

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CrI.O.P.No.24632 of 2017

and

CrI.M.P.No.14250 of 2017

1.M.N.Bopana
2.P.S.Chengapa
3.Varun Ganapathi
4.T.M.Tharmarajan
5.Y.Kalaiselvan
6.V.R.Sivadasan
7.A.Rajendran
8.M.Suresh
9.N.Saravanan
10.E.Vasanthkumar
11.L.Jogi
12.Micheal Antony
13.D.Savari
14.S.Ashok Kumar
15.K.Tamilarasan

...Petitioners/Accused

/Vs./

Inspector of Police,
Kullakamby Police Station,
Kullakamby - 643 218. ...Respondent
(Crime No.72 of 2015)

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records connected in Crime No.72 of 2015 on the file of the respondent police and quash the same.

For Petitioners :Mr.S.Ramachandran
For Respondent :Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

All the petitioners herein have been arrayed as accused in Crime No.72 of 2015 for alleged offences under Sections 188, 430 and 431 IPC r/w Section 3 of TNPPDL Act, 1988.

2. Insofar as the offence under Section 188 IPC is concerned, the law with regard to the procedure to be adopted for an offence under Section 188 IPC has been well settled through a catena of judgments. As a matter of fact, the very procedure contemplated under Section 195 Cr.P.C., is patently

clear to the effect that a police officer cannot take cognizance of an offence falling within Sections 172 to 188 IPC and the procedure for such prosecution is contemplated only under Section 195 Cr.P.C. Consequently, the jurisdictional Court is also deprived of taking cognizance of an offence under Section 188 IPC based on a police report filed under Section 173 (2) Cr.P.C. Such an offence can be only by way of a complaint by the concerned public servant as contemplated under Section 195 Cr.P.C.

3. Insofar as the other offences for which the petitioners are implicated are concerned, it is seen that the offences came to be registered against the petitioners herein on 31.07.2015 and are still pending investigation without much progress.

4. The Hon'ble Apex Court in the decision of Abdul Rehman Antulay and others vs. R.S.Nayak and another reported in (1992) 1 SCC 225 has held that right to speedy trial flowing from Article 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision, and retrial.

5. In view of the fact that the respondent police is not empowered to proceed with the investigation for offence under Section 188 IPC and on the well laid down ratio that the investigation in FIR No.72 of 2015 has been pending for more than four years without any effective progress, thereby amounting to denial of a fair and speedy trial, this Court is of the view that the petitioner is entitled to succeed.

6. In the light of the above observations, records in Crime No.72 of 2015 on the file of the respondent police stands quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar

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Sub Assistant Registrar

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To

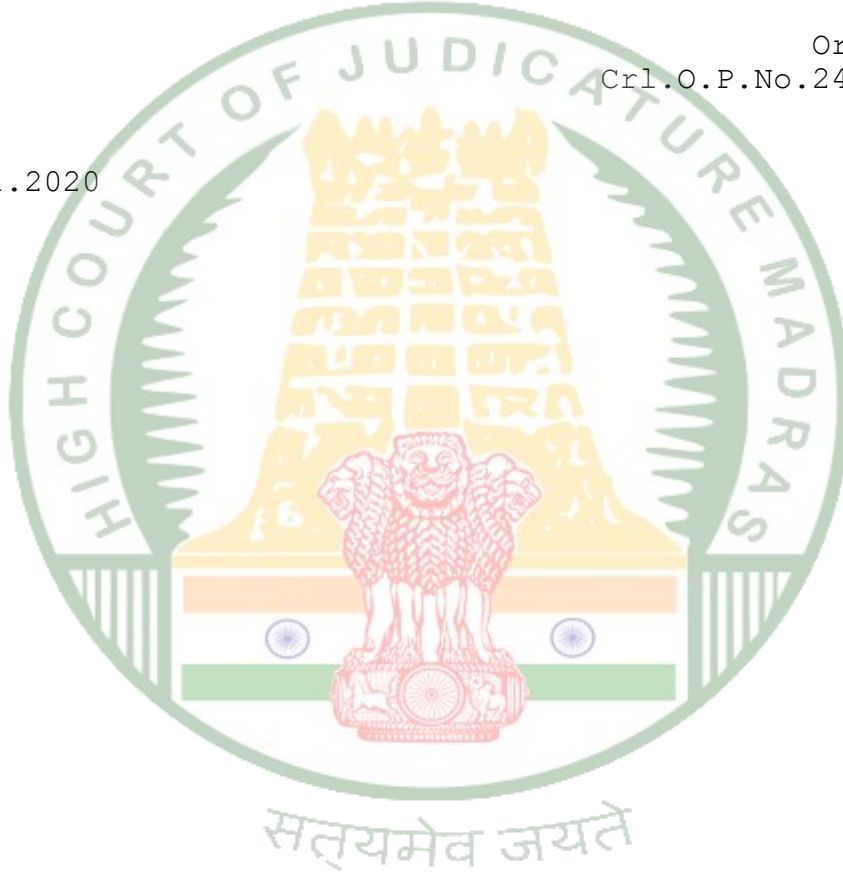
1.The Inspector of Police,
Kullakamby Police Station,
Kullakamby - 643 218.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Ramachandran, Advocate, SR.No.82593.

Order made in
Crl.O.P.No.24632 of 2017

EV(CO)
CSR: 31.01.2020



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