated 28.03.2022 dismissing the said petition. Aggrieved by the order of dismissal, the petitioner has filed a revision before this Court invoking Sections 397 r/w 401 Cr.P.C. along with the present miscellaneous petition to condone the delay of 572 days in filing the revision.

3. The case of the petitioner is that the petitioner, considering the plight and situation of his family, went to a foreign country as a coolie under compulsion, that the petitioner has also suffered by kidney stone



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problem and undergone a surgery for the same last year, that due to medical illness and inconvenience, he was not able to file the present revision within the stipulated time and that therefore the delay of 572 days in filing the revision has to be condoned.

4. The second respondent has filed a counter statement disputing the petitioner's averments and further stated that the revision had been filed after the delay of 572 days without mentioning any substantial reasons for the delay, that though the case was taken cognizance in S.T.C.No.233 of 2013 on 31.10.2013, he filed the petition for framing of additional charges in Crl.M.P.No.1669 of 2015 after two years since taking cognizance and after dismissal of the said petition on 28.03.2022, the present revision along with the delay condonation petition came to be filed after the lapse of two years and that the above petition has been filed only to delay and drag on the proceedings and to harass the respondents.

5. No doubt, the second respondent has also taken a stand that the petition filed under Section 215 Cr.P.C. is not maintainable, that Section 215 Cr.P.C. has no application to the case on hand, that the learned



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Magistrate has rightly observed that if the petitioner is aggrieved by the order of taking cognizance, he ought to have preferred a revision against the said order and that the above petition seeking orders for framing of additional charges is legally not maintainable.

6. As already pointed out, the petitioner has canvassed two reasons for condoning the alleged delay and according to him, he went to a foreign country as a coolie considering his family situation and that he was suffering from kidney stone problem and he had undergone a surgery for the same. Except the above, the petitioner has not elaborated anything further. The petitioner has not even mentioned when he went to abroad and when he returned to India and when the petitioner had undergone surgery and place and period of treatment. Admittedly, the petitioner has also not produced any evidence or materials to substantiate the above two reasons canvassed by him.

7. As rightly contended by the learned counsel appearing for the second respondent, though STC was taken on file in 2013, the said case is pending for the past more than 11 years and mainly due to the pendency of



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the petitioner's petition in Crl.M.P.No.1669 of 2015 for framing of additional charges and even after passing of orders in the said Crl.M.P.No. 1669 of 2015, the petitioner, without approaching the Court immediately, has come forward with the delay of 572 days which is inordinate. Considering the above, this Court is not inclined to condone the delay.

8. As already pointed out, the learned Magistrate has conducted enquiry under Section 202 Cr.P.C. in Crl.M.P.No.3717 of 2012 and wherein, the petitioner/complainant has produced five witnesses and their evidence came to be recorded and that the learned Magistrate, after considering the complaint and other materials available on record, has taken cognizance in S.T.C.No.233 of 2013 for the offences under Sections 294(b) and 323 IPC.

9. The main contention of the petitioner is that though there are materials to take cognizance for the offences under Section 506(2) IPC, Section 4 of TN Prohibition of Harassment of Women Act and Section 7 of Protection of Civil Rights Act, the learned Magistrate has miserably failed to take cognizance for the said offences and that therefore the petitioner



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was constrained to file the petition under Section 215 Cr.P.C. for framing of additional charges.

10. As rightly observed by the learned Magistrate, if the petitioner is aggrieved by the order taking cognizance, he should have preferred a revision. Since the learned Magistrate, considering the materials available on record, had taken cognizance only for the offences under Sections 294(b) and 323 IPC, the petitioner cannot direct the Magistrate to take cognizance for some other offences on the basis of the materials already available on record and admittedly, there is no other evidence or materials produced subsequent to the order taking cognizance.

11. The petitioner's prayer to frame additional charges for some other offences is nothing but seeking to recall the order of the learned Magistrate taking cognizance for the offences under Sections 294(b) and 323 IPC and such a power or jurisdiction is not available with the learned Judicial Magistrate. As rightly observed by the learned Magistrate, after examination of the prosecution side witnesses, if the evidence would go to show that the accused had allegedly committed some other offences,



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which are triable as warrant case, then the learned Magistrates will have power to convert the STC into warrant case and then to frame charges on the basis of the evidence adduced by the prosecution side witnesses. Such a course is not available at this stage as the prosecution side witnesses is yet to be commenced.

12. As rightly observed by the learned Magistrate and rightly contended by the learned counsel appearing for the second respondent, the very petition filed by the petitioner for framing of additional charges is legally not maintainable and as such, the order dismissing the said petition cannot be found fault with. Viewing from any angle, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

13. In the result, this Criminal Miscellaneous Petition is dismissed. Consequently, Crl.R.C.(MD)SR.No.3465 of 2024 is rejected at SR stage itself.

28.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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To

1.The Judicial Magistrate No.III,
Nagercoil, Kanyakumari District.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.M.P.(MD)No.1317 of 2024
in Crl.R.C.(MD)SR.No.3465 of 2024
and
Crl.R.C.(MD)SR.No.3465 of 2024

Dated : 28.10.2024