



Crl.O.P.(MD)No.14479 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.14479 of 2022
and
Crl.M.P.(MD)No.9336 of 2022

- 1.Manikandan
- 2.Mahesh Prem Anand
- 3.Esakkipandi
- 4.Thillai Rama Sulthan
- 5.Murugan
- 6.Jeyalakshmi
- 7.Manicathai
- 8.Shanmugathai

... Petitioners

Vs.

- 1.The Inspector of Police,
Vallioor Police Station,
Tirunelveli District.
(Crime No.24 of 2015)
- 2.Dharmapathi Muthu

... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.245 of 2021 on the file of the learned Judicial Magistrate Court, Vallioor, Tirunelveli District and quash the same as illegal.

For Petitioners : Mr.A.Mohamed Hashim

For R1 : Mr.S.Manikandan,
Government Advocate (Crl. Side)

For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the impugned charge sheet in C.C.No.245 of 2021 on the file of the learned Judicial Magistrate Court, Vallioor, Tirunelveli District.

2.The case of the prosecution is that there was previous enmity in between the defacto complainant, A1 and A2. Due to which, on 23.01.2015, all the accused persons waylaid the college bus, abused the defacto complainant in filthy language and also attacked him. Therefore, the second respondent lodged a complaint before the first respondent, based on which, FIR in Cr.No.24 of 2015 has been registered for the



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offence under Sections 143, 147, 341, 294(b), 323, 506(i) IPC altered into Sections 147, 341, 294(b), 109, 323, 506(i) IPC. Upon completion of investigation, the first respondent filed the final report, which was taken on file in C.C.No.245 of 2021 by the learned Judicial Magistrate Court, Vallioor, Tirunelveli District. Challenging the same, the present petition came to be filed.

3.The learned counsel appearing for the petitioners submitted that maximum punishment for the above said offences are 6 months, 2 years, 1 month, 3 months, 1 month and 2 years respectively. In the present case, FIR came to be registered on 23.01.2015. However, charge sheet filed by the first respondent only on 31.12.2020 and thereby, the impugned final report is barred by limitation as prescribed under Section 468 Cr.P.C. He further submitted that the issue arose in the present issue is no longer *res integra* and it is covered by the Judgment of this Court in the case of ***A.Kaliyaperumal and others Vs. the Superintendent of Police, Cuddalore, Cuddalore District and others*** in Crl.O.P.Nos.433 and 543 of 2024, dated 24.01.2024. Accordingly, he prayed to quash the impugned proceedings.



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4.The learned Government Advocate(Crl.side) appearing for the first respondent submitted that the first respondent filed the final report within the prescribed limitation, however, the trial Court failed to take cognizance. He further submitted that the issues raised in the present petition are all triable in nature, which cannot be agitated before this Court under Section 482 Cr.P.C. Accordingly, he prayed to dismiss the present petition.

5.Heard the learned counsel on either side and perused the materials available in the records.

6.It is seen that the second respondent lodged a complaint on 23.01.2015 and FIR was registered on the same day. Maximum punishment for the above said offences is two years and hence, the first respondent has to file the final report within two years. However, after a lapse of five years, ie., on 31.12.2020 the impugned charge sheet filed, which is barred by limitation. In the decision relied on by the learned counsel appearing for the petitioner, this Court held as follows:

26. Limitation in the context of a case instituted on a police report was considered by the Hon'ble Supreme Court in Arun Vyas v Anita Vyas reported in (1999) 4 SCC



690. The Court held as follows:

“13.The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988 when, on the allegation made by the respondent in the complaint to the Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995, therefore, it was clearly barred by limitation under Section 468(2)(c) CrPC.”

This decision makes it clear that the relevant date for reckoning the cut-off is the date on which the final report was filed and not the date on which the FIR was registered. The aforesaid conclusion was referred to and affirmed by a three Judge Bench in State of H.P. v. Tara Dutt, (2000) 1 SCC 230, and followed by another two-judge bench in Ramesh v. State of T.N., reported in (2005) 3 SCC 507. In Ramesh, the facts were that an FIR was registered on 23.06.1999 for an offence under Section 498-A IPC. The



informant had exited the matrimonial home on 02.02.1997 and applying the decision in Arun Vyas v Anita Vyas reported in (1999) 4 SCC 690, the last act of cruelty was taken to be the point for the commencement of limitation under Section 469 Cr.PC. The Court found that the process of investigation and filing of the charge-sheet took its own time and was completed when the final report was filed on 28.12.2001 which was beyond the period of three years. The Hon'ble Supreme Court held that the Magistrate was barred from taking cognizance unless the delay was properly explained under Section 473 Cr.PC. A serious flaw in Kishore v State reported in (2023) 2 LW (Cri) 285 is evident when one applies the law therein to the facts of Ramesh v. State of T.N., reported in (2005) 3 SCC 507. The limitation in Ramesh having commenced on 02.02.1997 and the FIR having been lodged on 23.06.1999, applying Kishore v State reported in (2023) 2 LW (Cri) 285 the issue of limitation would not arise. However, the conclusion of the Hon'ble Supreme Court is precisely the opposite which is on account of the fact that Kishore v State reported in (2023) 2 LW (Cri) 285 unfortunately applies the ratio of a complaint case to a case instituted on a police report.

7. On perusal of the above said decision makes it clear that the starting point of the date of occurrence in the present case is 23.01.2015.



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However, charge sheet was filed after a lapse of five years, ie., on 31.12.2020, which is clearly barred by limitation and thereby, the above said decision is squarely applicable to the present case. Accordingly, this criminal original petition is allowed and the impugned charge sheet in C.C.No.245 of 2021 on the file of the learned Judicial Magistrate Court, Vallioor, Tirunelveli District is here by quashed. Consequently, connected miscellaneous petition is closed.

12.03.2024

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

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



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M.DHANDAPANI,J.

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