



2023/KER/71708

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 16TH DAY OF NOVEMBER 2023 / 25TH KARTHIKA, 1945

CRL.REV.PET NO. 161 OF 2023

AGAINST THE ORDER DATED 17.08.2022 IN CRL.M.P.NO.1946 OF
2022 IN CC NO.47 OF 2019 OF THE CHIEF JUDICIAL MAGISTRATE,

PATHANAMTHITTA

REVISION PETITIONERS/PETITIONERS/ACCUSED 2 TO 4:

1 MANOJ KUMAR

2 RATHEESH,

3 AJAYAN,

BY ADV AJEESH K.SASI

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031.

BY MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 16.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**"C.R."****P.G. AJITHKUMAR, J.****Crl.R.P.No.161 of 2023****Dated this the 16th day of November, 2023****ORDER**

The petitioners are accused Nos.2 to 4 in C.C.No.47 of 2019 on the files of the Chief Judicial Magistrate, Pathanamthitta. They stand charged for the offence punishable under Sections 143, 147, 148, 341, 323 and 153(A) read with Section 149 of the Indian Penal Code, 1860 (IPC). The petitioners filed Crl.M.P.No.1946 of 2022 invoking the provisions of Section 239 of the Code of Criminal Procedure, 1973 (Code), seeking discharge. That petition was dismissed as per the order dated 17.08.2022. The petitioners challenge the said order in this revision petition filed under Section 397 read with Section 401 of the Code.

2. The allegations based on which the crime was registered are that the petitioners along with other co-accused, after forming themselves into an unlawful assembly, attacked the de facto complainant and a few students of Bible College at Maramon. The further allegation is that they shouted slogans



against a particular religion and thereby, they tried to create communal disharmony and hatred between different religious groups. In the incident, a few students sustained injury.

3. The incident took place on 12.05.2005. After investigation and obtaining sanction under Section 196 of the Code, a final report was submitted before the court below on 17.04.2019. On receipt of summons, the petitioners appeared before the court below. They filed Crl.M.A.No.1946 of 2022 contending that the court took cognizance of the offence long after the period prescribed in Section 468 of the Code, and therefore, the prosecution was illegal. For that reason, they sought a discharge.

4. The court below considered the contention of the petitioners with reference to Section 470(3) of the Code and took the view that once the period taken for obtaining sanction from the Government is excluded, cognizance of the offence was taken within time. Accordingly, the petition was dismissed.

5. Heard the learned counsel for the petitioners and the learned Public Prosecutor.



6. Among the offences alleged against the petitioners the offences under Sections 148 and 153(A) of IPC are punishable with imprisonment for three years. The other offences are punishable with lesser terms of sentence. The period of limitation for taking cognizance prescribed as per Section 468 of the Code for an offence punishable with imprisonment for a term exceeding one year, but not exceeding three years, is three years. Therefore, cognizance of the offence involved in this case should have been taken on or before 11.05.2008. The contention of the petitioners is that even applying the provisions of Section 470(3) of the Code, the filing of the final report was beyond the period of limitation and therefore the order of the court below is wrong.

7. An offence under Section 153(A) of the IPC can be taken cognizance of only with previous sanction of the appropriate Government in view of the provision under Section 196(1) of the Code. The case of the prosecution is that a request for sanction was submitted to the Government on 10.05.2008 and sanction was finally obtained on 22.02.2019. The said period is liable to be excluded and if so, in the view of



the learned Public Prosecutor, the final report submitted on 17.04.2019 is within time and the order taking cognizance is valid. From the records, it is seen that the request for sanction submitted on 10.05.2008 was returned on 18.05.2008 for curing formal defects in it. Thereafter, the request was resubmitted only on 22.01.2013. The learned Public Prosecutor would submit that during the interregnum there was flood situation in the area disabling the police personnel to take action in the matter and therefore the delay in re-submitting the application is justified. It appears that there was no such plea raised before the court below. On the other hand, the contention was that the period from 10.05.2008 till 22.02.2019 was liable to be excluded under the provisions of Section 470(3) of the Code.

8. As stated, the request for sanction was returned for curing defects on 18.05.2008, but it was re-submitted after curing the defects only on 22.01.2013. There was a delay of nearly five years. Explanation to Section 470(3) of the Code reads,-

“Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application



was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.”

When the Explanation says that the date on which the application was made and the date of receipt of the order of the Government are allowed to be excluded from the period taken for obtaining sanction, the intention of the Legislature is clear. The provisions under Section 470 of the Code that allows exclusion of the period taken for obtaining sanction requires a strict interpretation. When there occurred a delay of nearly five years to re-submit the request for obtaining sanction, the prosecution cannot be heard to contend that that period is liable to be excluded under Section 470(3) of the Code.

9. Simultaneous to the claim for exclusion, the prosecution seeks condonation of delay also. The reason for allowing exclusion is that the period is the time taken by the Government to accord sanction. If whole of the period was taken by the Government, the prosecuting agency cannot be found at fault for that. But, it was not so. As stated, a major part of the period of delay was on account of the inaction on the



part of the prosecuting agency. The provision for condonation of delay is a salutary one and is intended to mitigate the hardship of a person from rigours of limitation, provided he has a justifiable reason for not approaching the court in time. He has to satisfy the court that there was sufficient cause for not approaching the court in time. On the other hand, if exclusion of time is claimed, it is a matter for reckoning by computing the period. Once it is shown that the period is liable for exclusion, it is a matter of right, whereas condonation of delay is a matter of discretion of the court. Viewed so, a party cannot claim benefit of both the provisions in regard to the same period.

10. I am, therefore, of the view that the prosecution is not entitled to get the period between return of the request for sanction and re-submission of the same before the Government excluded under Section 470(3) of the Code. If so, the final report submitted on 17.04.2019 was barred by limitation and the court should not have taken cognizance of the offence.

11. The question then is whether the accused is entitled to claim discharge for the reason that the cognizance of the offences was taken beyond the period of limitation. Section 239 of the Code



says that if the charge against an accused would be groundless, he is entitled to get a discharge. If the cognizance is time barred, there cannot be a legal trial and in that case, the charge would only be groundless and the trial a futile exercise.

12. In such circumstances, the finding of the court below that there was a *prima facie* case to frame charge against the petitioners is incorrect and liable to be set aside. Accordingly, this revision petition is allowed. On setting aside the impugned order dated 17.08.2022, Crl.M.P.No.1946 of 2022 is allowed. The petitioners/accused Nos.2, 3 and 4 are discharged.

Sd/-

P.G. AJITHKUMAR, JUDGE