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Crl.R.C.Nos.2040, 1862 and 1864 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 13.03.2025

Orders Pronounced on : 22.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.2040, 1862 and 1864 of 2023
and

Crl.M.P.Nos.18847, 17478 and 17480 of 2023

Ruban, S/o Subbaiyan .. Petitioner in Crl.R.C.No.2040 of 2023

MR.Ravichandran,S/o Mr.Natarajan

Mr.R.Ramnath, S/o J.R.Rajaram

A.Marimuthu, S/o Anandan .. Petitioners in Crl.R.C.No.1862 of 2023

A.Marimuthu, S/o Anandan .. Petitioner in Crl.R.C.No.1864 of 2023

Vs.

State, rep. by
The Sub-Inspector of Police,
Central Crime Branch, Tiruppur. .. Respondent in Crl.R.C.No.2040 of 2023

The State,
Represented by the Sub-Inspector of Police,
District Crime Branch,
Coimbatore District (Now at Tirupur District),

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Crime No.12 of 2001.

.. Respondent in Crl.R.C.No.1862 of 2023

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The State,
Represented by the Sub-Inspector of Police,
District Crime Branch,
Coimbatore District (Now at Tirupur District),
Crime No.11 of 2001.

.. Respondent in Crl.R.C.No.1864 of 2023

Criminal Revision Case No.2040 of 2023 filed under Sections 397 and 401 of Cr.P.C. to set aside the order dated 08.09.2023 made in Crl.M.P.No.1379 of 2019 in C.C.No.523 of 2019 on the file of Judicial Magistrate No.2, Tiruppur and discharge the petitioner as prayed for.

Criminal Revision Case No.1862 of 2023 filed under Section 397 read with Section 401 read with Section 482 of Cr.P.C., to set aside the order dated 08.09.2023 in Criminal M.P.No.492 of 2019 on the file of the Judicial Magistrate No.2, Tiruppur and discharge the petitioner.

Criminal Revision Case No.1864 of 2023 filed under Section 397 read with Section 401 read with Section 482 of Cr.P.C. to set aside the order dated 08.09.2023 in Criminal M.P.No.6473 of 2022 on the file of the Judicial Magistrate No.2, Tiruppur and discharge the petitioner.

For petitioner in Crl.R.C.No.2040 of 2023: Mr.N.Ponraj

For petitioner in Crl.R.C.Nos.1862 and 1864 of 2023 : Mr.S.P.S.Nithyan

For respondents in all Crl.R.Cs. : Mr.S.Sugendran, Addl.P.P.

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COMMON ORDER

The revision petitioner in Crl.R.C.No.2040 of 2023 is A2 in C.C.No.523 of 2019 on the file of the Judicial Magistrate No.2, Tiruppur.

2. The revision petitioners in Crl.R.C.No.1862 of 2023 are A2, A3 and A4 in C.C.No.529 of 2019 on the file of the Judicial Magistrate No.2, Tiruppur.

3. The revision petitioner in Crl.R.C.No.1864 of 2023 is A3 in C.C.No.523 of 2019 on the file of the Judicial Magistrate No.2, Tiruppur.

4. The respondent-Police registered the above case against the petitioners herein for the offence under Sections 406 and 424 of IPC in the respective crime numbers.

5. After investigation, the Police laid the charge-sheet before the Judicial Magistrate No.2, Tiruppur, which were taken on file in C.C.Nos.523 and 529 of 2019 in Crime Nos.11 and 12 of 2001.

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WEB COPY 6. The revision petitioners have filed Crl.M.P.Nos.1379 of 2019, 6473 of 2022 and 492 of 2019 before the Judicial Magistrate No.2, Tiruppur.

7. The said Crl.M.Ps. were filed under Section 239 Cr.P.C., praying to discharge the accused from the cases and the said Crl.M.Ps. were dismissed by the learned Judicial Magistrate No.2, Tiruppur, after hearing both sides, against which, the respective revision petitioners are before this Court under these Criminal Revision Petitions.

8. Learned counsel for the revision petitioners contended that the cases are barred by limitation. Though the cases were registered for the above said offences in the year 2001 itself, subsequently, the respondent-Police, after investigation, filed charge-sheet in the respective cases which is barred by limitation under Section 468 Cr.P.C.

9. Further, A3 (K.Ravichandran), A4 (Ramnath) and A6 (A.Marimuthu), have earlier filed Crl.O.P.No.7425 of 2016 before this Court to quash the charge-sheet in C.C.No.193 of 2007, which was pending on the file of the Judicial Magistrate No.2, Tiruppur, The said Crl.O.P. was

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disposed of on 29.04.2016 by quashing C.C.No.193 of 2007 not only against the said three accused persons, but against all the accused.

10. Further, the said A.Marimuthu and S.Ruban, respectively, have filed Crl.O.P.Nos.12128 of 2016 and 19471 of 2014 before this Court to quash C.C.No.174 of 2007 pending on the file of Judicial Magistrate No.2, Tiruppur. The said Crl.O.Ps. were dismissed on 29.06.2016 with a direction to the trial Court to determine the date on which the final report was presented and if there is delay, it is open to the learned Magistrate to consider the same under Section 473 Cr.P.C., bearing in mind the law laid down by the Honourable Supreme Court in the case of Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director, Dr.KM.Churian and others, reported in 2014 (2) SCC 62.

11. Learned counsel for the revision petitioners further contended that again, the said accused persons, i.e. A2 (N.Ravichandran), A3 (Ramnath) and A5 (A.Marimuthu) filed Crl.O.P.No.7426 of 2016 to quash the charge-sheet in C.C.No.192 of 2007, pending on the file of the Judicial Magistrate No.2, Tiruppur. The said Crl.O.P. was dismissed by this Court on 07.08.2018.

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WEB COPY 12. Learned counsel for the revision petitioners further submitted that A2 (N.Ravichandran), A3 (Ramnath) and A4 (A.Marimuthu) filed Crl.O.P.No.9443 of 2016 before this Court and the same was allowed by this Court on 23.06.2022, quashing C.C.No.239 of 2007 on the file of Judicial Magistrate No.2, Thiruppur.

13. It is further contended by the learned counsel for the revision petitioners that the revision petitioners have filed discharge petitions in the years 2019 and 2022 before the trial Court, by invoking Section 239 Cr.P.C. These discharge petitions were dismissed by the impugned order.

14. Learned counsel for the revision petitioners further contended that the impugned order is liable to be set aside for the reason that, originally, the complaint was registered on 20.12.2001 itself, whereas, the charge-sheet was filed only on 25.07.2007. It is stated by the learned counsel for the revision petitioners that the punishment for the offence under Section 406 IPC is only three years of imprisonment and therefore, the charge-sheet ought to have been filed within three years from the date of complaint and since the charge-sheet was filed beyond the period of

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three years, the complaint(s) itself/themselves, are barred by limitation under Section 468 Cr.P.C.

15. It is also stated by the learned counsel for the revision petitioners that the trial Court failed to consider the belated filing of the charge-sheet.

16. The learned counsel for the revision petitioners further argued that there is no prima-facie case made out as against the revision petitioners/accused persons, even to frame the charges, but the trial Court failed to consider all the relevant facts and law, and therefore, the revision petitioners have filed the present revision petitions, challenging the dismissal of the discharge petition filed under Section 239 Cr.P.C.

17. In support of his submissions, the learned counsel for the revision petitioners relied on an order dated 24.01.2024 (A.Kaliyaperumal Vs. The Superintendent of Police) passed by this Court in CrI.O.P.Nos.433 and 543 of 2024. For all the above reasons, the learned counsel for the revision petitioners prayed that the revision petitioners/accused may be discharged from the cases.

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18. Per contra, learned Additional Public Prosecutor appearing for the respondent/Police, submitted that the complaint in all these three cases was filed within the period of three years from the date of knowledge and the respondent/Police conducted investigation and laid charge-sheet(s) and the complaint(s) was/were given in time, which is within three years from the date of knowledge and the de-facto complainant had complained before the Police on 20.12.2001 itself, which is within the period of limitation, and the same was registered on the same day for the offences under Sections 406 and 424 IPC and after investigation, the Police have laid the charge-sheet(s) dated 26.11.2003 for the offences under Sections 120-B, 406 read with 109 IPC on 28.11.2003 itself. According to the learned Additional Public Prosecutor, the complaint was filed within the period of limitation and investigation is also over and charge-sheet(s) was/were also filed, whereas, the Court had returned the charge-sheet for some defects and thereafter, the charge-sheet was re-presented and the Court had taken cognizance of the charge-sheet on 14.08.2019 itself.

19. Further, starting period of limitation is applicable only from the date of knowledge of the commission of the offence(s) and the date of giving the complaint and not from the date on which the charge-sheet(s)

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was/were taken on file by the Magistrate. Therefore, when the revision petitioners approached this Court on the earlier occasion to quash the respective cases by invoking Section 482 Cr.P.C., this Court had dismissed those Crl.O.Ps. as stated above in the preceding paragraph of this order, however, the ground of limitation is a question of fact and this Court had earlier given liberty to the accused persons to approach the trial Court, and the trial Court, taking into consideration the cause of action, the date of knowledge, the date of giving complaint and filing of the charge-sheet and also considering the decision of the Honourable Supreme Court stated supra, was followed and hence, these cases are not barred by limitation. Further, there are prima-facie materials to frame the charge(s) against the revision petitioners/accused persons to proceed with the case. Now, the revision petitioners/accused persons have filed the present revision petitions only to drag on the matter and there is no merit in these revision petitions.

20. The learned Additional Public Prosecutor appearing for the respondent/Police also contended that the grounds taken by the revision petitioners are all matters of trial.

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21. Admittedly, the de-facto complaint gave complaint before the respondent-Police on 20.12.2001. The revision petitioners have made false allegations regarding the hypothecation of the machinery and the de-facto complaint came to know of the same only on 21.06.2000 and subsequently, on inspection, on 17.07.2000, the de-facto complainant/officials noted that some of the machineries, before hypothecation to the de-facto complainant, were missing and therefore, they lodged the complaint on 20.12.2001 and on the same day, the respondent-Police initially registered the case(s) in Crime No.12 of 2001 for the offences under Sections 406 and 424 IPC and after investigation, the charge-sheet was filed on 26.11.2003 and the charge-sheet was taken on file by the learned Magistrate on 11.04.2007 in C.C.No.523 of 2019 for the offences under Sections 120-B, 406 and 109 IPC. Thereafter, the quash petitions were filed before this Court in the respective Crl.O.Ps., as discussed above, and subsequently, the revision petitioners filed discharge petitions before the Court below under Section 239 Cr.P.C. The trial Court found that the limitation period starts from the date of the offence / knowledge of the offence till filing of the complaint and not the date of the charge-sheet(s) or taken on file by the trial Court.



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22. The case was registered on 20.12.2001 for the offences under Sections 406 and 424 IPC and subsequently, only after investigation, the charge-sheet was/were filed including the offences under Section 120-B IPC, 406 read with 109 IPC.

23. Further, the offences came to the knowledge of the complainant only on 21.06.2000 and 17.07.2000, whereas, the complaint(s) was/were filed before the respondent-Police on 20.12.2001 itself and therefore, the complaint(s) is filed within the period of limitation.

24. Apart from arguing as above, the learned Additional Public Prosecutor contended that the trial Court rightly held that the complaint(s) is/are filed within the period of limitation and thereby, the discharge petitions filed under Section 239 Cr.P.C. were dismissed by considering the facts and law, and the same may not be interfered with by this Court at this stage.

25. Heard both sides and perused the materials available on record.

26. Admittedly, the respondent-Police registered a case against the



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revision petitioners in Crime No.11 of 2001 for the offences under Sections 120-B and 406 IPC in C.C.No.523 of 2019 and in Crime No.12 of 2001 for the offences under Sections 120-B, 406 read with Section 109 IPC in C.C.No.529 of 2019. Subsequently, the respondent-Police investigated the matter and filed charge-sheet on 18.08.2007 in C.C.No.529 of 2019 and on 14.08.2019 in C.C.No.523 of 2019. Pending investigation of the case, the revision petitioners have filed discharge petitions by invoking Section 239 Cr.P.C. in Crl.M.P.Nos.1379 and 2379 of 2019 and 6473 of 2022 in C.C.Nos.523 of 2019 and in Crl.M.P.No.492 of 2019 in C.C.No.529 of 2019. The trial Court, after giving an opportunity of hearing to both parties, considered the materials available on record and elaborately discussed the issues involved in these revision petitions and gave a finding that the cases are not barred by limitation. There are also prima-facie materials available on record to proceed with the case further as against the accused and the merits of the cases could be decided only after trial and thereby, the discharge petitions were dismissed by the impugned order dated 08.09.2023. Hence, the present revision petitions are filed challenging the said order dated 08.09.2023.

27. It is not in dispute that the cases were registered against the

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revision petitioners on 20.12.2001. It is seen from the complaint given by the de-facto complainant before the respondent-Police that the revision petitioners had availed loan by hypothecating the properties and only later, the de-facto complainant came to know during inspection on 19.04.2000 that some of the hypothecated machineries were not even available and also the value of the machineries had been not properly given and only based on the inspection, it was found by the investigating officer, through letters sent to the revision petitioners on 21.06.2000.

28. Thereafter, the officials of the de-facto complainant further inspected the premises with a qualified Valuer on 17.07.2000 and noted the defects mentioned in the complaint(s) and therefore, they have preferred a complaint before the respondent-Police and they have also investigated the matter and laid charge-sheets, which were taken on file by the Magistrate.

29. At this juncture, the revision petitioners approached this Court by filing quash-petitions (as earlier stated in this order), before this Court on the ground of limitation in taking the charge-sheet on file. This Court, in the earlier round of litigations, disposed of the respective quash-petitions and



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directed the revision petitioners to approach the Magistrate. This Court directed the Magistrate to consider the plea of limitation, which is a question of fact.

30. The revision petitioners have filed discharge petitions before the Court below taking advantage of the observations made by this Court in the respective quash-petitions earlier filed before this Court.

31. As far as the question of limitation is concerned, on a reading of the materials available on record, the alleged offences had taken place between 11.05.1999 and 21.05.1999 and the same came to the knowledge of the de-facto complainant only on 21.06.2000 and 17.07.2000. From the date of knowledge, the complaints were preferred by the de-facto complainant, before the respondent-Police on 20.12.2001. It is well within the period of three years either from the date of commission of the offence(s) or from the date of the knowledge of the commission of the offence(s). The respondent-Police, after investigating the matter, filed charge-sheet before the Court below and a copy of the charge-sheet enclosed in the typed set of papers filed in these revision petitions, shows that the investigating officer had signed the charge-sheet(s) on 28.11.2003.

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However, from the Court seal in the charge-sheet(s), it is clear that the charge-sheet(s) were filed before the Court on 11.04.2007. The Court below had taken the charge-sheet on file in C.C.Nos.192 of 2007, 523 of 2019 and 529 of 2019.

32. Subsequently, after disposal of the quash-petitions by this Court in the respective Crl.O.Ps. (discussed supra), the cases were transferred to the file of the Judicial Magistrate-2, Thiruppur and subsequently, the cases were re-numbered in C.C.No.529 of 2019.

33. The main contention taken by the revision petitioners is that the cases are barred by limitation under Section 468 Cr.P.C. on the ground that the charge-sheet(s) were filed beyond the period of limitation of three years. The punishment for the offences under Sections 406 and 120-B IPC is only three years and as per Section 468 Cr.P.C., the charge-sheet should have been filed within three years and the Court cannot take cognizance of the offence(s) beyond three years, and hence, the complaint(s) in these cases is/are barred by limitation. In this context, it is useful to extract Section 468 Cr.P.C., as follows:

"Section 468: Bar to taking cognizance after lapse

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of the period of limitation: 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. The period of limitation shall be:

six months, if the offence is punishable with fine only;

one year, if the offence is punishable with imprisonment for a term not exceeding one year;

three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

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."

34. The Court below elaborately discussed the issue before dismissing the discharge petitions, by placing reliance on the judgment of the Honourable Supreme Court in the case of Amritlal Vs. Shanthilal Soni,

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reported in Amritlal Vs. Shantilal Soni and others, reported in 2022 (13)

WEB COPY SCC 128.

35. Further, the trial Court also discussed the judgment of the Honourable Supreme Court in the case of Sarah Mathew Vs. Institute of Cardio Vascular Diseases, reported in 2014 (2) SCC 62, while dismissing the discharge petition.

36. Therefore, on a reading of the complaint and charge-sheet and the discussion made by the learned Magistrate in the impugned order, and also the decisions of the Honourable Supreme Court referred to by the learned Magistrate, it is crystal clear that the Honourable Supreme Court has stated that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the limitation has to be calculated from the date of commission of the offence(s) till the date of filing of the complaint and not the Court taking cognizance of the charge-sheet.

37. In this case, the cause of action has arisen from the date of knowledge of the de-facto complainant on 21.06.2000 and 17.07.2000 and the complaint was filed on 20.12.2001. Therefore, from the date of either

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the commission of the offence or from the date of knowledge, the complaint has been filed within three years, though the charge-sheets were filed later, but the charge-sheet(s) were taken on file by the Magistrate in the year 2007, which cannot be taken into consideration for the purpose of calculating the period of limitation.

38. Therefore, this Court finds that in view of the decisions of the Honourable Supreme Court, as referred to by the learned Magistrate in the impugned order, the present case is not barred by limitation.

39. As far as the other ground regarding the prima-facie materials to proceed against the accused, is concerned, on a reading of the complaint and the charge-sheet, it shows that there are prima-facie allegations against the revision petitioners and the revision petitioners are alleged to have committed the offence under Sections 406, 120-B read with Section 109 IPC.

40. Further, the statement of the witnesses and other materials, are themselves sufficient to proceed with the case further as against the revision petitioners.

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WEB COPY 41. Therefore, at the time of deciding the petitions for discharge filed under Section 239 Cr.P.C., the Court has to see the materials produced by the investigating officer and not the defence of the accused.

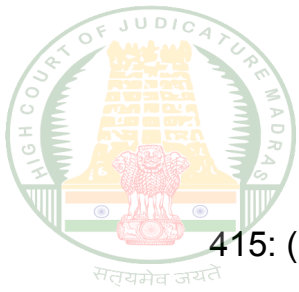
42. Further, on a reading of the materials, it is clear that there are prima-facie materials available against the revision petitioners to proceed the case further, as there are sufficient materials to frame the charges against the accused and to proceed with the case further, the defence of the accused had to be decided only after trial and not at this stage.

43. The learned Magistrate has also placed reliance on the decisions of the Honourable Supreme Court to arrive at a conclusion that there is evidence to proceed against the revision petitioners/accused.

44. At the risk of repetition, it is useful to notice the relevant portion of the decisions of the Honourable Supreme Court, as relied on by the Court below:

(i) 1997 (2) SCC 397 = AIR Online 1996 SC 699 = 1997 SCC (Cri)

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415: (Rashmi Kumar Vs. Mahesh Kumar Bhada):

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"15. The next question that needs to be answered is whether the complaint filed by the appellant in September 1990 is time barred. Section 468 of the Code prescribes period of limitation. Under sub-section (3) thereof, the period of limitation shall be three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Since the offence alleged to have been committed by the respondent is punishable under Section 406, viz., criminal breach of trust, and the punishment of imprisonment which may extend to three years or with fine or with both, the complaint is required to be filed within three years from date of the commission of the offence."

(ii) 2022 (13) SCC 128 (Amritlal Vs. Shantilal Soni):

"9. In *Sarah Mathew (Sarah Mathew Vs. Institute of Cardio Vascular Diseases)* (2014 (2) SCC 62 : 2014 (1) SCC (Cri) 721, the Constitution Bench of this Court examined two questions thus: (SCC pp.73-74, para 3):

'3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:



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3.1.(i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence ?

3.2 (ii) Which of the two cases, i.e. *Krishna Pillai (Krishna Pillai Vs. T.A.Rajendran (1990 Supp SCC 121 = 1990 SCC (Cri) 646)* and *Bharat Kale (Bharat Damodar Kale Vs. State of A.P (2003 (8) SCC 559 = 2004 SCC (Cri) 39)* (which is followed in *Japani Sahoo (Japani Sahoo Vs. Chandra Sekhar Mohanty (2007 (7) SCC 394 = 2007 (3) SCC (Cri) 388)*, lays down the correct law ?"

10. The Constitution Bench answered the aforesaid questions as follows: (*Sarah Mathew case (Sarah Mathew Vs. Institute of Cardio Vascular Diseases - 2014 (2) SCC 62 = 2014 (1) SCC (Cri) 721*) (*in SCC p.102, para 51*):

"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the



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date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale (Bharat Damodar Kale Vs. State of A.P. - 2003 (8) SCC 559 = 2004 SCC (Cri) 39) which is followed in Janani Sahoo (Janani Sahoo Vs. Chandra Sekhar Mohanty - 2007 (7) SCC 394 = 2007 (3) SCC (Cri) 388) lays down the correct law. Krishna Pillai (Krishna Pillai Vs. T.A.Rajendran (1990 Supp SCC 121 = 1990 SCC (Cri) 646) will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

(emphasis supplied)

11. Therefore, the enunciations and declaration of law by the Constitution Bench in *Sarah Mathew* case (*Sara Mathew Vs. Institute of Cardio Vascular Diseases - 2014 (2) SCC 62 = 2014 (1) SCC (Cri) 721*) do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not



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the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e. 4.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence ie. 4.10.2009.

12. In a rather overzealous, if not over adventurous, attempt to support the order of the High Court, the learned counsel for the contesting respondents has attempted to submit that *Sarah Mathew case (Sarah Mathew Vs. Institution of Cardio Vascular Diseases - 2014 (2) SCC 62 : 2014 (1) SCC (Cri) 721)* requires reconsideration on the ground that some of the factors related with Chapter XXXVI CrPC have not been considered by this Court. Such an attempt has only been noted to be rejected.

13. A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration. It remains trite that the binding effect of a decision of this Court does not depend upon whether a particular



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arguments was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein. (vide *Samawani Vs. State of Punjab*, 1962 SCC OnLine SC 23: AIR 1963 SC 151, para 22). This is apart from the fact that a bare reading of the decision in *Sarah Mathew* (*Sarah Mathew Vs. Institute of Cardio Vascular Diseases - 2014* (2) SCC 62 : 2014 (1) SCC (Cri) 721) would make it clear that every relevant aspect concerning Chapter XXXVI CrPC has been dilated upon by the Constitution Bench in necessary details. As a necessary corollary, the submissions made with reference to other decision of this Court, which proceeded on its own facts, are of no avail to the respondents. Thus, the submissions made on behalf of the contesting respondents stand rejected in absolute terms."

(iii) 2014 (2) SCC 62 (*Sarah Mathew Vs. Institute of Cardio Vascular Diseases*):

"35. In this connection, our attention is drawn to the judgment of this Court in *Sharadchandra Dongre* [*State of Maharashtra v. Sharadchandra Vinayak Dongre*, (1995) 1 SCC 42 : 1995 SCC (Cri) 16] . It is urged on the basis of this judgment that by condoning the delay, the court takes away a valuable right which accrues to the accused.

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Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 CrPC is presented before the court. Keeping this argument in mind, let us examine both the viewpoints i.e. whether the date of taking cognizance or the date of filing complaint is material for computing limitation. If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time-barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 CrPC. The court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the court takes cognizance within the period of limitation, there is no question of the complaint being time-barred. If the court takes cognizance after the period of limitation then, the question is how will Section 473 CrPC work. The complainant will be interested in having the delay condoned. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the



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delay or not. This would also mean that the Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr Luthra, learned ASG submitted that use of disjunctive “or” in Section 473 CrPC suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the latter part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 CrPC has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass an order condoning or not condoning the delay. The law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.

36. The role of the court acting under Section 473 was aptly described by this Court in *Vanka Radhamanohari* [*Vanka Radhamanohari v. Vanka Venkata Reddy*, (1993) 3 SCC 4 : 1993 SCC (Cri) 571] where this Court expressed that this section has a non



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obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that : (SCC p. 8, para 6)

“6. ... There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Criminal Procedure Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay.”

These observations indicate the scope of Section 473 CrPC. Examined in the light of legislative intent and meaning ascribed to the term “cognizance” by this Court, it is clear that Section 473 CrPC postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and



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circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (*U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra* [(2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000] .)

38. The conclusion reached by us is reinforced by the fact that the Law Commission in Para 24.20 of its



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Forty-second Report, which we have quoted hereinabove, referred to *Dau Dayal* [*Dau Dayal v. State of U.P.*, AIR 1959 SC 433 : 1959 Cri LJ 524] where the three-Judge Bench of this Court was dealing with a special Act i.e. the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26-4-1954 when he was arrested, and that, in consequence, the issue of process on 22-7-1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three-Judge Bench of this Court observed as under : (AIR p. 435, para 6):

“6. It will be noticed that the complainant is required to resort to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of



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the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court.”

Though this Court was not concerned with the meaning of the term “taking cognizance”, it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year

39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Kale* [*Bharat Damodar Kale v. State of A.P.*, (2003) 8 SCC 559 : 2004 SCC (Cri) 39] , *Japani Sahoo* [*Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and *Vanka Radhamanohari* [*Vanka Radhamanohari v. Vanka Venkata Reddy*, (1993) 3 SCC 4 : 1993 SCC (Cri) 571]. The object of the criminal law is to punish



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perpetrators of crime. This is in tune with the well-known legal maxim *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim *vigilantibus et non dormientibus, jura subveniunt*. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *actus curiae neminem gravabit* which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.

.. .. .

.. .. .

Conclusion

50. Having considered the questions which arise in



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this reference in the light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that *Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646]* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC, primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 CrPC in that judgment. It does not refer to Sections 4 and 5 CrPC which carve out exceptions for the special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on *Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277]*, in our opinion, was not apt. In *Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277]* this Court was dealing inter alia with the contention that a private complaint is not maintainable in the Court of the Special Judge set up under Section 6 of



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the Criminal Law (Amendment) Act, 1952 (“the 1952 Act”). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 CrPC. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 CrPC or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in *Antulay ‘1984’ case* [A.R. *Antulay v. Ramdas Srinivas Nayak*, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] : since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 CrPC at all, in our opinion, the said judgment could not have been usefully referred to in *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646]



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while construing provisions of Chapter XXXVI CrPC. For all these reasons, we are unable to endorse the view taken in *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] .

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* [*Bharat Damodar Kale v. State of A.P.*, (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in *Japani Sahoo* [*Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

45. On a further perusal of the materials available on record and also the impugned order passed by the learned Magistrate, it has to be concluded that the complaint is not barred by limitation and further, the grounds taken by the revision petitioners in these revision petitions, are



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nothing but the defence, which can be agitated only during the course of trial and the Court can decide the same only after trial and not at this stage.

Therefore, there is no merit in the present revision petitions and the same are liable to be dismissed.

46. The vehicle was/were hypothecated in the year 1998. The offences are alleged to have taken place between 23.12.1998 and 19.04.2000. The complaint was given on 20.12.2001 and the charge-sheet was laid on 28.11.2007.

47. The complaint was filed within three years from the date of knowledge of the commission of the offence(s) by the de-facto complainant before the respondent-Police.

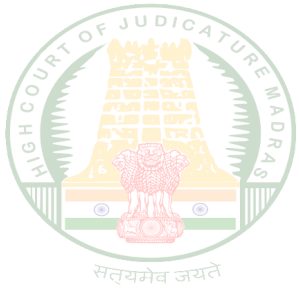
48. In view of the above decisions of the Honourable Supreme Court holding that as far as the limitation is concerned, filing of the complaint has to be taken note of and not taking cognizance of the charge-sheet.

49. Considering the above said facts and circumstances of the case, these Criminal Revision Petitions are dismissed. The miscellaneous petitions are closed.

22.04.2025

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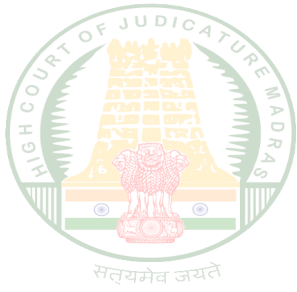
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- To
1. The Sub-Inspector of Police,
Central Crime Branch, Tiruppur.
 2. The Sub-Inspector of Police,
District Crime Branch,
Coimbatore District (Now at Tirupur District),
 3. The Public Prosecutor, High Court, Madras.



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P.VELMURUGAN, J

CS

Pre-delivery Order in

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Order pronounced on 22.04.2025

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