

Rajasekaran vs The State Rep. By Its on 12 November, 2024

Crl

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.1696 of 2024
and CrI.M.P.No.14002 of 2024

Rajasekaran ... Petitioner

Vs.

The State Rep. by its
The Inspector of Police,
Erumapatti Police Station,
Namakkal District.
(Cr.No.10/2023)

... Respondent

PRAAYER: Criminal Revision Case filed under Sections 438 r/w 442 of the BNSS, to set aside the order dated 14.06.2024 made in CrI.M.P.No.1932 of 2021 on the file of the learned Judicial Magistrate Sendamangalam and set aside the same.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.V.J.Priyadarsana
Government Advocate (CrI. Side)

ORDER

The Criminal Revision Case challenges the dismissal of the petition seeking to stop the proceedings against the petitioner on the ground that <https://www.mhc.tn.gov.in/judis> the cognizance was taken beyond the period of limitation.

2. (i) The learned counsel for the petitioner would submit that an FIR was lodged against the petitioner for the alleged offence under Sections 323, 447 and 294(b) of the IPC in Cr.No.168 of 2018 on the file of the respondent; that after investigation, the respondent had filed the final report on 28.01.2020, which was taken on file as CC No.382 of 2020 on 20.03.2020; and that the maximum punishment prescribed for all the three offences for which he is charged is one year and therefore, under Section 468 (2) of the Cr.P.C., the respondent ought to have filed the final report within a period of one year; and that the learned Magistrate however had taken cognizance of the offences beyond the period of one year, although, there was no petition filed by the respondent

seeking for extension for period of limitation.

(ii) The learned counsel further submitted that the learned Magistrate had erroneously held that taking of cognizance would amount to deemed condonation of delay, which is contrary to the settled principles of law.

3. The learned Government Advocate (Criminal Side) per contra <https://www.mhc.tn.gov.in/judis> would submit that the occurrence took place on 15.07.2018 and the final report was filed on 28.01.2020 and on instructions would submit that the respondent have not filed any petition under Section 473 of the Cr.P.C., for extension of period of limitation.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

5. The learned Magistrate had dismissed the petition on the ground that once the Court had taken cognizance, it has to be assumed that there is deemed condonation of delay. Therefore, the fact that the final report was filed and the cognizance was taken beyond the period of limitation, is not in dispute. The offences charged against the petitioner are punishable with a maximum sentence of one year and therefore, as per Section 468 (2) of the Cr.P.C., cognizance ought to have been taken within a period of one year from the date of occurrence. However, since, there was no petition filed by the respondent seeking extension of time under Section 473 of Cr.P.C., the mere fact that cognizance was taken cannot amount to deemed condonation of delay. This position of law is settled in several <https://www.mhc.tn.gov.in/judis> cases and this Court in *Kathamuthu vs. Balammal*, reported in 1985 SCC OnLine Mad 193 had held as follows:

“This discretionary power vested in the court can be exercised by applying its mind to the facts and circumstances of the case and considering the reasons offered by the complainant in justification of his request for condonation of delay, which reasons can be made either in the complaint or the charge-sheet, as the case may be, or in a separate application filed for the purpose, or the Court itself may suo motu condone the delay on its being satisfied, on the facts and in the circumstances of the case, that it has become necessary so to do in the interests of justice. In any case, the exercise of the power under Section 473, extending the period of limitation by condoning the delay in launching the prosecution, should precede the taking cognizance of the offence. See *Prakash Chandra v. Kaushal Kishore*, 1980 Cri LJ 578 (All), *Roshanlal v. State* 1977 Cri LJ NOC 255 (All), *Thaga Pillai v. Superintendent Regulated Market of South Arcot Market Committee, Kallakurichi*, 1977 Mad LW Cri 19 : (1977 Cri LJ 1375), *Manickam v. State* 1982 Mad LW Cri 1 and *Thambiran Achari v.*

State 1984 Mad LW Cri 175. While so exercising such discretionary power, the court is obliged to record its order in writing, giving its reasons therefor.”

6. The learned counsel for the petitioner had today produced the order of the learned Magistrate taking cognizance of the offences. In the said order, the learned Magistrate has recorded as follows:

“New C.C.No.382/2020 Judicial Magistrate Court, Sendamangalam. Taken on file Old C.C.No.271/2020 Dt. 20.03.2020 U.s.323, 447, 294(b), IPC against accused <https://www.mhc.tn.gov.in/judis> Cr.NO.168/2018, Erumaipatty Police Station Prepare copies. Issue summon to the accused case posted on 21.04.2020.”

7. There is nothing in the order taking cognizance to suggest that the learned Magistrate had applied her mind for taking cognizance beyond the period of limitation. The above referred judgment would show that the Magistrate has to either act on the application filed by the respondent or can condone the delay suo motu and on being satisfied on the facts and the circumstances of the case. Since no such satisfaction is recorded, this Court is of the view that the impugned proceedings cannot be sustained, as it is barred by limitation.

8. Hence, the further proceedings against the petitioner cannot be continued in C.C.No.382 of 2020 [Old C.C.No.271 of 2020] and the impugned order, dated 14.06.2024 in Crl.M.P.No.1932 of 2021 in C.C.No.382 of 2020 passed by the learned Judicial Magistrate, Sendamangalam, is set aside. The Criminal Revision Case is allowed, accordingly. Consequently, the connected Criminal Miscellaneous Petition is closed.

12.11.2024 <https://www.mhc.tn.gov.in/judis> Index: Yes/No Speaking/Non-speaking order Neutral citation: Yes/No. ars <https://www.mhc.tn.gov.in/judis> SUNDER MOHAN, J.

ars To

- 1.The Judicial Magistrate, Sendamangalam.
- 2.The Inspector of Police, Erumapatti Police Station, Namakkal District.
3. The Public Prosecutor, High Court, Madras.

12.11.2024 <https://www.mhc.tn.gov.in/judis>