

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.4696 of 2018
and CRL.M.P.Nos.2449 & 2450 of 2018
AND

CRL.O.P.No.4697 of 2018
and CRL.M.P.Nos.2451 & 2452 of 2018

1.R.Mariammal
2.R.Sakthivelprakash
3.R.Balasubramaniam
4.R.Chandrasekara Velan ... Petitioners in Crl.OP.4696/18

P.Senthil Kumar ... Petitioner in Crl.OP.4697/18

Vs

1.State of Tamil Nadu,
Rep. by its
Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai-9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

3.The Commissioner of Police,
Greater Chennai,
E.V.K.Sampath Road, Vepery,
Chennai-7.

4.The Deputy Commissioner of Police,
Thiagaraya Nagar Division,
Chennai-92.

5.The Assistant Commissioner of Police,
Vadapalani Sub Division,
Vadapalani, Chennai-26.

6.The Inspector of Police,
R-5 Virugambakkam Police Station,
Virugambakkam, Chennai-92.

7.K.Sathianarayana Raju @
Sathish

.. Respondents in
both Crl.OPs

CRL.O.P.No.4696 of 2018 filed under Section 482 Cr.P.C., to direct the the respondents 1 to 6 herein to provide adequate police protection to the petitioners to remove the 7th respondent who had committed criminal house breaking and house trespass on 29.08.2013 in the second floor of the premises bearing No.58, Door No.16, Kannammal Street, Kannapiran Colony, Saligramam, Chennai-93 to enable them to take peaceful possession and consequentially direct the state authorities respondents 1 and 2 to pay the liquidated damages of Rs.2,35,800/- towards actual loss of rent suffered by the petitioners with interest thereon at rate of interest of 7.5% p.a. for one year nationalized bank deposit rate and to grant liberty to the respondents 1 and 2 State authorities to recover the said amount from the respondents 3 to 6 who caused deliberate delay and inaction as the grave crime of offences of house breaking and criminal house trespass was committed on 29.08.2013 and with costs

CRL.O.P.No.4697 of 2018 filed under Section 482 Cr.P.C., to direct the the respondents 1 to 6 herein to provide adequate police protection to the petitioner to remove the 7th respondent who had committed criminal house breaking and house trespass on 29.08.2013 in the third floor of the premises bearing No.58, Door No.16, Kannammal Street, Kannapiran Colony, Saligramam, Chennai-93 to enable him to take peaceful possession and consequentially direct the state authorities respondents 1 and 2 to pay the liquidated damages of Rs.2,35,800/- towards actual loss of rent suffered by the petitioner with interest thereon at rate of interest of 7.5% p.a. for one year nationalized bank deposit rate and to grant liberty to the respondents 1 and 2 State authorities to recover the said amount from the respondents 3 to 6 who caused deliberate delay and inaction as the grave crime of offences of house breaking and criminal house trespass was committed on 29.08.2013 and with costs.

For Petitioners : Mr.A.R.Suresh
in Crl.OP.4696/18

For Petitioner
in Crl.OP.4697/18 : Mr.P.Prince Premkumar

For R1 to R6 : Mr.C.Iyyapparaj, APP
in both Crl.OPs

C O M M O N O R D E R

The petitioner in CRL.O.P.No.4696 of 2018 is the mother of the petitioner in CRL.O.P.No.4697 of 2018. It is the case of the petitioners that they have purchased the property at Door No.16, Kannammal Street, Kannapiran Colony, Saligramam, Chennai-93 and that, Sathianarayana/R7 herein had illegally occupied the same. In this regard, Mariammal/ petitioner in CRL.O.P.No.4696 of 2018 gave a complaint to the respondent Police and thereafter, filed CRL.O.P.No.24541 of 2013 under Section 482 Cr.P.C. for a direction to the Police to register an FIR. This Court, by order dated 05.11.2013 in CRL.O.P.No.24541 of 2013, directed the Police to enquire into the complaint and register an FIR, if the complaint discloses commission of cognizable offence. The 6th respondent registered a case in Crime No.123 of 2014 on 24.01.2014 under Section 447, 294[b] r/w 506[ii] IPC against the 7th respondent and investigation is pending. While so, the petitioners have filed the present Criminal Original Petitions with the above prayer.

2.Heard Mr.Suresh, learned counsel for the petitioners and the learned Additional Public Prosecutor.

3.The 6th respondent has filed a counter, wherein, in paragraph Nos.6, 7 and 8, it is stated as follows :

"6.It is submitted that the petitioner herein has filed a petition in Crl.O.P.24541 of 2014 before this Hon'ble Court which came to be ordered on 05.11.2013 directing to file FIR in connection with the complaint made by the petitioner date 24.01.2014 u/s 447, 294[b] r/w 506[iii] IPC by this respondent for the occurrence taken place on 29.08.2013. It is still pending investigation.

7.It is submitted that on the basis of the above complaint, this respondent has conducted enquiry and obtained statements from the petitioner u/s 161[3] of Cr.P.C. his mother namely Mrs.Mariammal and others. Further, this respondent sent a notice to the 7th respondent calling upon him to attend the enquiry to be held on 02.12.2014 in the 6th respondent's police station and accordingly, the 7th respondent had also attended the enquiry. Thereafter, whenever this respondent called upon the 7th respondent for enquiry and to conclude the case by filing charge sheet before the appropriate criminal court. However, the 7th respondent did not co-operate with the same and never turned up to the police station and hence this respondent was not able to conclude the case immediately.

8.It is submitted that the 7th respondent had also obtained anticipatory bail on 29.04.2014 from this Hon'ble Court by filing a CrI.M.P.No.7170 of 2014 in Cr.No.1231 of 2014 so as to protect him from arrest by this respondent. It is further submitted that in view of the reasons stated above, the investigation in connection with the above crime number is still going on by the 6th respondent. Hence, there is no delay caused in this regard as alleged by the petitioner."

4.Mr.Suresh submitted that the Police had deliberately allowed the 7th respondent to go scot-free and had not arrested him and thus, enabled him to obtain anticipatory bail from the Court.

5.In Joginder Kumar Vs State of U.P. and Others reported in AIR 1994 SC 1349, the Supreme Court has stated that the Police need not arrest the accused, just because they have the power to arrest. In M.C.Abraham Vs State of Maharashtra reported in 2003[2] SCC 649, the Supreme Court has stated that even if the anticipatory bail application is dismissed, it does not mean that the Police should have to arrest the accused. In Arnesh Kumar Vs State of Bihar and another reported in [2014] 8 SCC 273, the Supreme Court has issued guidelines to the Police as to when, they should exercise the powers to arrest.

6.In such view of the matter, when there are disputed questions of fact, the prayer of the petitioner cannot be conceded. Hence, these petitions are devoid of merits and dismissed. However, the respondent Police is directed to complete the investigation in Crime No.123 of 2014 within a period of three months from the date of receipt of a copy of this order and file a Closure Report or a Charge Sheet as the case may be under due intimation to the de facto complainant, if there is no any legal impediment. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai-9.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

3.The Commissioner of Police,
Greater Chennai,
E.V.K.Sampath Road, Vepery,
Chennai-7.

4.The Deputy Commissioner of Police,
Thiagaraya Nagar Division,
Chennai-92.

5.The Assistant Commissioner of Police,
Vadapalani Sub Division,
Vadapalani, Chennai-26.

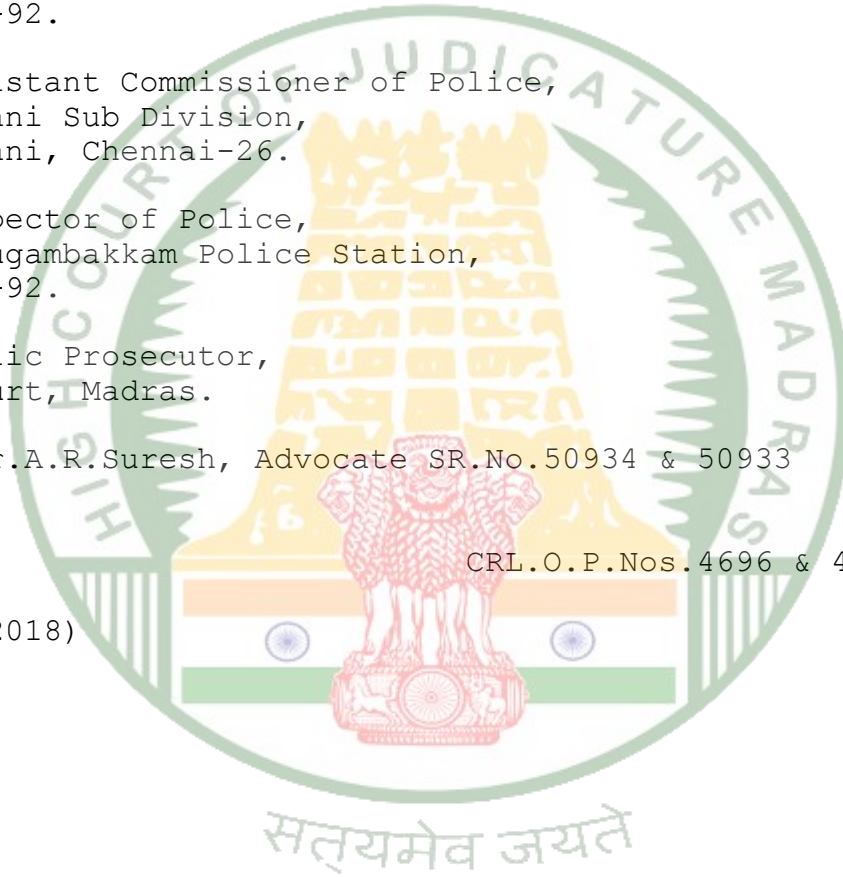
6.The Inspector of Police,
R-5 Virugambakkam Police Station,
Chennai-92.

7.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.A.R.Suresh, Advocate SR.No.50934 & 50933

CRL.O.P.Nos.4696 & 4697 of 2018

VD(CO)
GN(06/08/2018)



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