

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2008

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.32712 of 2004
and Crl.M.P.No.10416 of 2004

1.C.T.Baskaran
2.Mrs.Vasumathi Baskaran .. Petitioner/A5 & A6

Vs.

M.P.Jayarajan .. Respondent/Complainant

* * *

Prayer : Criminal Original Petitions filed under section 482 of Cr.P.C. to call for the records in P.R.C.No.1 of 1987 on the file of the Judicial Magistrate, Gudalur, and quash the same.

* * *

For Petitioner : Mr.P.N.Prakash

For Respondent : Mr.V.Gopinath, Senior Counsel
for M/s.L.Mahendran

O R D E R

The petitioners, who have been arrayed as A-5 and A-6 and who have been implicated in this case for the alleged offence under Sections 109, 120(b), 323, 347, 395, 397 and 356 IPC on the basis of the private complaint instituted by the respondent herein pending in P.R.C.No.1 of 1987 on the file of the learned Judicial Magistrate, Gudalur, have come forward with this petition seeking for the relief of quashing the proceedings.

2. Mr.P.N.Prakash, learned counsel for the petitioners contended that already police complaints were pending for investigation in Crime Nos.45 and 46 of 1983 on the file of the Inspector of Police, Cherambady Police Station, Thellucherry, Nilgiris District, for the offence under Sections 147, 342, 364, 384, 323 and 379 IPC implicating five accused and in that complaints, the petitioners have not been implicated as accused. It is contended that during the pendency of investigation in that complaints, the impugned private complaint was filed by the respondent herein and after taking the complaint on file by giving P.R.C.No.1 of 1987 the learned Magistrate kept further proceedings in abeyance in view of the provisions under Section 210 Cr.P.C. on

the ground of investigation is pending on the basis of the first Information Report registered in Crime No.45 of 1983 on the file of the Inspector of Police, Cherambady Police Station by calling the concerned police to submit its final report. The learned counsel for the petitioners contended that Section 210 Cr.P.C. is applicable to only in respect of the investigation is pending against the concerned accused persons and as far as the petitioners are concerned, they have not at all been implicated in the above said first Information Report which was registered on the basis of the complaint given by the respondent herein and as such there is no justification for keeping the matter pending by invoking Section 210 Cr.P.C. insofar as the petitioners are concerned. It is contended that in view of such procedure adopted by the learned Magistrate, the petitioners have been put into great hardship and they are undergoing the ordeal of the pendency of the criminal complaint against them right from the year 1987. The learned counsel for the petitioners further submitted that in view of the inordinate delay and in view of the admitted fact that the petitioners are in no way responsible for such delay, the impugned complaint is liable to be quashed. In support of his contention the learned counsel for the petitioners placed reliance on the decisions of the Hon'ble Apex Court in Moti Lal Saraf V. State of Jammu & Kashmir reported in 2006 AIR SCW 5219 and contended that in view of the inordinate delay in conducting the trial, the petitioners right to speedy trial has been infringed and as such continuation of further proceedings on the basis of the impugned complaint would amount to a clear case of abuse of process of law and the same is liable to be quashed.

3. Per contra, Mr.V.Gopinath, learned senior counsel for the respondent contended that till date the investigation in the First Information Report registered in Crime No.45 of 1983 on the file of the Inspector of Police, Cherambady Police Station is pending and the complainant is not able to see the light of the day. It is pointed out by the learned senior counsel that as a matter of fact, this Court has directed the Inspector of Police, CBCID, Coimbatore, to investigate into the matter and to file the final report expeditiously, but in spite of such direction given by this Court as early as in the year 1993, the investigating officer has not yet filed the final report and as a result the aggrieved and affected person, viz., the complainant/respondent herein has been put into great hardship and irreparable loss. It is contended that the respondent/complainant came to know about the involvement of the petitioners herein subsequently and as such he has implicated the petitioners by filing a private complaint before the learned Magistrate alleging that they are responsible for inducing the other accused to commit the other offences alleged against them. Therefore, it is contended that the learned Magistrate has rightly

stopped further proceedings by invoking Section 210 Cr.P.C. as admittedly investigation in respect of the very same occurrence is pending in Crime No.45 of 1983 on the file of the Inspector of Police, Cherambady Police Station. The learned senior counsel would further submit that the respondent/complainant is more anxious about the fate of the police complaint.

4. The learned Government Advocate(Crl. Side) on the other hand, submitted that the investigation is pending as on date and he is not able to get further instructions in spite of sending message to the concerned Inspector of Police.

5. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint and other materials available on record including the First Information Report registered in Crime No.45 of 1983 on the file of the Inspector of Police, Cherambady Police Station.

6. This is an unfortunate case wherein there is a dispute between the son-in-law and father-in-law and mother-in-law. The fact remains that the petitioners are father-in-law and mother-in-law of the respondent/complainant herein. As per the admitted version of both sides, it is seen that the First Information Report was registered in Crime No.45 of 1983 on the basis of the complaint given by the respondent/complainant, who is the complainant in the police case and the First Information Report was pending investigation till date as per the submissions of the learned senior counsel for the respondent. It is pointed out by the learned senior counsel that investigation itself is over, but the filing of the final report was kept dragged on the ground of obtaining sanction from the competent authority. Be it as it may, the undisputed fact remains that, as already pointed out by this Court, as far as the petitioners are concerned, they have not been implicated by the respondent/complainant in his earlier complaint given to the police on which the investigation was proceeded and pending for filing the final report. It is curious to note that in spite of the admitted fact that the petitioners have not been implicated in the police complaint on which the investigation is said to have been completed and the final report is yet to be filed, the learned Judicial Magistrate, Gudalur, has thought it fit to stay all further proceedings by invoking the provision under Section 210 Cr.P.C. including in respect of the petitioners herein.

7. Section 210 Cr.P.C. reads hereunder :

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence -

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

8. The reading of the above said provision particularly clause (3) of Section 210 makes it crystal clear that if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provisions of the Code. Therefore in view of the above said provision, there is absolutely no impediment much less any legal bar to proceed against the petitioners herein in respect of the impugned complaint. But in spite of such legal position, the matter was kept pending right from the year 1987. It is now well-settled that the accused is also having a right to a speedy trial and the infringement of such valuable right would definitely result in miscarriage of justice and the same would amount to a clear case of abuse of process of law.

9. The learned counsel for the petitioners has rightly placed reliance on the decision of the Hon'ble Apex Court in Moti Lal Saraf V. State of Jammu and Kashmir reported in 2006 AIR SCW 5219. The Hon'ble Apex Court in that decision has held that,

"The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the Courts and on the prosecution an obligation to proceed

with reasonable dispatch. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Government and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant, accused. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed."

10. The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case as it is already pointed, this case is pending for the last more than two decades without any progress and the complaint to the police pending for investigation is also not in respect of the petitioners herein as the petitioners have not been implicated in the police complaint and added to that the petitioners are in no way responsible for such inordinate delay and as such this Court is constrained to quash the impugned complaint as far as the petitioners are concerned and accordingly, the proceedings pending in P.R.C.No.1 of 1987 on the file of the learned Judicial Magistrate, Gudalur, is hereby quashed insofar as the petitioners are concerned.

11. It is made clear that the Inspector of Police, CBCID, Coimbatore, who is dealing with the investigation in Crime No.45 of 1983, is directed to expedite the filing of the final report as expeditiously as possible in view of the specific direction already given by this Court as early as in the year 1993 and more particularly to complete the investigation and to file the final report within a period of five months from the date of receipt of a copy of the order of this Court.

This Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Judicial Magistrate, Gudalur.

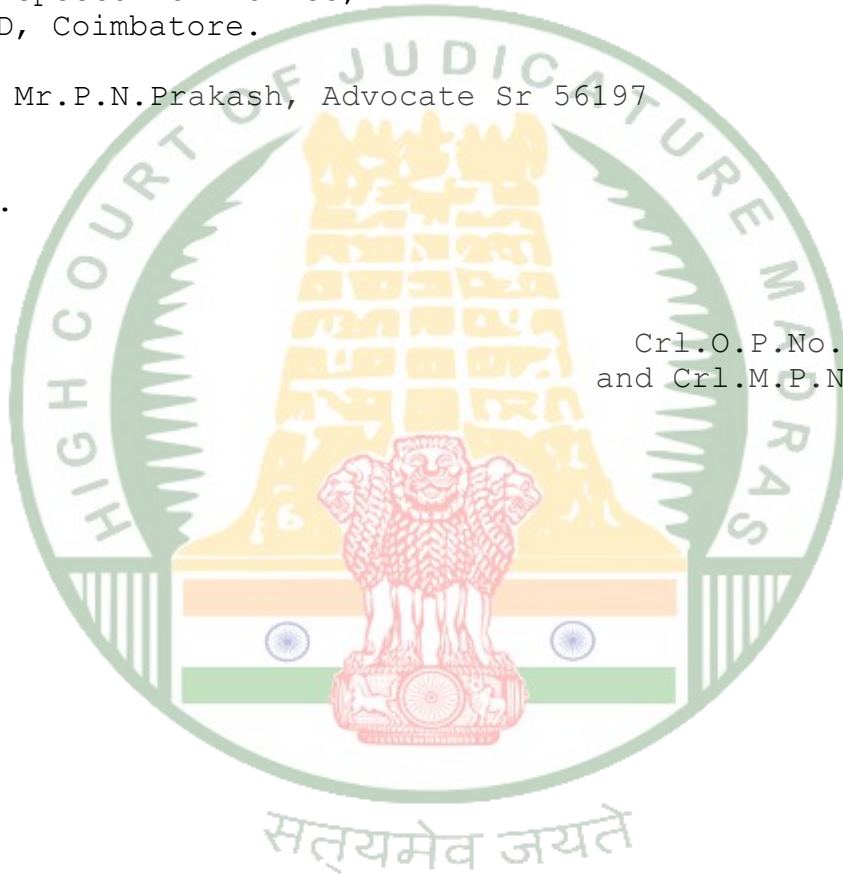
2.-do- thro' The Chief Judicial Magistrate,
Nilgiris District.

3.The Inspector of Police,
CBCID, Coimbatore.

+1cc to Mr.P.N.Prakash, Advocate Sr 56197

NM(CO)
km/6.11.

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