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CRL.O.P.No.23806 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.09.2022</i>
<i>Delivered on</i>	<i>17.10.2022</i>

CORAM:

**THE HON'BLE Ms.JUSTICE R.N.MANJULA**

CrI. O.P. No.23806 of 2021  
and CrI.M.P. No.13107 of 2021

Shiva Sankar Baba

.. Petitioner

Versus

1. State represented by  
Inspector of Police,  
CBCID, OCU Police Station -II,  
Chennai.  
(Crime No.2 of 2021)

2. XXXX

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to Crime No.2 of 2021 registered by the first respondent Inspector of Police, CBCID, OCU Police Station II, Chennai and quash the FIR as against the petitioner.



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For Petitioners : Mr. R.Vijaya kumar  
For Respondent 1: Mr. A.Damodaran  
Additional Public Prosecutor

## **ORDER**

This Criminal Original Petition has been filed to call for the records pertaining to Crime No. 2 of 2021 registered by the first respondent Inspector of Police, CBCID, OCU Police Station II, Chennai and to quash the same as against the petitioner.

2. On the allegations of sexual harassment made by the second respondent against the petitioner herein, a case in Cr. No. 2 of 2021 was registered for the offences under Section 354 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002.

3. The learned counsel for the petitioner submitted that a complaint has been given on 19.08.2021 for the occurrence that had occurred between the year 2010 and 2011; the second respondent has



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sent a complaint through email on 19.08.2021 by stating that the second respondent had an opportunity to meet the petitioner in connection with her son's academic issue; the son of the second respondent is said to have got admitted in Sushil Hari International Residential School which is being run by the petitioner; during the academic year 2010-2011, when the *de facto* complainant's son attended the school, he was suddenly removed from the school and his Transfer Certificate was also given; in view of the same, the *de facto* complainant went to the school and met the school authorities and on instruction, she had also met the accused / petitioner and during that time, it was alleged that the *de facto* complainant was sexually harassed by the petitioner and for which a case has been registered against the petitioner for the offences under Section 354 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002.

**3.1** The learned counsel for the petitioner submitted that the case itself is totally barred by limitation because of the expiry of the



prescribed time limit under Section 468 Cr.P.C. It is submitted that for the offence punishable under Section 354 IPC, the maximum punishment at the time of occurrence was two years and for the other offence relating to Section 4 of Tamil Nadu Prohibition of Harassment of Woman, the maximum punishment was three years on the date of giving the complaint; since more than three years have lapsed, the case is clearly barred by limitation.

**3.2** In support of his above contentions, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal and others* reported in *1992 Supp (1) SCC 335* and submitted that if there is any legal bar to the institution and continuation of the proceedings, the FIR should be quashed. The learned counsel for the petitioner further relied on the following cases:

i) *Kamlesh Kalra and another Vs. Shilpika Kalra and others* reported in *(2020) 4 MLJ (Crl) 501 (SC)*.

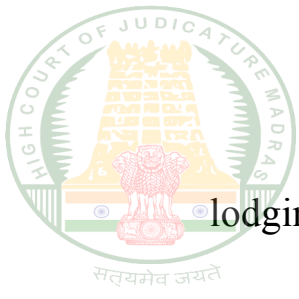


ii) *Sarah Mathew Vs. Institute of Cardio Vascular Diseases*

reported in (2014) 2 SSC 62.

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4. The first respondent filed his counter affidavit by stating that there are sufficient materials available on record to make out a case against the petitioner for the offence under Section 354 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002; the petitioner is a highly influential person and due to fear, the *de facto* complainant who is a single mother would not have come forward to give the complaint immediately after the occurrence; the sexual atrocities of the petitioner came to light recently and the petitioner has been charged for offences under POCSO Act for having caused sexual abuse against many children of the school; the petitioner was in the habit of targeting innocent children, students who are economically weak, children of single parents on various occasions and abused them sexually; due to fear, family relations, personal reputation and all other said factors they did not give the complaint immediately; the delay in



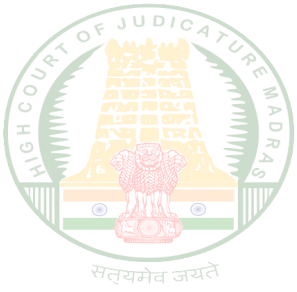
lodging the complaint cannot be the reason for not accepting the complaint of sexual harassment; even at the time of filing the charge sheet, the investigation agency is at liberty to file a petition under Section 473 Cr.P.C. and request the Court to condone the delay for appropriate reasons; hence, the proceedings cannot be quashed on the ground of delay.

**4.1** In his counter affidavit, the first respondent had extracted the judgment of the Hon'ble Supreme Court rendered in the case of *Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and others* reported in *(2021 SCC OnLine SC 315)*, which reads as follows:

*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*

*ii) Courts would not thwart any investigation into the cognizable offences;*

*iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*



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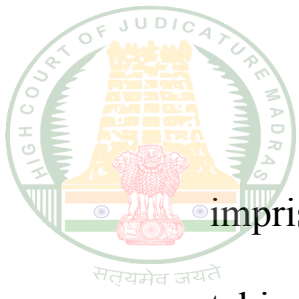
*iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

*v) While examining an FIR / complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR / complaint;*

*vi) Criminal proceedings ought not to be scuttled at the initial stage;*

*vii) Quashing of a complaint / FIR should be an exception rather than an ordinary rule..."*

**5.** The one and only point on which the petitioner has submitted his arguments is that there is a huge delay in giving the complaint and on the date of the complaint itself, the case is barred by limitation. The records would show that for the occurrence that is alleged to have occurred during the academic year 2010 – 2011, a complaint has been given in the year 2021. The petitioner has been charged for offence under Section 354 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The maximum punishment at the time of occurrence for the offence under Section 354 IPC was one year imprisonment and for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 was three years



imprisonment. As per Section 468 Cr.P.C., the time prescribed for taking cognizance of offence is three years from the date of occurrence.

As per Section 468 Cr.P.C. the period of limitation shall commence from the date of occurrence. Section 468 Cr.P.C. is extracted hereunder:

***“468. 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—*

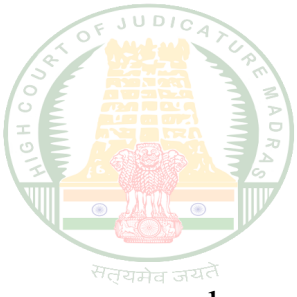
*(a) six months, if the offence is punishable with fine only;*

*(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.*

*(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”*





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6. Though the case is barred by limitation, it is submitted by the learned Additional Public Prosecutor that even at the time of filing the charge sheet before the Court, the prosecution would file a petition for extension of period of limitation under Section 473 Cr.P.C. and get the delay condoned and hence the FIR cannot be quashed on the ground of delay alone.

7. No doubt the offence of sexual abuse is serious and heinous crime and there is always an understandable reluctance on the part of the victim to come forward and give a complaint immediately, after the occurrence. The contributive factors for non-reporting of such cases is not only fear or shame in the mind of the victim, but also the intimidating influential position of the perpetrator in the society.

8. In the instant case, the petitioner / accused is an influential religious person who projected himself as the star of hope for many people and for whom there were lot of devotees. The serious



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allegations of beastful attitude of the petitioner have been made recently. There are serious complaints against the petitioner that the children studying in his school were the targets for his sexual exploitations. It is not uncommon when long suppressed illegal acts of any influential person is brought out, many people affected by him will get emboldened and courageous to report about the unlawful acts. The second respondent / *de facto* complainant has stated in her complaint that she tried to swallow the bitter part of her life as she was helpless at the time when the offence was committed.

9. The second respondent had stated in her complaint that she had met the petitioner on account of the removal of her son from the petitioner's school and she was instructed to meet the petitioner in this regard. When she went and met the petitioner, she was not given audience to express her grievance, but the petitioner behaved strangely and suddenly did acts outraging her modesty. The second respondent / *de facto* complainant, like many other women tried to suppress the

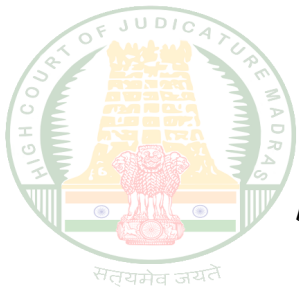


occurrence within herself. She gathered courage after seeing many complaints of sexual abuse made against the petitioner and he was arrested.

**10.** No doubt from the date of the occurrence the time runs and hence the case is barred by limitation in view of Section 468 Cr.P.C. However, it is submitted that if the prosecuting agency gives convincing reason to condone the delay while filing the report, it is quite possible to get the case taken on file.

**11.** In this regard, it is pertinent to analyse when the cognizance is taken by the Court and at what point of time, a petition under Section 473 Cr.P.C. can be filed to condone the delay. At this juncture, it is relevant to refer Section 190 Cr.P.C. which is extracted hereunder:

*“190. Cognizance of offences by Magistrates -1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this*



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behalf and 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.

2) The Chief Judicial magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.”

## 12. In *Sarah Mathew Vs. Institute of Cardio Vascular Diseases*

reported in (2014) 2 SCC 62, the Hon'ble Supreme Court held that the Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings. The relevant portions of the said judgment is extracted hereunder:

“34. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term “cognizance” and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several



*reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.*

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*35. In this connection, our attention is drawn to the judgment of this Court in Sharadchandra Dongre 29. It is urged on the basis of this judgment that by condoning the delay, the court takes away a valuable right which accrues to the accused. Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 CrPC is presented before the court. Keeping this argument in mind, let us examine both the viewpoints i.e. whether the date of taking cognizance or the date of complaint is material for computing limitation. If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time-barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 CrPC. The court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the court takes cognizance within the period of limitation, there is no question of the complaint being time-barred. If the court takes cognizance after the period of limitation then, the question is how will Section 473 CrPC work. The complainant will be interested in having the delay condoned. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the Magistrate can decide whether to condone*



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*delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr Luthra, learned ASG submitted that use of disjunctive “or” in Section 473 CrPC suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the latter part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 CrPC has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass an order condoning or not condoning the delay. The law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.*

*36. The role of the court acting under Section 473 was aptly described by this Court in Vanka Radhamanohari<sup>1</sup>? Where this Court expressed that this section has a non obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that: (SCC p. 8, para 6)*

*“6.... There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Criminal Procedure Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient*



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*cause for condonation of the delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay."*

*These observations indicate the scope of Section 473 CrPC. Examined in the light of legislative intent and meaning ascribed to the term "cognizance" by this Court, it is clear that Section 473 CrPC postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material."*

**13.** So the date of filing the complaint is also material for a petition under Section 473 Cr.P.C. to be filed. In the above judgment, the Hon'ble Supreme Court has laid down the law by stating that the petition to condone the delay should be filed at the time of giving the complaint itself. Admittedly, at the time of filing the complaint, no petition under Section 473 Cr.P.C. was filed. The FIR sent to the Magistrate did not accompany any petition filed under Section 473 Cr.P.C. The act of cognizance by the Magistrate would start from the moment the Magistrate applies his mind while reading the FIR. Hence the relevant date for filing the petition under Section 473 Cr.P.C. is the

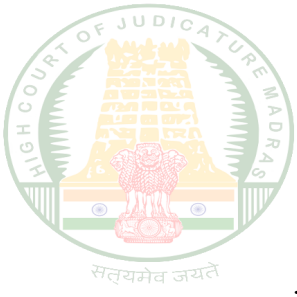


date on which the complaint is sent to the Magistrate and not while filing the final report. It is worthwhile to reproduce paragraph '51' of the judgment of **Sarah Mathew** (cited supra):

*“ 51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Janani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C.”*

**14.** Though the allegations made by the second respondent is serious in nature, because of the absence of any petition under Section 473 Cr.P.C. to condone the delay filed along with the complainant, the case becomes barred by limitation. In the said circumstances, I feel that the investigation cannot serve any fruitful purpose and for the reasons of technical flaw, the FIR is liable to be quashed.





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**15.** Accordingly, the Criminal Original Petition is allowed and the case in Cr. No.2 of 2021 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed.

**17.10.2022**

Index: Yes/No  
Speaking order / Non-speaking order  
bkn

To:

1. The Inspector of Police,  
CBCID, OCU Police Station -II,  
Chennai.
2. The Public Prosecutor,  
Madras High Court.



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**R.N.MANJULA, J.,**

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