



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.[MD]No.535 of 2018andCrl.M.P(MD)Nos.7443 & 7444 of 2018

Gnanavaram

: Petitioner

Vs.

State through Inspector of Police,  
S.S.Colony Police Station,  
Madurai.

In Crime No.425 of 2013

: Respondent

**PRAYER:** Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the trial Court, hear the counsel for the petitioner / Accused set aside and dismiss the order passed by the learned Judicial Magistrate, Additional Mahila Court, Madurai, in Cr.M.P.No.1977 of 2016 dated 27.07.2018.

For Petitioner : Mr.C.Ramachandran

For Respondent : Mrs.S.Bharathi,  
Government Advocate (Crl. Side)

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**O R D E R**

This Criminal Revision Case has been filed against the order passed in Cr.M.P.No.1977 of 2016 by the learned Judicial Magistrate, Additional Mahila Court, Madurai, dated 27.07.2018.

2.Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

3.Based on the complaint preferred by the defacto complainant before the respondent police, a case has been registered against the accused in Crime No.425 of 2013 . After investigation, the respondent police has filed a charge sheet against the accused under Section 354(A) IPC and Section 4 of TNPWH Act. The learned Judicial Magistrate has taken the case on file in C.C.No.9 of 2015. During the pendency of C.C.No.9 of 2015 the revision petitioner filed a petition under Section 239 Cr.P.C., before the learned Judicial Magistrate, to discharge the revision petitioner / Accused from the charges levelled against him. After hearing the arguments, the learned Judicial Magistrate found that from the 161(3) statement,



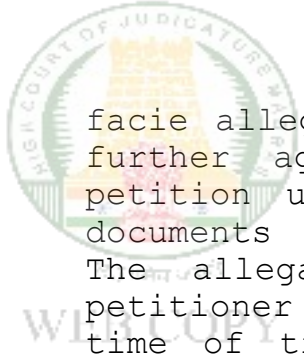
there is a strong material available to proceed the case against the Accused. By order dated 27.07.2018, the learned Judicial Magistrate dismissed the said petition. Challenging the same, the accused is before this Court with this revision.

4. The learned Counsel for the revision petitioner would submit that the date of commission of offence is in the year 2010, whereas in the complaint, the defacto complainant stated that the period of offence is from 2008 June to 2010 February and thereby the defacto complaint gave complaint before the respondent police only on 27.05.2013. It is beyond the period of limitation. Therefore, this fact has not been considered by the learned Judicial Magistrate. In Section 468 Cr.P.C. it is clearly stated that no Court shall take cognizance of a case after the expiry of period of three years, as per the offence charged against the accused. This fact has not been considered by the learned Judicial Magistrate. The learned Counsel for the petitioner has also relied on the judgment reported in **(2016) 4 MLJ (Crl) 764** in the case of **S. Balasubramaniam Vs. State, rep. by Assistant Commissioner of Police, West (Crime), Coimbatore** and therefore, the learned Judicial Magistrate failed to consider the legal position and also factual aspects and dismissed the application, which needs interference of this Court.

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that though the date of offence in between the period June 2008 and February 2010, she left the institution in the year 2010 itself and then she gave complaint in the year 2013 after lapse of 3 years, for the reason that the petitioner is the guide of the defacto complainant and taking advantage of his position, the petitioner misbehaved with the defacto complainant and also not disbursed the UGC course scholarship, which was received and returned back the amount, the defacto complainant has not accepted his sexual acts and thereby gave complaint. Therefore, the complaint is not barred by limitation and therefore, the learned Judicial Magistrate rightly considered the case and dismissed the petition and the same does not warrant interference and therefore, there is no merit in this revision.

6. Heard both sides and perused the records.

7. It is not in dispute that the defacto complainant is a research scholar and she was doing her research under the guidance of the accused. The main contention of the revision petitioner is that without any valid reason, the defacto complainant left the institution in the year 2010 itself and then she came after 3 years, in order to take vengeance on the petitioner, she gave complaint before the respondent police. So far as the question of limitation is concerned it is a mixed question of law and fact that has to be decided only after recording the evidence, not at this stage. Therefore, a reading of materials clearly shows that there is prima



facie allegation and strong material available to proceed the case further against the petitioner/ Accused. While deciding the petition under Section 239 of Cr.P.C the Court has to see the documents filed by the prosecution under Section 173 of Cr.P.C. The allegations made by the defacto complainant against the petitioner is true or false are all to be considered only at the time of trial. Further the defence taken by the petitioner / Accused need not be looked into at this stage and the same can be decided only after recording the evidence. The Judgment cited by the learned Counsel for the petitioner is not applicable to the present case on hand at this stage. Therefore, this Court does not find any reason to interfere with the order passed by the learned Judicial Magistrate and there is no merit in this revision.

8. Accordingly, the Criminal Revision Case is dismissed. Consequently connected miscellaneous petition are closed. Considering the nature of the offence involved in this case, the learned Judicial Magistrate, Additional Mahila Court, Madurai, is directed to complete the legal formalities and trial and dispose the case on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

Sd/-  
Assistant Registrar(RTI)

//True Copy//

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate,  
Additional Mahila Court, Madurai.
2. The Inspector of Police,  
S.S.Colony Police Station,  
Madurai.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
4. The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.C.Ramachandran, Advocate Sr.No.96166

RM

KM/SV/SAR1/27.12.2018/3P/6C

**Cr1.R.C. [MD] No.535 of 2018**  
**20.11.2018**