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(2010) 09 MAD CK 0285

In the Madras High Court

Case No : Criminal O.P. (MD) No. 6457 of 2008 and M.P. (MD) No''s. 1 of 2008 and 1 of 2010

M. Sathianathan — APPELLANT

Vs

The State of Tamilnadu and P. Kalimuthu — RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:
Constitution of India, 1950 — Article 114, 115, 131, 132
Criminal Procedure Code, 1973 (CrPC) — Section 200, 468, 468(2), 473, 9
Penal Code, 1860 (IPC) — Section 328, 341, 379, 420, 467

Citation : (2010) 09 MAD CK 0285

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : A.V. Arun, for the Appellant; R.M. Anbunithi, Government Advocate for RR1, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—This petitioner approaches this Court to call for the records relating to C.C. No. 71 of 2008 on the file of Judicial Magistrate No. 1, Sivaganga and to quash the same.

2. The case of the petitioner is that on the basis of the complaint given by the 2nd respondent/defacto complainant alleging that his 16 goats were missing on 07.01.2004 and all the accused are responsible for the same, a case has been registered in Crime No. 119 of 2004 for the offence u/s 379 I.P.C against the petitioner/A2 and others; the complaint has been given on 06.05.2004 i.e. after 4 months from the date of occurrence; the 2nd respondent has not given the petitioner''s name in the complaint. The occurrence has been taken place on 07.01.2004, but the charge sheet has been filed and take on file in C.C. No. 71 of 2008 on 28.04.2008 after 4 years, which is barred u/s 468 Code of Criminal Procedure; no averments as against the petitioner, hence, he prayed for the quashing the case against the petitioner. He relied upon the decisions of the Apex

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Court and this Court.

3. The learned Government Advocate would submit that the complaint has been filed on 06.05.2004 and final report has been prepared on 18.04.2006 and the same was produced before the Court on 05.06.2006, which was taken on file on 28.04.2008; the charge sheet has been filed within three years from the date of occurrence and hence, he prayed for the dismissal of the application.

4. The learned Counsel appearing for the 2nd respondent would submit that he has filed 161(3) Code of Criminal Procedure Statements to prove the involvement of the petitioner in the occurrence and he also filed some articles published in monthly Edition of "Arasiyal Muthirai" and prayed for the dismissal of the application.

5. Heard the learned Counsel appearing for the petitioner, learned Government Advocate (criminal side) as well as the learned Counsel appearing for the respondent.

6. The 2nd respondent has been preferred a complaint against the petitioner and others on 06.05.2004 alleging that on 07.01.2004 at about 4.00 p.m., when his 16 goats were grassing in their land, at the instigation of A1 to A4, A5 and A6 stolen his goats worth about Rs. 47,000/- and even though a panchayat has been convened, they did not return back the goats and hence, the 2nd respondent has given the complaint before the respondent police. Admittedly, the petitioner''s name has not been shown in the first information report. Earlier, the petitioner has approached this Court with a petition in Crl.O.P.(MD) No. 9104 of 2007 for direction, directing the respondent police not to harass the petitioner in crime No. 119 of 2004, which was allowed. After the completion of investigation, charge sheet has been filed against 24 persons and this petitioner has been arrayed as A1. The allegation against the petitioner and others is that in the panchayat, since the goats were grassing their land, the 2nd respondent was directed to pay a fine of Rs. 600/- and since, he refused to pay the amount, the accused persons stolen the goats. In such circumstances, the petitioner''s name has not been shown in the first information, but, during investigation, he has been included.

7. It is pertinent to note that the occurrence had taken place on 17.01.2004 and the complaint has been given on 06.05.2004, but in the first information report, the petitioner has not stated the fact that the panchayat has been convened and he was directed to pay the fine and since he refused to pay the amount, the accused persons stolen the goats. At this juncture, it is appropriate to consider the 161(3) Code of Criminal Procedure Statement of the 2nd respondent and other two eye witnesses that the petitioner has paid Rs. 500/- per day for grassing of coats to one Ravi. A perusal of 161(3) Code of Criminal Procedure statement of Karuppiah S/o. Kalimuthu would show that the 2nd respondent purchased 16 goats through this petitioner herein. A Perusal of 161(3) Code of Criminal Procedure statement of Karuppiah S/o. Karuppiah would show that the

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petitioner herein asked his son Ravi to grass the coats, which has proved that the petitioner has involved in the commission of offence.

8. Now, this Court has to decide whether the charge sheet is barred by 468 Code of Criminal Procedure A perusal of case diary would show that the complaint has been given on 06.05.2004 and the final report has been filed on 05.06.2006. It is appropriate to consider the Section 468(2) Code of Criminal Procedure, which reads as follows:

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 on year but not exceeding three years.

Admittedly, in the present case, the full pledged charge sheet has been filed after 4 years i.e. on 28.04.2008 and on the same day, it was taken on file on 28.04.2008.

9. At this juncture, it appropriate to consider the decisions relied on by both sides.

In Ramesh Chandra Sinha and Others Vs. State of Bihar and Others, , wherein, the Apex Court has held as follows:

12. There is no dispute that cognizance was taken of the offences by the learned Magistrate long after a period of three years. The Magistrate condoned the delay on the ground that the proceedings were stayed by the High Court till 5-10-1999. On 11-11-1994, further proceedings had been specifically stayed but by the order dated 6-2-1995, the order dated 11-11-1994 was modified in effect to vacating the earlier order staying further proceedings. This position is abundantly clear by a bare perusal of the orders dated 11-11-1994 and 6-2-1995 extracted above. When the order of 11-11-1994 was specifically modified, there was no reason to understand the orders otherwise. It was not correct for the learned Magistrate to say that there was stay of further proceedings till 5-10-1999 in the face of order dated 6-2-1995 read with the order dated 11-11-1994. No other reason or ground is given in the order of the Magistrate to condone the delay u/s 473 of the Code. If the discretion is exercised on relevant considerations, possibly no fault could be found with such discretion. The High Court although noticed in the impugned order as to the effect of the order dated 6-2-1995 and found that there was an error committed by the Magistrate but took the view that it was not a serious one. Added to this, the proceedings are of the year 1994. Having regard to the facts and circumstances of the case, the CJM as well as the High Court committed serious error in upholding taking cognizance when it is clearly barred by Section 468(2) of the Code.

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In Vivekanandan v. Inspector of Police, Central Crime Branch, Egmore, Chennai reported in (2009)4 M LJ 1169, wherein, this Court has held as follows:

Para 9. As a statutory obligation is placed upon the Court u/s 468 of the Code of Criminal Procedure not to take cognizance of the offences specified in Sub-section (2) thereof after lapse of the period of limitation and as the Code also does not envisage issue of any process against the accused before taking cognizance of the offence, it is open to the accused to plead before the Court in response to the process issued to him that the complaint or the final report filed against him and cognizance taken by the Court is barred by limitation.

In Krishna Pillai v. T.A. Rajendran , wherein, the Apex Court has held as follows:

Para 4. Taking cognizance has assumed a special meaning in our criminal jurisprudence. We may refer to the view taken by a five Judge bench of this Court in A.R. Antulay v. Ramdas Sriniwas Nayak At p. 530 (para 31) of the reports this Court indicated:

When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Code of Criminal Procedure After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court.

The extract from the Constitution Bench judgment clearly indicates that filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Since the magisterial action in this case was beyond the period of one year from the date of the commission of the offence the Magistrate was not competent to take cognizance when he did in view of the bar u/s 9 of the Act.

In Harnam Singh Vs. Everest Construction Co. and Others, , wherein, the Apex Court has held as follows:

Most of the offences alleged against the respondents viz., Sections 420, 467, 471 and 474 I.P.C are punishable with imprisonment for a term exceeding three years and therefore as contended by the learned Counsel for the appellant, the bar of limitation u/s 468 is not attracted. The complaint cannot therefore be thrown out at the threshold on the ground of limitation. If, apart from the question of limitation, "the effect of delay if any in instituting the complaint is necessary to be determined for considering the merits of the charge, that can only be done at the stage of trial on the basis of the evidence on record.

In Dinamalar Krishnamurthy Vs.G. Pannerselvam reported in (2001) M.L.J. 548, wherein this Court has held as follows:

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Insofar as Section 468, Code of Criminal Procedure Is concerned, as discussed above, though the phrase used is "taking cognizance", according to the various rulings of the Apex Curt, it virtually amounts to only making of the complaint. The law prescribed the period of limitation. Even in the general law of limitation only for filing suits and making of complaints, etc. And not for taking cognizance as such by the Courts concerned. In that view of the matter, since insofar as this case is concerned, the complaint was filed well within the expiry period of limitation, this Court is unable to set aside the order of the learned Magistrate who rejected the request of the accused petitioners.

In Mari and Anr. v. The State reported in 2010(1) MWN 227, wherein, this Court has held as follows:

Final report has been submitted against the petitioners only for offenders under Sections 341, 328 and 506(i) I.P.C. The maximum punishment prescribed for the above said offences is only two years and therefore, limitation period is admittedly three years from the date of the commission of the alleged offences. Though it is stated that initially a final report was submitted on 03.11.2005, admittedly, the same was returned to the Police as the same was found to be defective. The respondent-Police did not care to re-submit the final report within the period of limitation so as enable the Court to take cognizable. Instead, the returned final report was re-submitted after three years, i.e. only on 15.6.2009. Thereafter, cognizance was taken. Therefore, it is crystal clear that the crucial date for calculating period of limitation is only 15.06.2009 and not 03.11.2005. But the learned Magistrate has taken 3.11.2005 as the crucial date. In my considered opinion, the said view taken by the learned Magistrate is incorrect. If correct approach is made and 15.6.2009 is taken as crucial date, certainly, it goes without saying that the case is barred by limitation u/s 468 Code of Criminal Procedure So I am inclined to quash the entire proceedings.

In Vanniaraj Vs. The State, , this Court has as follows:

An opinion of a Public Prosecutor or an Assistant Public Prosecutor for the purpose of filing a final report is totally unwarranted and the practice of filing such report is nothing but consuetudinary. Therefore, it is quite clear that the return made by the Judicial Magistrate Court on the ground that opinion of the Assistant Public Prosecutor Grade II has not been filed along with the final report is not legally correct. The final report having been filed within the period of limitation, the accused is not entitled to get discharge on the ground of limitation.

In Japani Sahoo Vs. Chandra Sekhar Mohanty, , wherein, the Apex Court has held as follows:

Prosecution launched by State cannot be thrown solely on ground of delay, mere delay in approaching Court of Law is no ground for dismissing cases though it may be a relevant circumstance in reaching final verdict. Relevant date for purpose of deciding period of limitation is date of filing of Complaint and not issuance of process or taking of cognizance by Court. For purpose of computing

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period of limitation, relevant date must be considered as date of filing of Complaint or initiating criminal proceedings and not date of taking cognizance by Magistrate or issuing of process by Court. So far as complainant is concerned as soon as he files Complaint in Competent Court of Law, he has done everything which is required to be done by him at that stage. Thereafter it is for Magistrate to consider matter and apply his mind and take appropriate decision of taking cognizance, issuing process or any other action which law contemplates. Complainant has no control over those proceedings. Complainant cannot be penalized for delay on part of Magistrate to issue process or take cognizance.

Further, it has been held as follows:

Application of Limitation Act in criminal proceedings - Limitation Act does not apply to criminal proceedings unless there are express and specific provisions to that effect like Articles 114, 115, 131 and 132. Criminal offence is an offence against State and society even though committed against an individual. Mere delay in approaching Court of Law would not by itself afford ground for dismissing case though it may be a relevant circumstance in reaching a final verdict.

10. Considering the above said citations along with the case diary, even though final report has been filed on 05.06.2006, it is pertinent to note that the case has been registered on 06.05.2004 and Referred notice has been issued as ''Mistake of Fact'' in R.C.S. No. 4 of 2004 on 20.12.2004, subsequently, the respondent herein filed a petition in Crl.O.P. No. 5832 of 2004 and it was disposed of on 14.02.2005 directing the 4th respondent to re-investigation the matter in accordance with law and thereafter only, the investigation completed and charge sheet has been filed on 05.06.2006, which was also returned for ratification if 8 defects and at last it has been represented on 28.04.2008 and then only, the Judicial Magistrate has taken cognizance.

11. At that time, it is appropriate to consider the decisions relied upon by both sides, wherein, it has been stated that if the private complaint is given, the limitation is from the date of occurrence till the private complaint filed before the Court. The Apex Court has considered that since the private complaint has been filed by the Court, which is filed within time, it is immaterial when the Magistrate has taken cognizance of the offence. But, here, the first charge sheet filed by the respondent has been referred as ''Mistake of Fact" and subsequently, it has been filed on 05.06.2006, which was ultimately, represented only on 28.04.2008.

12. It is also appropriate to consider the decision Vanniaraj Vs. The State, , wherein the final report has been returned for want of opinion from the Assistant Public Prosecutor Grade II and then, it was represented after the lapse of limitation and hence, the learned Judge has come to the conclusion that the return made by the Judicial Magistrate is not legally correct and hence the final report having been filed within the period of limitation and the accused is not entitled to get discharge on the ground of limitation.

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13. In the present case, final report has been filed on 05.06.2006, it was returned for ratifying 8 defects and the full pledged final report has been filed only on 28.04.2008. At this juncture, it is appropriate to consider the decision in (2010)1 MWN 227 (Mari and Anr. v. The State), it has been held that the cognizance taken after resubmission of final report, crucial date for calculating period of limitation, therefore, is only when the date, when he filed the charge sheet after rectifying the defects. As per the citations, here the complaint has been preferred on 06.05.2004 and R.C.S has been filed on 22.12.2004 and the respondent has re-investigated the matter and filed the charge sheet on 05.06.2006 even though it was dated 18.04.2006, the same has been returned for ratification of 8 defects and ultimately, the same has been filed only on 28.04.2008. Hence, as per the above said decisions, the charge sheet filed by the respondent is barred by limitation as per Section 468 Code of Criminal Procedure And he ought to have the same on or before 06.05.2007, but the same has been filed on 28.04.2008 and the same day, it was taken cognizance and hence, the arguments advanced by the learned Counsel appearing for the respondent does not merit acceptance and the petition is liable to be allowed.

14. In such circumstances, this criminal original petition is allowed and the proceedings in C.C. No. 71 of 2008 on the file of Judicial Magistrate No. 1, Sivaganga is quashed against the present petitioner alone. Consequently, connected miscellaneous petitions are closed.

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