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CrI.R.C.(MD) No.71 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.03.2025

Delivered on : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.71 of 2024
and
CrI.M.P.(MD)Nos.846 and 848 of 2025

Dharanitharan

: Petitioner

Vs.

State rep.by the Inspector of Police,
M.Reddiyapatti Police Station,
Virudhunagar District.
Crime No.97 of 2018

: Respondent

Prayer : This Criminal Revision has been filed under Section 397 and 401 of Cr.P.C., to call for the records and set aside the order, dated 28.12.2023 passed in Cr.M.P.No.4030 of 2023 in C.C.No.424 of 2022 on the file of the Judicial Magistrate, Aruppukottai, Virudhunagar District.

For Petitioner : Mr.C.Suresh Kannan

For Respondent : Mrs.M.Aasha,

Government Advocate (Criminal Side)

ORDER

This Criminal Revision Case is directed against the order passed in Cr.M.P.No.4030 of 2023 in C.C.No.424 of 2022, dated 28.12.2023 on the file



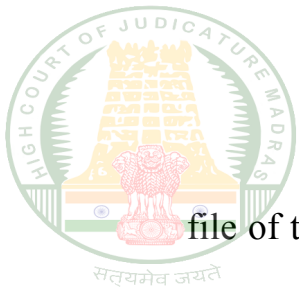
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of the Court of the Judicial Magistrate, Aruppukottai, Virudhunagar District,
dismissing the petition for discharge filed under Section 239 of Cr.P.C.

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2. The case of the prosecution is that one Banumathi mother of the petitioner approached the defacto complainant and borrowed a sum of Rs.8 lakhs, to meet out her family and other expenses, promising to repay the same within a period of three months; that when the said Banumathi failed to pay the amount, despite the lapse of more than 2 ½ years, the defacto complainant visited the petitioner's house on 24.07.2018 at about 08.00 am and demanded the said Banumathi to return the amount; that the said Banumathi abused the deacto complainant, pulled her and as a result of which, the defacto complainant fell down on the window rods and sustained bleeding injuries on her right arm and that the petitioner and her mother caused criminal intimidation.

3. On the basis of the complaint of the defacto complainant, FIR came to be registered in Crime No.97 of 2018 against two persons including the petitioner for the alleged offence under Sections 324 and 506(i) IPC. After completing the investigation, the respondent police filed a final report against two accused including the petitioner for the alleged offence under Sections 324 and 506(i) IPC and case was taken on file in C.C.No.424 of 2022 on the



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file of the Court of the Judicial Magistrate, Aruppukottai. When the case was pending for framing of charges, the accused including the petitioner have filed a petition under Section 239 of Cr.P.C., seeking discharge from the above case.

4.The respondent police has filed a counter affidavit raising objections. The learned Magistrate, after enquiry, has passed the impugned order, dated 28.12.2023, dismissing the discharge application. Aggrieved by the order of dismissal, the present revision came to be filed.

5.The main reason canvassed for discharge is that the charge sheet filed by the respondent police is barred by limitation under Section 468 of Cr.P.C; that since the respondent police has registered FIR for the offence under Sections 324 and 506(i) IPC on 31.07.2018, they ought to have filed the charge sheet within three years ie., on or before 31.07.2021, but the charge sheet came to be filed only on 18.07.2022 and that since the case itself is barred by time, dismissal of discharge petition cannot legally be sustained.

6. The learned Government Advocate (Criminal Side) would submit that the prosecution while filing the charge sheet has also filed a petition in Cr.M.P.4836 of 2022 under Section 473 of Cr.P.C., to condone the delay in



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filing the final report and the learned Magistrate, considering the reasons assigned, has allowed the petition and thereby condoned the delay in filing the final report and consequently received the same and cognizance was taken in C.C.No.424 of 2022 and as such, the question of the limitation does not arise at all.

7.The learned Magistrate in the impugned order has also observed about the filing of the petition in Cr.M.P.No.4836 of 2022 to condone the delay and the order passed by the learned Magistrate condoning the delay. Whatever it is, it is pertinent to note that the Constitution Bench of Hon'ble Supreme Court in the case of ***Mrs.Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director – Dr. K.M. Cherian & Ors.***, reported in ***2014 2 SCC 62*** and the case in ***Amritlal vs. Shantilal Soni & Others reported in 2022 Livelaw SC 248***, has held that for the purposes of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of the prosecution and not the date on which a Magistrate takes cognizance of the offence.

8. It is necessary to refer the decision of this Court in ***Abiganesh Vs. The State of Tamil Nadu rep.by The Inspector of Police, Adiramapattinam***



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Police Station, Thanjavur District, dated 29.10.2024, and the relevant

passages are extracted hereunder :

23. *Considering the above, for the purpose of computing the period of limitation for taking cognizance of an offense under Section 468 Cr.P.C., this Court has no hesitation to hold that the relevant date is when the first information was given to the police, not when the police submitted the final report to the court.*

24. *It is a fundamental principle of law that the act of sovereign authorities shall not prejudice anybody. Therefore, for the inaction or delay on the part of the police authority or the court, the complainant/informant should not be penalized, as it would be unjust to deny them justice due to circumstances beyond their control.*

25. *The Parliament, in response to the judgments of the Constitution Bench of the Hon'ble Supreme Court in Sarah Mathew's case, as interpreted by the subsequent Division Bench of Hon'ble Supreme Court in Amritlal's case, while enacting the BNSS, incorporated an explanation to clarify the computation of the period of limitation. Section 514 BNSS, corresponding to Section 468 Cr.P.C., now includes an explanation that provides clarity on this issue. Section 468 Cr.P.C. states:-*

“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.



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(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 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.”

26. The explanation added to Section 514 BNSS reads:-

“Explanation.—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.”

27. This explanation, along with Section 515 BNSS (corresponding to Section 469 Cr.P.C.), conclusively resolves the issue in dispute. The explanation to Section 514 BNSS unequivocally states that the relevant date for computing the period of limitation is the date of filing the complaint under Section 223 BNSS or recording the information under Section 173 BNSS.



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28. In the present case, the occurrence took place on 03.04.2021, and the FIR was registered on the same day. Consequently, the date of institution of prosecution is 03.04.2021, being the date of FIR registration. In light of the settled legal position, it is clear that the case is not barred by limitation, as the charge sheet filing date is irrelevant for computing the limitation period. Therefore, the prosecution in this case is well within the prescribed limitation period.

9. The above legal position is squarely applicable to the case on hand. In the present case, the alleged incident was occurred on 24.07.2018, and the FIR was registered on 31.07.2018 within a week period. Considering the legal position above referred, this Court has no other option, but to say that the case is not barred by limitation and that the prosecution is well within the period of limitation and as such, the above contention, which is devoid of substance, is liable to be rejected.

10. The next contention of the petitioner is that the petitioner/second accused was alleged to have been committed the offence under Section 506(i) IPC; that there are no allegations of criminal intimidation committed by the petitioner; that there are no materials to show that the victim was put to fear or that the threat was real and that the learned Magistrate, without



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considering the above aspects in proper perspective, dismissed the discharge petition in a mechanical fashion.

11. The Government Advocate (Criminal Side) would submit that the defacto complainant was aged more than 60 years; that when the complainant went to the house of the accused to demand her money, she was attacked by the first accused and was threatened with dire consequences by both the accused including the petitioner.

12.As rightly contented by the learned Government Advocate (Criminal Side), the defacto complainant has given statements reiterating the complainant contentions and that the occurrence witnesses have also given statements reiterating the complainant version. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***.

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent &



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Remembrancer of Legal Affairs, West Bangal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial”

11. It is settled law that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

12. It is also settled law that while considering an application seeking discharge from a case, the Court is not



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expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

13. It is pertinent to note that the petitioner/second accused is the son of the first accused and according to the prosecution both of them have caused criminal intimidation. Whether the charge alleged is true or not cannot be gone into the present proceedings and is a matter for trial. But as rightly contended by the learned Government Advocate (Criminal Side), there existed prima facie material to frame charges against the petitioner and as such, the impugned order dismissing the discharge petition cannot be found fault with. Consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

14. In the result, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

09.04.2025

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

- 1.The Judicial Magistrate, Aruppukottai,
Virudhunagar District.
- 2.The Inspector of Police,
M.Reddiyapatti Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
Crl.R.C.(MD)No.71 of 2024
and
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