



Crl.O.P.(MD) No.4636 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.4636 of 2021

and

Crl.M.P.(MD) Nos.2597 & 2598 of 2021

Sethu @ Ilangeswaran

... Petitioner

Vs.

1.The State represented by its
The Inspector of Police,
Parthibanur Police Station,
Ramanathapuram District.
[Crime No.36 of 2009]

2.Karunanithi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.71 of 2018 on the file of the Judicial Magistrate Court, Paramakudi and quash the same.

For Petitioner : Mr.M.S.Jeyakarthik

For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



Crl.O.P.(MD) No.4636 of 2021

ORDER

WEB COPY Seeking to quash the final report in C.C.No.71 of 2018 on the file of the Judicial Magistrate Court, Paramakudi, the present Criminal Original Petition is filed.

2. The petitioner is the sole accused. The case of the prosecution in a nutshell is as follows:

(i) On 11.03.2009, the present petitioner/accused was driving a private bus belonging to G.K.M.Travels bearing Registration No.TN 57 V 7879 from Chennai to Mudukulathur. When he was nearing Devaneri Bus Stop, he hit another bus belonging to Tamil Nadu State Transport Corporation (TNSTC) bearing Registration No.TN 63 N 0907 which was proceeding towards Kamuthi from Ramanathapuram, as a result of which, the driver of TNSTC bus died on the spot.

(ii) Based on the complaint given by the conductor of TNSTC bus, an F.I.R. in Crime No.36/2009 was registered by the Sub Inspector of Police, Parthibanur Police Station for the offences punishable under Sections 279, 337, 338 & 304(A) of IPC against the present petitioner. The Inspector of Police after conducting investigation laid a final report



Crl.O.P.(MD) No.4636 of 2021

against the present petitioner/accused for the aforesaid offences.

3. Mr.M.S.Jeyakarthik, learned counsel for the petitioner/accused would contend that though the occurrence took place on 11.03.2009, the first respondent police has filed the final report before the Judicial Magistrate Court, Paramakudi only in the year 2018 and the learned Judicial Magistrate had taken cognizance of the offence without even condoning the delay in filing the final report. He would further contend that since the final report was filed beyond the period of limitation as envisaged under Section 468 of Cr.P.C., the final report has to be quashed.

4. Mr.M.Sakthi Kumar, learned Government Advocate (Crl. Side) appearing for the first respondent police, on instructions, would contend that the final report was filed by the police before the Judicial Magistrate Court, Paramakudi in the year 2012 itself and there was a delay in taking cognizance of the offence by the learned Judicial Magistrate, Paramakudi.

5. At the time of admission, this Court called for a report from the Judicial Magistrate as to why the cognizance of offence was taken up



Crl.O.P.(MD) No.4636 of 2021

beyond the period of limitation. Mr.L.Kamalakannan, learned Judicial Magistrate, (FAC), Paramakudi had sent an explanation *vide* a letter bearing D.No.545, dated 31.05.2021, wherein, he has stated thus.

I most humbly submit that I have been officiating as District Munsif, Paramakudi and I am holding all additional charge of Judicial Magistrate Court, Paramakudi from 21-04-2021 and full additional charge of Judicial Magistrate Court, Mudukulathur, District Munsif Court, Mudukulathur, District Munsif cum Judicial Magistrate Court, Kamudhi, District Munsif cum Judicial Magistrate Court, Kadaladi from 23-04-2021 and Judicial Magistrate Court No.1, Ramanathapuram from 18-05-2021.

I most humbly submit that on perusal of the case bundle in C.C.No.71/2018, it is found that date of occurrence was on 11-03-2009 and F.I.R. was lodged on the same date. The police has submitted the final report in court on 11-07-2012 after getting approval from A.D.P., Ramanathapuram on 26-06-2012. The initial of then Judicial Magistrate and court seal reveals the same. I humbly submit that the final report was returned for defects on 12-07-2012 and the same was represented by police on 21-06-2013. Since, the final report was



Crl.O.P.(MD) No.4636 of 2021

represented without complying the previous defects, it was returned, and the same was represented on 26-04-2018 and the final report was taken on file on the same date, 26-04-2018 by then Judicial Magistrate in C.C.No. 71/2018 for the offences punishable under sections 279, 337, 338, 304(A) of Indian Penal Code. The case stands posted on 08-06-2021 for service of summons to Lw1 to Lw3.

6. The above explanation shows that the final report was filed by the police only on 11.07.2012 with the delay of nearly 4 months. The learned Judicial Magistrate, Paramakudi has not condoned the delay in filing the final report as it is seen from the orders of taking cognizance of offence punishable under Sections 279, 337, 338 & 304(A) of IPC in C.C.No.71 of 2018.

7. Initially, the final report was returned to the police for rectifying certain defects pointed out by the Judicial Magistrate and the police has represented the same on 21.06.2013 without rectification. Therefore, the final report was once again returned to the police. Thereafter, the police had represented the final report only on 26.04.2018 and on the same date, the Judicial Magistrate had taken cognizance of offence.



Crl.O.P.(MD) No.4636 of 2021

WEB COPY

8. The learned Judicial Magistrate, Paramakudi either in the original return or at the time of taking cognizance of offence did not seek any explanation from the police for not filing the final report within the period of limitation as per Section 468 of Cr.P.C. On the contrary, the learned Judicial Magistrate, Paramakudi had taken cognizance of the offence on 26.04.2018.

9. Despite specific instructions by way of circulars to not affix rubber stamps in the place of written orders, it is observed that in the specific instance, a rubber stamp has been used by the judicial officer for taking cognizance of the offence, as a result of which, there is non-application of mind. He has mechanically signed on the rubber stamp. The instructions given in circulars have been blatantly flouted by the concerned Judicial Magistrate.

10. In any event, this is a case where there was an accident in which the driver of TNSTC bus died on spot and some of passengers travelled in the TNSTC bus also got injured. Moreover, merely because the police did not file a petition under Section 473 Cr.P.C. for condoning delay along



Crl.O.P.(MD) No.4636 of 2021

with the final report, the final report cannot be quashed. The Magistrate also could have *suo motu* condoned the delay or directed the police to file an application under Section 473 Cr.P.C.

11. Since the final report is filed with a delay of nearly 4 months, taking cognizance of offences without condoning the delay alone is hereby set aside. The first respondent police is directed to file a petition before the concerned Court under Section 473 of Cr.P.C. to condone the delay in filing the final report and the learned Judicial Magistrate, Paramakudi shall pass orders strictly on merits and in accordance with law.

12. With the above observation, this Criminal Original Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed.

12.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN



Crl.O.P.(MD) No.4636 of 2021

WEB COPY To

- 1.The Judicial Magistrate,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Parthibanur Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.4636 of 2021

R.HEMALATHA, J.

JEN

Crl.O.P.(MD) No.4636 of 2021 and
Crl.M.P.(MD) Nos.2597 & 2598 of 2021

12.02.2024