



Crl.O.P.(MD) No.12141 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

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THE HON'BLE MRS.JUSTICE R.HEMALATHA

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and

Crl.M.P.(MD) Nos.6230 & 6231 of 2021

1.Amalraj

2.Muthulakshmi

3.Madasamy

4.Murugaperumal

5.Perumal

6.Ravisankar

... Petitioners

Vs.

1.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
(Crime No.320 of 2016)

2.Pandiarajan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to S.T.C.No. 643 of 2020 on the file of the Judicial Magistrate No.II, Virudhunagar and quash the same as against the petitioners.



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For Petitioners : Mr.R.Pon Karthikeyan

For R1 : Mr.K.Sanjai Gandhi

ORDER

Seeking to quash the final report filed by the police before the Judicial Magistrate Court No.II, Virudhunagar in S.T.C.No.643 of 2020, the present Criminal Original Petition is filed.

2. The second respondent/*de facto* complainant lodged a complaint with the Inspector of Police, Virudhunagar East Police Station against the present petitioners and others for the alleged offences punishable under Sections 147, 294(b), 506(1) of IPC and same was registered as F.I.R. in Crime No.320 of 2016 of Virudhunagar East Police Station. The petitioners are accused 1 to 3 and 5 to 7. After completing the investigation, the police filed a final report before the Judicial Magistrate Court No.II, Virudhunagar in S.T.C.No.643 of 2020.

3. Mr.R.Pon Karthikeyan, learned counsel for the petitioners/accused 1 to 3 and 5 to 7 would contend that though the date of occurrence is 08.07.2016, the police had filed the final report only on



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16.09.2020 and that the maximum imprisonment for the offence punishable under Section 506(1) of IPC is 2 years and the police have not filed the final report within the period of limitation as envisaged under Section 468 of Cr.P.C. He would further contend that the learned Judicial Magistrate had also not condoned the delay in filing the final report and therefore, the entire final report has to be quashed.

4. It is true that the final report has been filed beyond the period of limitation. The learned Judicial Magistrate has taken cognizance of offence without directing the police to file a petition under Section 473 of Cr.P.C. seeking to condone the delay in filing the final report. It is appropriate to extract hereunder Sections 468 & 473 of Cr.P.C.

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***



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

473. Extension of period of limitation in certain cases.—

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

5. The Constitution Bench of the Hon'ble Supreme Court in the case of ***Mrs.Sarah Mathew Vs. The Institute of Cardio Vascular***, reported in ***2014 (1) SCC 721 : AIR 2014 SC 448***, had ruled that for the purpose of computing the period of limitation under Section 468 of Cr.P.C., the relevant date is the date of filing of the complaint or the date



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of institution of prosecution and not the date on which the Magistrate takes cognizance of offence.

6. In the instant case, the date of occurrence is 08.07.2016 and the period of limitation is computed from the said date. The final report should have been filed on or before 07.07.2019 i.e., within a period of three years from the date of occurrence. The learned Judicial Magistrate while taking cognizance of offence had not *suo motu* condoned the delay as it is seen from the orders of taking cognizance of offence in S.T.C.No. 643 of 2020.

7. In the circumstances, cognizance taken by the learned Judicial Magistrate, Virudhunagar of the final report filed by the police is totally erroneous and therefore, the same is set aside. However, the entire final report cannot be quashed on this ground. The matter is remitted back to the Judicial Magistrate Court No.II, Virudhunagar and the first respondent police is directed to file a petition under Section 473 of Cr.P.C seeking to condone the delay in filing the final report. Upon filing the same, the learned Judicial Magistrate is directed to decide the petition on merits and in accordance with law.



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WEB COPY 8. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

07.02.2024

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

JEN

To

- 1.The Judicial Magistrate No.II,
Virudhunagar,
Virudhunagar District.
- 2.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA, J.

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