

DATE: 04.11.2009

CORAM:

THE HONOURABLE MR. JUSTICE RAJA ELANGO

Criminal Original Petition (MD) No. 8550 Of 2008

Pannerselvam

Vs

... Petitioner / Defacto Complainant

1. State rep. By
The Inspector of Police,
Pappanadu Police Station,
(Crime No. 11 of 2008).

... Respondent / Complainant

2. Iyarayatham
3. Manimegali
4. Sarala

... Respondents / Accused

PRAYER: This petition is preferred under Section 482 Cr.P.C to set aside the order passed by the learned Judicial Magistrate, Orathanadu in Crime No. 11 of 2003 dated 09.05.2006.

For Petitioner : Mr. V. Pharithidasan
For Respondents: Mr. S. Pathu Venkatesan For R1
G.A. (Crl. Side)

ORDER

The petitioner approaches this Court with a prayer to set aside the order passed by the learned Judicial Magistrate, Orathanadu in Crime No. 11 of 2003 dated 09.05.2006.

The brief facts of the case is as follows:
The petitioner has given a complaint against the respondent Nos. 2 to 4 herein on 12.01.2003 for the offence under Section 294(b) and 32A of I.P.C. The respondent police registered a case in Crime No. 11 of 2003 and after registering the case, the respondent police did not file a final report before the Court concerned. In view of the non filing of final report, the learned Judicial Magistrate, Orathanadu closed the complaint under section 46U(2) of Cr.P.C on the ground that the limitation of taken cognizance period is over. Learned counsel appearing for the petitioner submitted that the learned Judicial Magistrate has no such power to pass an order and close the F.I.R. on the ground that the limitation period is over even prior to the filing of the charge sheet by the respondent police herein. He relied on the order in State by Inspector of Police,

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Central Crime Branch, represented by Public Prosecutor vs. Deepan and another reported in Madras Law Journal Reports.(Criminal), wherein the Ratio laid down runs as follows:

"A reading of Sec. 468 and the language in it would clearly show that the power given under Sec.468 can be exercised only at the time of taking cognizance of the offence. The stage of taking cognizance of the offences would come only when a police report under Sect.173(2) is forwarded to a Magistrate empowered to take cognizance of the offence under Sec. 190 of the Code. In the instant case, admittedly the police report was not forwarded to the Additional Chief Metropolitan Magistrate as on 1.3.1991. So the stage of taking cognizance of the offence had not at all come. As per Sec.468, CrI.P.C., the Court shall not take cognizance of the offence after expiry of the period of limitation. When that stage has not at all come, the impugned order of the Magistrate closing the F.I.R on the ground that period of limitation had expired under Sec.468, CrI.P.C cannot be sustained. Exercise of the power under Sec.468, CrI.P.C at any earlier stage of investigation is not contemplated in the language of the Section."

3. In view of the above said decision, this Court is of the opinion that the learned Magistrate has passed the order erroneously. Hence, the order passed in crime No.11 of 2003 by the learned Magistrate, Orathanadu dated 09.05.2006 is set aside. Accordingly, this Criminal Original Petition is allowed.

5d/-
Assistant Registrar(Writs)

/True Copy/

[Signature]
17/11/23
Sub Assistant Registrar

- To
- 1. The Judicial Magistrate, Orathanadu.
- 2. The Inspector of Police, Pappanadu Police Station,
- 3. The Additional Public Prosecutor,
- Madurai Bench of Madras High Court, Madurai.

CC TO MR. V. BHARATHIDASAN, ADVOCATE S.R. NO. 35022
CC TO MR. M. SATHISH BABU, ADVOCATE S.R. NO. 30932

CrI.O.P(MD) No.B550 of 2008
04.11.2009

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