

(1998) 06 KL CK 0022

In the High Court Of Kerala

Case No : Criminal M.C. No's. 2290, 2361/95 and 784/96

Prem Shankar, K.G.

APPELLANT

Vs

Inspector of Police and Others

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 468, 473, 482
Penal Code, 1860 (IPC) — Section 143, 166, 219, 228A, 323
Protection of Civil Rights Act, 1955 — Section 7(1)

Citation : (1998) 3 RCR(Criminal) 724

Hon'ble Judges : S. Marimuthu, J

Bench : Single Bench

Advocate : V. Rajagopal, in Criminal M.C. 2209/95, T.R. Ramachandran, in Criminal M.C. 2361/95 and O.V. Musthfa Zafeer, in Criminal M.C. 784/96, for the Appellant; K.P. Satheesan, for Respondent 1 and K. Ramkumar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Marimuthu, J.—The Petitioner in Crl. M.C. No. 2361 of 1995 is the 7th accused, the Petitioner in Crl. M.C. No. 2209/95 is the first accused and the Petitioner in Crl. M.C. No. 784/96 is the 10th accused in C.C. No. 513/95 on the file of the Chief Judicial Magistrate, Ernakulam. The prayer in Crl. M.C. 2361/95 and 2209/95 is to quash the entire proceedings against the Petitioners, in C.C. No. 2361/95 before the Chief Judicial Magistrate, Ernakulam. And the relief sought for in Cr. M.C. 784/96 is to quash the proceedings dated 6th March 1996, issuing Non-bailable Warrant against the Petitioner. Before appreciating the contentions of both the Petitioners and the Respondents herein, the admitted facts as well as the rival contentions can be summarised hereunder:

2. On 2nd February 1988, a news item in the evening Daily "Sudnam" was printed and published by one Madhavan at Kannur as per which one "Manja" an Adivasi girl aged about 16 years was raped by one Rajan. Manja and her parents, on account of the above news published by Madhavan, lodged a complaint before

the Superintendent of Police, Kannur. On that complaint a case was registered in Crime No. 50/88 u/s 228A I.P.C. and Section 7(1)(d) of the Protection of Civil Rights Act in the Kannur Town Police Station as per the direction of the Superintendent of Police (who is the Petitioner in Crl. M.C. No. 2209/95). The case was entrusted with the Circle Inspector of Police of the said Police Station for investigation. The Circle Inspector of Police arrested Madhavan and the printing press of Madhavan was also searched by the Circle Inspector of Police, on 12th February 1988. After the arrest at 8 p.m. on that relevant day Madhavan was taken in the police jeep through a circuitous way to the Police Station and on the way Madhavan was assaulted by the police men in the jeep. At about 8.30 p.m. he was put in lock-up and on 13th February 1989 when Madhavan was produced before the Magistrate at Kannur, he complained that he was assaulted by the police and thereby he sustained injuries. The above submissions of Madhavan were recorded by the Magistrate with the remand order. Then he was enlarged on bail by the Magistrate. For taking treatment for the injuries sustained by him he went to the hospital and got himself admitted there. While he was in the hospital as an inpatient, he lodged a complaint before the Kannur Town Police Station wherein a case was registered in Crime No. 52/88 under Sections 143, 323, 324 etc. of I.P.C. against the Sub Inspector of Police, Kannur Police Station and also some six or seven unidentified policemen.

3. The case registered against Madhavan in Crime No. 50/88 was quashed by this Court in Crl. M.C. No. 954/88. Since there was no considerable progress in the investigation by the Crime Branch in Crime No. 52/88, Madhavan moved this Court in Crl. M.C. No. 328/88 for entrusting the investigation to C.B.I. In this Crl. M.C., this Court passed an order directing the Deputy Inspector General of Police, Northern Range to investigate the case. Being not satisfied with the above order passed by this Court, Madhavan moved the Supreme Court in SLP (Crl.) No. 2755/88 in which the Supreme Court passed an order on 22nd December 1989 directing the Deputy Inspector General of Police, Central Range (Sri M.G.A. Raman) to investigate and file the report within two months from the date of the representation by the de facto complainant. As directed by the Supreme Court, Madhavan made the representation before the Deputy Inspector General (Central Range) on 3rd February 1990. The D.I.G. forwarded the representation to the Kannur Town Police Station for investigation wherein a case in Crime No. 151/90 was registered against 13 named accused persons (including the present Petitioners) under Sections 323, 341, 342, 357, 219, 166, 506(ii), 427 and 379 read with 34 I.P.C. But the investigation was not completed within 2 months as directed by the Supreme Court. By this time Sri Raman (Deputy Inspector General of Police) was transferred to some other department without the permission or order of the Supreme Court. Therefore, Madhavan moved the Supreme Court again and the Supreme Court passed an order on 24th September 1992 in SLP No. 3378/91 and 4456/92, in the above SLP (Crl.) No. 2755/90 entrusting the investigation to C.B.I. and also awarding a compensation of Rs. 10,000 to Madhavan on account of the lapses in the investigation of the

State Government. C.B.I. in that order was also directed to file the report within 4 months before the Supreme Court. C.B.I. then registered a case in R.C. No. 225/92 against all the 13 persons and investigated the case and filed its report before the Supreme Court on 5th May 1993 (after getting extension of 2 more months). The Supreme Court on 22nd September 1993 passed the final order, entrusting the investigation of the case registered to C.B.I. After the investigation, C.B.I. moved the State Government for sanction u/s 197 Code of Criminal Procedure. On getting sanction, C.B.I. filed the final report before the Chief Judicial Magistrate, Ernakulam against the 12 accused on 27th April 1995 (including the present Petitioners) under Sections 324, 341, 342, 357, 219 and 166 I.P.C. The Chief Judicial Magistrate took the same and filed on 5th May 1995.

4. In the meanwhile, the first accused who is the Petitioner in CrI. M.C. No. 2209/95 moved a petition in M.P. No. 6332/95 and the other accused 2 to 6 filed M.P. No. 6334/95 and the 10th accused filed M.P. No. 6335/95 before the Chief Judicial Magistrate for dropping the proceedings on the ground that the final report has been filed by C.B.I. beyond the period of limitation enjoined in Section 468 Code of Criminal Procedure without any petition being filed to condone the delay. The Chief Judicial Magistrate on hearing both sides dismissed the above 3 petitions by order dated 27th September 1995. In the same order he has condoned the delay in filing the final report by C.B.I., by invoking Section 473 Code of Criminal Procedure. Questioning the said order of the Chief Judicial Magistrate, the above Petitioners moved CrI. R.P. No. 59/95 before the 4th Addl. Sessions Judge, Ernakulam who after giving opportunities to both sides, set aside the order of the Magistrate and remanded the matter to the same Magistrate for fresh disposal with the following observations. "The Magistrate is directed to consider afresh the question of delay in the light of the principle laid down by the Supreme Court in *State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others*, and in accordance with law. It is also open to C.B.I., the investigating agency to move the court below for condonation of the delay". In that juncture, the present 3 petitions came up before this Court u/s 482 Code of Criminal Procedure.

5. The submissions of the learned Counsel appearing for all the Petitioners would be that the cognizance of those offences have been taken by the Chief Judicial Magistrate beyond the period of limitation prescribed u/s 468 Code of Criminal Procedure. Hence, the proceedings pending before the Magistrate in C.C. No. 513/95 can be quashed and in support of their arguments they placed reliance on the propositions settled by the apex court and on some of the judgments delivered by High Courts.

6. On the other hand the learned Public Prosecutor of C.B.I. submitted that as per the order of the Supreme Court, C.B.I. conducted the investigation and filed the final report before the Chief Judicial Magistrate. There was no lapse at all on the part of C.B.I. in investigation and it was in accordance with the order and direction of the Supreme Court. In support of the above contention, the learned

Public Prosecutor, C.B.I. also placed the principles laid down by the Supreme Court. It was also his submission that in case the cognizance was taken after efflux of time of limitation without delay being condoned the court can condone delay at any time before the conclusion of trial provided the requirements in Section 473 Code of Criminal Procedure are satisfied.

7. On account of the divergent submissions of both the learned Counsel appearing for the Petitioners and the learned Public Prosecutor, C.B.I., the citations referred to by both of them can be referred to after extracting Sections 468 and 473 Code of Criminal Procedure hereunder:

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 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.

1. State of Punjab Vs. Sarwan Singh, . Wherein it is held that it is not mandate that the prosecution, either by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

2. Srinivas Gopal Vs. Union Territory of Arunachal Pradesh (Now State), . Offence of delay of 9? years will not save the limitation for prosecution as provided u/s 468 Code of Criminal Procedure.

3. 1989 2 KLT 710 (Joseph v. State of Kerala). It is laid down that when the final report has been filed after the expiry of 6 years, the same is gone u/s 468 Code of Criminal Procedure. The Supreme Court and this Court in the above citations have laid that the prosecution should not be encouraged by condoning delay like

6 years and 9? years.

4. State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others, . In this case after the expiry of the limitation prescribed u/s 468 Code of Criminal Procedure, an application u/s 473 Code of Criminal Procedure was moved by the prosecution to condone the delay. In that petition without giving notice and affording opportunity to the opposite party an order was passed by the Magistrate by condoning the delay. When that be so, according to the Supreme Court the action of the Magistrate in condoning the delay is not proper and however he can pass the final order after giving notice to the other side (Respondents). In that view the Supreme Court has remitted the matter for fresh disposal. In all the above judgments the Supreme Court and this Court have interfered into the question of delay only after final orders have been passed in the petitions filed u/s 473. But in the instant case on hand, the Sessions Judge has remitted the matter to the Chief Judicial Magistrate for consideration and decision in the petition to be moved by C.B.I. for condoning the delay.

5. In a case reported in Sureshbhai K. Desai Vs. State of Gujarat, , it was laid down by the Supreme Court that the court is not precluded from considering the question of condonation of delay on the petition moved by the prosecution after the cognizance was taken.

6. 1993 (1) KLT 290 (G.T.C. Industrial Ltd. v. Aburahimankutty). The principle here is that it is the discretion of the Court to condone the delay. If the Court is satisfied on the facts of the case that the delay has been properly explained it can take cognizance of the offence after the expiry of the period of limitation. Even if the delay has not been properly explained by the prosecution, if the court is satisfied it can take cognizance of the complaint after the expiry of the period of limitation, if it finds necessary so to do in the interest of justice.

7. AIR 1994 S.C.C. 1480 (Suhdevraj v. State of Punjab). The Supreme Court is of the view that the condonation petition can be entertained and order can be passed on it at any time before the conclusion of the trial court. The propositions of law laid down by the Supreme Court and by this Court are so clear that petitions for condonation of the delay should not be encouraged in those cases where the delay is for a quite long time like six years and above, that if proper reasons have been explained by the prosecution for condoning the delay, cognizance can be taken, that even after the cognizance was taken in the cases (where the limitation was already over as prescribed in Section 468 Code of Criminal Procedure) petitions, filed by the prosecution u/s 473 Code of Criminal Procedure to condone the delay can be entertained and suitable orders can be passed thereon, that such petitions u/s 473 Code of Criminal Procedure can be filed at any time before the conclusion of the trial, that even when no petitions u/s 473 are filed, the delay can be condoned if the court is satisfied in the interest of justice and that when a petition has been filed for condonation of the delay, notice and opportunity must be given to the opposite party for being heard.

8. On the above principles, now let me look into the facts in the present case before me. The Supreme Court passed the final order on 22nd September 1993 entrusting the investigation of this case to C.B.I. C.B.I. then filed the charge sheet on 27th April 1995. The period taken by C.B.I. from 22nd September 1993 till 27th April 1995 was explained by the learned Public Prosecutor of C.B.I. According to him they had to obtain the sanction from the State Government and the matter had also to be clarified in approaching the Government of India as one of the accused is an I.P.S. officer. The above submission of the learned Public Prosecutor is fortified by the records placed before this Court. On the date of the final order passed by the Supreme Court on 22nd September 1993, as a matter of fact, the period of limitation of taking cognizance of these offences was barred. The Supreme Court, taking into consideration of the above aspect, has passed the order on that day directing C.B.I. to investigate the matter. Therefore, it is idle now to advance an argument that the Supreme Court was not aware of the aspect of limitation already barred prior to 22nd September 1993. However, the learned Public Prosecutor, C.B.I. is not standing in the way of considering the period of limitation in the light of the settled principles of the Supreme Court and this Court. In this context, it is pertinent to note once again that in all the citations, stated supra, the final orders have been passed in the petition u/s 473 Code of Criminal Procedure. In the instant case before me, the learned Sessions Judge has only remitted the matter to the Chief Judicial Magistrate to consider the petition to be filed by C.B.I. u/s 473 Code of Criminal Procedure. Hence, it is needless to say that no final order has been passed by the Court below in a petition u/s 473 Code of Criminal Procedure. When that be so, in moving cases like the present u/s 482 Code of Criminal Procedure there will not prevail a healthy atmosphere in the administration of justice. For, only in order to prevent the abuse of process of courts, and miscarriage of justice and to secure the ends of justice in the rarest of rare case Section 482 Code of Criminal Procedure can be invoked during investigation and enquiry or trial before the court. It was contended on behalf of the Petitioners that the de facto complainant Madhavan filed a suit for damages in O.S. No. 235/90 before the Sub Court, Tellicherry against the present Petitioners and the other accused in the above C.C. and the suit ended in dismissal and now an appeal has been preferred before this Court which is pending hearing. According to the principle laid down by the Supreme Court in V.M. Shah Vs. State of Maharashtra and another, the civil court verdict will prevail over the judgment of the criminal court and therefore, in view of the dismissal of the above suit, the criminal prosecution pending against the present Petitioners and Ors. has to automatically disappear. The above submission, at this stage, I am unable to accept, for, now the appeal is pending before this Court questioning the judgment of the Sub Judge. Hence the above principle of the Supreme Court now cannot be taken advantage of by the Petitioners.

In the totality of consideration of facts in the criminal case in C.C. No. 2361/95 and the position of law, statutory and settled, I am fully satisfied to hold that

these petitions cannot be entertained at this stage and they will have to be dismissed. Accordingly, all these three Crl. Miscellaneous cases stand dismissed.