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2009 SCC OnLine Mad 2853 : 2009 Cri LJ 3142

Madras High Court
(BEFORE A. SELVAM, J.)

Vanniaraj
Versus
State

Cri. R.C. (MD) No. 348 of 2007 and M.P. No. 1 of 2007
Decided on March 31, 2009

ORDER

1. Challenge in this criminal revision case is to the order dated 6-3-2007 passed in Criminal Miscellaneous Petition No. 3571 of 2006 in Calendar Case No. 30 of 2006 by the Judicial Magistrate Court, Periyakulam.

2. The respondent herein as complainant has filed a final report, wherein the present criminal revision petitioner has been shown as accused.

3. It is stated in the final' report that the accused has committed offences under Sections 286, 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act and the alleged occurrence has-been taken place on 19-5-2002.

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4. The final report has been taken on file in Calendar Case No. 30 of 2006 on the file of the Judicial Magistrate Court, Periyakulam. During the pendency of Calendar Case No. 30 of 2006, the present criminal revision petitioner as petitioner has filed the petition in question under Section 239 read with 468 of the Code of Criminal Procedure, wherein it is stated that the respondent/complainant in Calendar Case No. 30 of 2006 has filed a final report under Section 173 of the Code of Criminal Procedure and the alleged occurrence has taken place on 19-5-2002 and as per Section 468(1) of the Code of Criminal Procedure, a final report has to be filed within three years from the date of offence, that is on or before 19-5-2005 and in the present case, cognizance has been taken in the year 2006 and there fore, the final report is barred by limitation and under the said circumstances, the petitioner/accused is entitled to get discharge.

5. The Judicial Magistrate Court, Periyakulam after considering the divergent contentions raised on either side, has dismissed the petition filed in Criminal Miscellaneous Petition No. 3571 of 2006. Against the order of dismissal, the present criminal revision case has been filed at the instance of the petitioner/accused as revision petitioner.

6. Before contemplating the rival sub missions made by either counsel, it would be more useful to prorate the following admitted facts:

> It is an admitted fact that the revision petitioner is said to have committed offences under Sections 286 and 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act on 19-5-2002. The respondent/complainant after conducting investigation has filed a final report on the file of the Judicial Magistrate Court, Periyakulam and the final report has been taken on file in Calendar Case No. 30 of 2006. During the pendency of Calendar Case No. 30 of 2006, the petition in

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question has been filed in Criminal Miscellaneous Petition No. 3571 of 2006 under Sections 239 read with 468 of the Code of Criminal Procedure, praying to discharge him from the proceedings of Calendar Case No. 30 of 2006 mainly on the ground of limitation. The Judicial Magistrate Court, Periyakulam has dismissed the petition filed in Criminal Miscellaneous Petition No. 3571 of 2006.

7. The learned counsel appearing for the revision petitioner/petitioner/accused has vehemently contended that the revision petitioner/petitioner/accused is said to have committed offences under Sections 286 and 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act on 19-5-2002 and a defective final report has been filed on 16-3-2005 and subsequently, the same has been returned on various dates and finally it has been taken on file only in the year 2006. As per Section 468 of the Code of Criminal Procedure, a final report ought to have been filed within three years, that is on or before 19-5-2005 and since the final report has been taken on file in the year 2006, it is clearly barred by limitation. Under the said circumstances, the revision petitioner/petitioner/accused has filed Criminal Miscellaneous Petition No. 3571 of 2006 under Section 239 read with 468 of the Code of Criminal Procedure, so as to discharge him from the proceedings of Calendar case No. 30 of 2006, but the Court below has erroneously dismissed the petition and therefore, the dismissal order passed by the Court below is liable to be set aside.

8. In order to remonstrate the argument advanced by the learned counsel appearing for the revision petitioner/petitioner/accused, the learned Government Advocate (Criminal side) has also equally contended that the revision petitioner/petitioner/accused has committed offences under Sections 286, 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act on 19-5-2002 and the respondent/complainant after completing investigation has laid a final report under Section 173 of the Code of Criminal Procedure on 16-3-2005. Since the final report has been filed within the period of limitation, the present petition is not legally maintainable and the Court below, after considering all the contentions raised on either side, has rightly dismissed the petition and therefore, the dismissal order passed by the Court below is perfectly correct and the same needs no interference.

9. For the purpose of scrutinising the rival submissions made by either counsel, it would be more useful to look into the provision of relevant sections of the Code of Criminal Procedure, 1973.

10. Section 173(1) & (2)(i) of the said Code reads as follows:

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"Report of Police Officer on completion of investigation (1) Every investigation under this chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170."

11. As per the provision of the said Section, it is pellucid that every investigation should be completed without unnecessary delay and as soon as it is completed the officer in charge of the police station should file a final report and the same should contain the particulars mentioned in the said section.

12. Section 190(1) of the Code of Criminal Procedure, 1973 deals with 'cognizance of offences by Magistrates' and the same reads as follows;

"Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

13. The provision of Section 190(1) of the said Code can be vivisected into three parts and the same are as follows;

(a) The concerned Magistrate can take cognizance of any offence on the facts of a complaint which constitutes such offence.

(b) The concerned Magistrate can take cognizance of any offence on the basis of facts mentioned in a police report.

(c) The concerned Magistrate can also take cognizance of any offence on the basis of information received from any person other than a police officer or on the basis of his own knowledge that such offence has been committed.

14. The word "may" used in Section 190(1) of the said Code means "must" and therefore, it is easily discernible that when a complaint is filed, the concerned Magistrate is bound to take cognizance in the absence of legal impediments.

15. With these legal backdrops, the Court has to analyse the legal point which involves in the present criminal revision case. The only reason given in the petition is that the final report filed by the respondent/complainant against the revision petitioner/petitioner/accused under Sections 286 & 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act, is barred by limitation. Even at the risk of jarring repetition, the Court would like to point out that the revision petitioner/petitioner/accused is said to have committed offences under the said Sections on 19-5-2002.

16. At this juncture, it would be more useful to look into the provision of Sections 468(1) & (2) of the Code of Criminal Procedure, 1973 and the same reads as follows;

"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."

17. In the instant case, the maximum punishment prescribed under Section 338 of the Penal Code, 1860 is two years. Therefore, the present case comes within the contour of Section 468(2)(c) of the said Code. The alleged occurrence has taken place

on 19-5-2002 and as per Section 468(2)(c) of

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the said Code, a final report ought to have been filed within three years from the date of occurrence, that is on or before 19-5-2005.

18. In fact, this Court has closely perused the entire final report filed by the respondent/complainant and found that the same has been filed on 16-3-2005 and the Judicial Magistrate Court, Periyakulam has returned the same on 18-3-2005 stating that opinion of Assistant Public Prosecutor Grade II has not been obtained.

19. At this juncture, a nice legal question emerges to the effect as to whether a final report filed under Section 173(2) of the Code of Criminal Procedure 1973 should accompany with an opinion of a Public Prosecutor or an Assistant Public Prosecutor.

20. The learned counsel appearing for the revision petitioner/petitioner/accused has repeatedly contended that the final report has been filed before the Court on 16-3-2005 and the same has been returned on 18-3-2005 as defective one and since the final report has been returned on 18-3-2005 as defective one, the date of first filing (i.e., on 16-3-2005) cannot be taken into consideration for the purpose of calculating the period of limitation. In order to encrust the said contention, the decision reported in 2004 (2) Law Weekly (Criminal) 545 (*Nagrajan, etc.* v. *State of Tamil Nadu*) has been drawn to the attention of the Court, wherein this Court has held that filing of a defective charge-sheet and returning the same to rectify the defect amounts to non-filing of charge-sheet and will not defeat right of the accused to be released on bail after expiry of 90 days.

21. In the instant case, as pointed out earlier, the only legal point that comes up for consideration is as to whether a final report filed under Section 173(2) of the Code of Criminal Procedure, 1973 should accompany with an opinion of a Public Prosecutor or an Assistant Public Prosecutor.

22. Section 173(2) of the Code of Criminal Procedure, 1973 does not say anywhere that along with a final report an opinion of a Public Prosecutor or an Assistant Public Prosecutor should be annexed with. Therefore, it is quite clear that the practice of obtaining opinion from a Public Prosecutor or an Assistant Public Prosecutor for filing a final report under Section 173(2) of the said Code is nothing but a consuetudinary.

23. In (2007) 1 SCC (Cri) 264 : ((2007) 1 SCC 110 : AIR 2007 SC 1087) (*M.C. Mehta (Taj Corridor Scam)* v. *Union of India*) the Honourable Apex Court has held as follows:

> "There is a clear-cut and well demarcated sphere of activities in the field of crime detection and crime punishment. Investigation of an offence is the field reserved for the executive through the Police Department, the superintendence over which vests in the State Government. The executive is charged with a duty to maintain vigilance over the law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed, the Investigating Officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 Cr. P.C. and his duty comes to an end.
>
> Under Cr. P.C., investigation consists of proceeding to the spot, ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence and formation of the opinion as to whether on the

material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173. The scheme of Cr. P.C. shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for each one of the above steps is that of the officer in charge of the police station. The final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated and can be performed by no other authority. The formation of the opinion of the police on the material collected during the investigation as to whether judicial scrutiny is warranted or not is entirely left to the officer in charge of the police station. There is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate under Section 36 Cr.

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P.C."

24. From the close perusal of the decision rendered by the Honourable Apex Court, *it is* made clear that the process of formation of opinion as to whether or not there is a case to place the accused on trial, completely vest with the officer in charge of the police station and formation of opinion cannot be delegated to any other authority.

25. Section 24 of the Code of Criminal Procedure, 1973 deals with the procedure of appointment of Public Prosecutors and Additional Public Prosecutors and likewise, Section 25 of the said Code deals with the procedure of appointment of Assistant Public Prosecutors. Nowhere in the said Sections, it is stated that the concerned Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor is empowered to give his opinion on the basis of final report so as to proceed with the particular accused further. Therefore, the practice of obtaining an opinion from the concerned Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor is nothing but unwritten and also unwarranted.

26. At this juncture, it would be apropos to look into the decision reported in (2000) 4 SCC 459 : (2000 SCC (Cri) 823) : (2000 Cri LJ 2453) (*R. Sarala* v. *T.S. Velu*). For better appreciation, the facts of the case are very much essential:

A young bride has committed suicide within seven months of her marriage. An inquiry under Section 174(3) of the Code of Criminal Procedure has been ordered. The Magistrate conducted the inquiry and submitted a report held that due to mental restlessness, she has committed suicide and no one is responsible and he further opined that her death is not due to dowry demand. However, the police have continued with the investigation and submitted a report against the husband of the deceased and his mother for the offence under Sections 304-B and 498-A of the Penal Code, 1860. The father of the deceased is not satisfied with the report as the sister-in-law and father-in-law are not arraigned as accused. Therefore, the father of the deceased has moved the High Court under Section 482 of the Code of Criminal Procedure. A single Judge of the High Court directed that the papers be placed before the Public Prosecutor and he has been asked to give an opinion on the matter and the High Court has also directed that an amended charge-sheet should be filed in the concerned Court.

27. The Honourable Apex Court has held as follows;

"In this case the High Court has committed an illegality in directing the final

report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny. The formation of the opinion, whether or not there is case to place the accused on trial, should be that of the officer in charge of the police station and none else. There is no stage during which the Investigating Officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed, as indicated in Section 24 Cr. P.C., for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution with the consent of the Court. He is the officer of the Court. Thus the Public Prosecutor is to deal with different field in the administration of justice and he is not involved in investigation. It is not the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the Court."

(Emphasis supplied)

28. The aforesaid decision rendered by the Honourable Apex Court is a befitting answer to the legal point involved in the present criminal revision case. From the said decision, it is easily discernible that a Public Prosecutor or an Assistant Public Prosecutor is not empowered to make interference in the field of investigation and the same is completely vest with the officer in charge of the concerned police station and further the concerned Public Prosecutor or the Assistant Public Prosecutor is not at all empowered to give his opinion for taking cognizance of an offence and at the most his duties are limited to conduct prosecution, appeal or other proceedings in Court and he can also withdraw any case from the prosecution and that too with the consent of the Court.

29. In (1991) 3 SCC 655 1991 SCC (Cri) 734 (*K. veeraswami* v. *Union of India*) the Honourable Apex Court has held as follows:

"The charge-sheet is nothing but a final report of police officer under Section 173 (2)

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of the Criminal Procedure Code. Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi* v. *State of Bihar* (((1980) 3 SCC 152 : 1980 SCC (Cri) 660) : (1980 Cri LJ 227) that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the Magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by

Section 175(5). Nothing more need be stated in the report of the investigating officer. It is also not necessary that all the details of the defence must be stated. The details of the offence are required to be proved to bring home the guilt of the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

30. From the conjoint reading of the decisions referred to supra, the corollary is that an opinion of a Public Prosecutor or an Assistant Public Prosecutor is totally unwarranted for the purpose of filing a final report in the concerned Court.

31. As adverted to earlier, the Judicial Magistrate Court, Periyakulam has returned the final report' in question on 18-3-2005 simply on the-ground that opinion of the Assistant Public Prosecutor Grade II has not been filed along with the final report. The final report in question has been filed on 16-3-2005. In view of the decisions referred to supra, it is an axiomatic fact that 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, Preiyakulam on 18-3-2005 is not legally correct. The final report in question has been filed on 16-3-2005. The revision petitioner/petitioner/accused is said to have committed offences under Sections 286 and 338 of the Penal Code, 1860 and also under Section 30 of the Arms Act on 19-5-2002. As per Section 468(2)(c) of the Code of Criminal Procedure, in the present case, a final report should be filed within three years from the date of occurrence, that is on or before 19-5-2005. Since the final report in question has been filed on 16-3-2005 itself, it is needless to say that the same has been filed within the period of limitation. The present petition has been filed under Section 239 read with 468 of the Code of Criminal Procedure, praying to discharge the revision petitioner/petitioner/accused from the proceedings of Calendar Case No. 30 of 2006 mainly on the ground of limitation. It has already been decided that the final report which has been filed on 16-3-2005 is well within the period of limitation and therefore, it is quite clear that the revision petitioner/petitioner/accused is not entitled to get discharge on the ground of limitation. In view of the foregoing enunciation of both the factual and legal aspects, this Court has not found any valid force in the argument advanced by the learned counsel appearing for the revision petition/petitioner/accused and whereas the argument advanced by the learned Government Advocate (criminal side) is really having attractive and also subsisting force and altogether the present criminal revision case deserves dismissal.

32. In fine, the present criminal revision case deserves dismissal and accordingly is dismissed. The order dated 6-3-2007 passed in Criminal Miscellaneous Petition No. 3571 of 2006 in Calendar Case No. 30 of 2006 by the Judicial Magistrate Court, Periyakulam is confirmed. Consequently, connected miscellaneous petition is also dismissed.

33. *Petition dismissed.*

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