



Bail Slip

The Appellant/Accused namely Subburaman and Alagiri were released on bail as per order of this Court dated 26.04.2010 and made in MP.(MD).NO.3 of 2010 in Crl.RC(MD)NO.320 of 2010 and MP(MD).NO.2 of 2010 in Crl.RC.(MD).No.321 of 2010 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C.(MD)Nos.799 of 2008, 118, 320 and 321 of 2010

1.Durai Raj

2.Rajendarn

3.Balraj

4.Muthumani ... Petitioners in Crl.R.C.(MD).No799 of 2008

Kasimayan ... Petitioner in Crl.R.C.(MD).No.118 of 2010

Subburaman ... Petitioner in Crl.R.C.(MD).No.320 of 2010

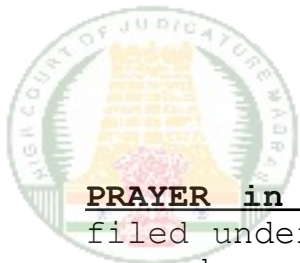
Alagiri ... Petitioner in Crl.R.C.(MD).No.321 of 2010

Vs.

The State represented by
The Inspector of Police,
Kanavilakku Police Station,
Andipatti,
Theni District.

... Respondent in all Crl.R.Cs.

PRAYER in Crl.R.C.(MD).No.799 OF 2008: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records and set aside the order of conviction and sentence rendered by the learned Judicial Magistrate cum District Munsif, Andipatti in C.C.No.147/01 by his order dated 22.10.2007 and confirmed by the Additional Sessions Judge cum Fast Track Court, Periyakulam in C.A.No.43 of 2007 by the order dated 21.08.2008.



PRAYER in Crl.R.C.(MD).No.118 OF 2010: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records and set aside the order of conviction and sentence passed by the learned Additional District Sessions Judge (Fast Track Court), Periyakulam in C.A.Nos.42 of 2007 dated 21.08.2008 in C.C.No.147 of 2001 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti dated 22.10.2007 and allow this revision and acquit the appellant from the charge leveled against the appellant.

PRAYER in Crl.R.C.(MD).No.320 OF 2010: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records and set aside the order of conviction and sentence passed by the learned Additional District Sessions Judge (Fast Track Court), Periyakulam in C.A.Nos.44 of 2007 dated 21.08.2008 in C.C.No.147 of 2001 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti dated 22.10.2007 and allow this revision and acquit the appellant from the charge levelled against the appellant.

PRAYER in Crl.R.C.(MD).No.321 OF 2010: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records and set aside the order of conviction and sentence passed by the learned Additional District Sessions Judge (Fast Track Court), Periyakulam in C.A.No.47 of 2007 dated 21.08.2008 in C.C.No.147 of 2001 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti dated 22.10.2007 and allow this revision and acquit the appellant from the charge leveled against the appellant.

For Petitioners	: Mr.N.Anandtha Padmanaban in Crl.R.C.(MD).No.799/2008
For Petitioner	: Mr.C.Arulvadivel @ Sekar in Crl.R.C.(MD).No.118/2010
For Petitioners	: Mr.K.Veluchamy in Crl.R.C.(MD).Nos.320 & 321 of 2010
For Respondent	: Mr.K.K.Ramakrishnan Additional Public Prosecutor in all Crl.R.Cs.

COMMON ORDER

These revision petitions are filed as against the judgment dated 21.08.2008 findings rendered by the Additional District and Sessions Judge, (Fast Track Court), Periyakulam, in C.A.Nos.43, 42, 44 and 47 of 2007 confirming the order passed by the learned District Munsif cum Judicial Magistrate, Andipatti in C.C.No.147 of 2001, dated 22.10.2007.

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2.The learned Trial Judge by order dated 22.10.2007 found the petitioners guilty for the offences punishable under Sections 420, 342 and 506(i) r/w Section 34 IPC and convicted and sentenced them as follows:

Accused	Penal Provisions	Punishment
A1 to A4	420, 342 and 506(i) IPC	(i)To undergo two years rigorous imprisonment with fine of Rs.1,000/, in default to undergo six months simple imprisonment under Section 420 IPC. (ii)To undergo six Months rigorous imprisonment under Section 342 IPC. (iii)To undergo six Months rigorous imprisonment under Section 506(i) IPC.
A5 to A7	420 r/w Section 34 and 506(i) IPC	(i)To undergo three years rigorous imprisonment, with fine of Rs.2,000/-, in default to undergo six months simple imprisonment under Section 420 r/w Section 34 IPC. (ii)To undergo six months rigorous imprisonment under Section 506(i) IPC.

3.The appellate Court by order dated 21.08.2008, while acquitted A1 to A4 of the offence under Section 506(i) IPC, however, confirmed the conviction and sentence for the other offences.

4.Aggrieved by the said conviction and sentence accused No.1 to 4 preferred the revision petition in Crl.R.C.(MD).No.799 of 2008; Accused No.5 preferred Crl.R.C.(MD).No.320 of 2010: Accused No.6 preferred Crl.R.C.(MD).No.118 of 2010 and the Accused No.7 preferred Crl.R.C.(MD).No.321 of 2010. Since all the revision petitions arise out of the same judgment, the matters are taken up together and disposed of by this common order.



5.It is represented by the learned Counsel appearing for the A-5 in Crl.R.C.(MD).No.320 of 2010 that pending the revision the A-5 died and therefore, the charges framed as against the A-5 abates. This fact has also been confirmed by the learned Public Prosecutor on instructions from M/s.S.Ramalakshmi, the Inspector of Police, District Crime Branch, Theni. Accordingly, Crl.R.C.(MD).No.320 of 2010 filed by A-5 stands abated.

6.The case of prosecution in brief is as follows:

The defacto complainant/P.W.1 is the Head Master of a school at Valliyoor in Tirunelveli District and A1 is a land broker and he is known to P.W.1. P.W.1 requested A1 to arrange a land in Madurai or Theni District to start a new school. A1 informed P.W.1 that he has arranged some land in Kodaikanal and asked P.W.1 to bring a sum of Rs.3,00,000/- for making an advance amount. Believing the words of A1, P.W.1 along with his brother, P.W.2, and one Thangaraj and P.W.5 went to Andipatti on 15.05.1995 at about 5.00 a.m. A1 received them and took them to the house of A2 at 10.30 a.m on 15.05.1995. In the house of A2, A3 and A4 were also present and A2 enquired P.W.1 as to whether he has brought an advance amount of Rs.3,00,000/- and, thereafter, A2 offered tea to P.W.1 his brother and those who accompanied P.W.1 and they were also given a lemon fruit. On drinking the tea, P.Ws.1, 2 and 5 fainted. Using the said opportunity, A1 to A4 took the money from P.W.1 and locked them inside the room. On regaining consisness, P.W.1 realized that they were inside a locked room and they raised alarm seeking the help of the accused. Upon alarm being raised, the door was opened by A3 along with A5 to A7, who were police officials in uniform. A5 to A7 threatened P.W.1 and others that they will register a case against them and out of fear, P.W. 1 and his brothers returned back to their native place. After returning to their native place, P.W.1 requested A1 to A4 to return the money for which they requested some time to repay the money. Believing that promise, P.W.1 returned three years thereafter, P.W.1 came to know about the news clipping about A2 and thereafter they came to Andipatti again and approached P.W.4, who was running a press at Andipatti. P.W.4 called the accused to verify about the allegation made by P.W.1 and they assured to repay the amount. Since the amount was not paid even after repeated assurance, on 19.08.1998, P.W.1 approached the Inspector of Police and Deputy Superintendent of Police, Andipatti, and lodged a complaint. Since police officials were also involved in the occurrence, the Deputy Superintendent of Police, Andipatti advised him to approach the Superintendent of Police, Theni. Accordingly, P.W.1 lodged a complaint before the Superintendent of Police, Theni, and on his direction, the Sub Inspector of Police, namely Satheeshkumar from Rajadhani Police Station examined P.W.1 and recorded his statement, but no action was taken. Thereafter, P.W.1 lodged another complaint before the District Superintendent of Police, Dindigul District on 15.02.1999 and he directed P.W.1 to contact the Superintendent of



Police. On the direction of the Superintendent of Police, the Inspector of Police, Andipatti recorded his statement and thereafter a case was registered as against the revision petitioners in Crime No.10 of 1999 on 16.02.1999 on the file of Kanavilakku Police Station, Theni District for the offences punishable under Sections 420, 342, 506(i) r/w Section 34 IPC. The investigation was conducted by the Inspector of Police, District Crime Branch, Theni District and final report was filed as against these revision petitioners as under:

(i)The accused No.1 to 4 for the offences punishable under Sections 420, 342 and 506(i) IPC.

(ii)The accused No.5,6 and 7 for the offences punishable under Sections 420, 506(i) r/w Section 34 IPC.

7.The case was taken up for trial before the learned Judicial Magistrate, Andipatti in C.C.No.147 of 2011. To prove the charges the prosecution examined 12 witnesses and marked 10 documents. Neither any witness nor any documents were marked on the side of the defence. The trial Court on appreciation of oral and documentary evidence convicted and sentenced the petitioners as stated above.

8.As against the said conviction and sentence, the petitioners preferred appeals before the Court of Session which was taken on file in C.A.Nos.42, 43, 44 and 47 of 2007 by the Additional Sessions Judge, Fast Track Court, Periyakulam and vide common order dated 21.08.2008, the Appellate Court, while acquitted A1 to A4 of the charge under Section 506(i) IPC convicted and sentenced the accused for the other offences noted above. As against the said concurrent findings these revision petitions are filed.

9.Heard Mr.N.Anantha Padmanaban, learned counsel appearing for the petitioners/Accused No.1 to 4 in Crl.R.C.(MD).No.799 of 2008; Mr.C.Arul Vadivel @ Sekar, learned counsel appearing for the petitioner/Accused No.6 in Crl.R.C.(MD).No.118 of 2010; Mr.K.Veluchamy, learned counsel appearing for the petitioners/Accused No.5 and 7 in Crl.R.C.(MD).Nos.320 and 321 of 2010 and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.

10.The learned counsel appearing for the petitioners raised the following contentions:-

10.1.The alleged occurrence had taken place on 15.05.1995, but the complaint has been lodged by P.W.1 only on 16.02.1999 nearly after four years.

10.2.Even according to the complainant, a complaint was lodged before the Superintendent of Police, Theni District and another complaint was lodged before the Deputy Superintendent of Police, Dindigul range, but those complaints were not placed before the trial Court for re-placing of the previous complaint before the trial



Court is a material defect on the side of the prosecution, which hits at the substratum of the prosecution case.

10.3.Even according to P.W.1, in his complaint dated 16.02.1999, he has not referred about the date of occurrence and the occurrence had taken place four years prior to the complaint. The complainant was not aware of the date of occurrence at the time of lodging the complaint, but has thereafter developed case stating that the occurrence had taken place on 15.05.1995, which is clearly an after thought and the same is detrimental to the prosecution version.

10.4.As per the evidence of P.W.1 and his earlier complaint dated 19.08.1998, before the Inspector of Police, Andipatti and another complaint before the Superintendent of Police, Theni, the said Superintendent of Police had directed one Satheeshkumar, of Rajadhani Police Station to conduct an enquiry. But the previous complaint as well as the statements recorded by the Satheeshkumar have not been placed before the Court which material affects the prosecution case.

10.5.The learned counsel appearing for the petitioners have relied on the material contradictions with regard to taking of money. As per the evidence of P.Ws.1 and 5, the money was taken by A2 and A4. According to P.W.2, money was taken by the police. According to P.W.3, the money was handed over by them to A1 and A2. These contradictions affect the prosecution theory as to the payment of money to the accused.

10.6.According to the case of the prosecution, P.W.1 knew A-1 and at his request, he went to Andipatti where he met A-2 to A-4 at the house of A-2. However, insofar as P.Ws.2 and 3 are concerned, they are not aware of A1 and that they came to know about the names of the accused only through P.W.4 and only thereafter the complaint was lodged. Though the prosecution has projected the case in the above manner, however, P.W.4 did not support the case of the prosecution.

10.7.P.W.2 had deposed that he lodged a complaint as against 10 persons and on the date when he was examined before the Court on 09.05.2003, he has stated that he lodged a complaint as against 10 persons and among them five persons are present before the Court and among the five persons he can identify only three persons and he is not aware of the names of the other two persons.

10.8.It is the further submission on the side of the revision petitioners that no identification parade was conducted to identify the accused.



10.9.The learned counsel appearing for the petitioners further submitted that P.W.1 has not stated about A6 in his evidence.

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10.10.The learned counsel appearing for the petitioners have relied upon the following judgments of the Honourable Supreme Court in support of their case.

(i)In the case of **Thulia Kali Vs. The State of Tamil Nadu** reported in **AIR 1973 SC 501.**

(ii)In the case of **Dilawar Singh Vs. State of Delhi** reported in **AIR 2007 SUPREME COURT 3234.**

(iii)In the case of **Kishan Singh Vs. Gurpal Singh and Others** reported in **AIR 2010 SUPREME COURT 3624.**

11.Per contra, the learned Additional Public Prosecutor submitted that the delay of four years in giving the complaint was properly explained by the prosecution. According to him, P.W.1 in his evidence stated that he has taken some steps to collect the money from the accused and he was negotiating with them for three years and thereafter made a complainant before the concerned Jurisdictional police Station, namely, Andipatti Police station on 19.08.1998. Since some of the accused are police officials, the police have not acted upon his complaint and therefore, he gave another complaint before the Superintendent of Police, Theni District. The Superintendent of Police, Theni District had directed the Inspector of Police, Rajadhani Police Station one Satheeshkumar to enquire into the complaint. The said Satheeshkumar, after conducting preliminary enquiry, directed P.W.1/complainant to come after one month and assured him of proper action and therefore, the complainant was waiting for his call. Since there was no response from Satheesh Kumar even after two months, he met the Deputy Superintendent of Police, Theni District, but the Deputy Superintendent of Police advised him to approach the Superintendent of Police, Theni District and since no steps were taken, he met the District Superintendent of Police, Dindigul District and lodged another complaint on 15.02.1999 which was forwarded to Kanavilakku Police Station and the same was registered as Crime No.10 of 1999 on 16.02.1999 as against these petitioners. Since some of the accused happen to be the police officers, there was a delay in taking proper action on the complaint of P.W.1 and therefore, this delay cannot be put agaist the prosecution to disbelieve the case.

12.The learned Additional Public Prosecutor appearing for the State further submitted that the Courts below have rightly accepted the explanation offered by the prosecution through the deposition of



the complainant for the delay and hence convicted the petitioners.

13.Insofar as the earlier complaints are concerned it is submitted that the lapse on the part of the investigation officer in collecting the earlier complaint is not a material defect to disbelieve the case of the prosecution.

14.The learned Additional Public Prosecutor, by relying upon the judgment of the Honourable Supreme Court reported in **CDJ 2003 SC 622** contended that the identification of the accused in the Court itself is enough and it can be taken as substantive piece of evidence and it will not affect the case of the prosecution.

15.The learned Additional Public Prosecutor further submitted that the contradiction referred by the petitioners are not material contradiction to be held against the prosecution.

16.The learned Additional Public Prosecutor by referring to the evidence of P.Ws.1, 2, 3 and 8 have narrated the incidents in a cogent manner and through the evidence of eye witness, the prosecution has established their case beyond any reasonable doubt and, therefore, there is no reason to interfere with the concurrent findings rendered by the Courts below.

17.Heard the learned counsel on either side and perused the materials placed before this court.

18.This is a case of cheating and the case of the prosecution, through the evidence of P.W.1 is that, believing the words of the accused, P.W.1 arranged for funds to purchase lands at Kodaikanal and that due to the inducement of the accused, P.W.1, accompanied by P.W.s 2 and 3, carrying a sum of Rs.3,00,000/= accompanied A-1 to Kodaikanal, where they met A-2 and in the course of interaction, on the offering of tea by A-2, which they consumed, they fell unconscious and on waking up, they found that the amount missing and that they found themselves being threatened by A-1 to A-4 accompanied by A-5 to A-7. Thereafter, P.W.1 along with the other witnesses returned and, thereafter, P.W.1 approached A-1 and demanded to get back his money. In spite of several assurances given by A-1 over a period of three years since 15.5.1995, since no amount was forthcoming, P.W.1 lodged the complaint with the Inspector of Police, Andipatti Police Station on 19.08.98. However, since there was no action on the said complaint, a complaint was made before the Deputy Superintendent of Police, Theni, who forwarded the complaint to the Inspector of Police, Rajadhani Police Station. Even thereafter, there was no fruitful action, and therefore, P.W.1, approached the Deputy Superintendent of Police, Dindigul, which was forwarded to Kanavilakku Police Station, which was ultimately culminated in the registration of the case on 16.2.1999.



19.A perusal of the testimony of P.W.1 clearly emboldens the stand of the appellant that P.W.1 was not aware of the date of occurrence and the same is not reflected in the complaint as well. However, after a lapse of four years, when the complaint is lodged, the date of occurrence finds a mention as 15.5.1995. Further, when P.W.1 is alleged to have lost Rs.3,00,000/-, what prompted P.W.1 to remain silent is not known and the reason attributed by P.W.1 that he was pursuing the matter with A-1 himself is well short of belief. Further, the explanation offered by P.W.1 for lodging the complaint after four years does not inspire the confidence of this Court and what was the circumstance that prompted P.W.1 to lodge the complaint after four years is also not clear. The prosecution has miserably failed to establish the proper reason for the delay in lodging the complaint. In this regard, it is useful to quote the testimony of P.W.1, which is as under :-

“நாங்கள் உயிருக்கு பயந்து ஊர் வந்து விட்டோம், அதன் பிறகு ஹை நபர்களிடம் பலமுறை வந்து கேட்ட பிறகும் சாக்குபோக்கு சொல்லியும் மந்திர சக்தியால் இரண்டு மடங்கு பணத்தை விரைவில் தந்து விடுவதாகவும் கூறினார்கள், துரைராஜ் இதை போன்று வேறு யாராவது பணத்தை கொண்டு வரும் போது முத்துமணியிடம் வாங்கி தந்து விடுகிறேன் என்று கூறி ஏமாற்றி வந்தார்.”

20. The contradictions in the testimony of P.W.s throws a serious doubt in the case of the prosecution. Had the transaction been purely purchase of land for which the accused have accepted money and neither offered any land nor returned the money, the transaction would be purely civil in nature and to bring the matter within the criminal nature, on the basis of fabricated materials, the criminal law has been set in motion.

21. Even if this Court is to accept the prosecution version relating to lodging of a complaint before the Inspector of Police, Andipatti Police Station on 19.8.1998 and, thereafter, the complaint before the Superintendent of Police, Theni on 23.11.1998, which was forward to the Sub-Inspector of Police, Rajadhani Police Station, those complaints, which are the substratum of the continuity of the criminal action, have not been placed before the court below. No explanation for not placing the said complaints at the time of trial is forthcoming from the prosecution. The explanation attributed by the prosecution only lingers on the involvement of police officers in the offence due to which the law enforcement machinery has not properly, is far from acceptance. If really the police officials were involved in the said offence, what is the action that has been taken against them on the administrative side has also not been placed before the Court. Mere submission that due to the involvement of police officials and due to their acts in not producing the complaints, the prosecution's hands were tied and they were not able to place the complaints before the court below is far



officers, who were alleged to have been entrusted with the investigation of the complaint given by P.W.1 have not been examined and no explanation for their non-examination has been placed before the court by the prosecution.

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22.It is relevant to refer the Judgment of the Honourable Supreme Court, in the case of ***Thulia Kali Vs. The State of Tamil Nadu*** reported in ***AIR 1973 SC 501*** wherein Honourable Supreme Court in Para 12 is Stated as follows.

"12.It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970 by Valanjiaraju, it is, not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came, to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused: The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first



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in- formation report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story As a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

23. The decision of the Honourable Supreme Court in the case of ***Dilawar Singh Vs. State of Delhi*** reported in ***AIR 2007 SUPREME COURT 3234***, more specifically, paragraph Nos.8 and 9 are as follows:

"8.In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case. In *Thulia Kali v. The State of Tamil Nadu* (AIR 1973 SC 501), it was held that the delay in lodging the first



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information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. In *Ram Jag and others v. The State of U.P.* (AIR 1974 SC 606) the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive for implicating the accused and/or when plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution.

9. The complainant has attempted to explain the delay by stating that the matter was reported to the police but the police did not take any action. Such statement can hardly be taken to have explained the delay. It is the simplest of things to contend that the police, though report had been lodged with it, had not taken any steps. But it has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case. The principle has been statutorily recognised in Section 210 of the Cr.P.C. Which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the G.R. Case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment. The provisions of Section 210, Cr.P.C., are mandatory in nature. It may be true that non-compliance of the provisions of Section 210, Cr.P.C., is not ipso facto fatal to the prosecution because of the provision of Section

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irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the non-production of the records from the police. Delay in filing the complaint because of police inaction has to be explained by calling for the records from the police was explained by this Court in *Khedu Mohton and others v. State of Bihar* (AIR 1971 SC 66). Where the Court took exception to the fact that the complaint lodged with the police had not been summoned or proved, no satisfactory proof of any such complaint had been adduced before the Court, and none of the documents as would have become available under Sec. 173, Cr. P.C., had also been brought on record."

24. Yet another decision of the Honourable Supreme Court in the case of ***Kishan Singh Vs. Gural Singh and Others*** reported in ***AIR 2010 SUPREME COURT 3624*** in Paragraph Nos.20 to 24 are as follows:

"20. In view of the above, the Judgment and order of the High Court dated 13.02.2009 is not sustainable in the eyes of law and is liable to be set aside. However, the facts and circumstances of the case do not warrant so. The agreement to sell in favour of the appellants' father is dated 22.10.1988 and sale deed was to be executed and registered by 15.06.1989. The respondent Nos. 1 to 4 filed Civil suit No. 60/1989 in 1989. It is difficult to believe that the appellants' father was not aware of the pendency of that suit. No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of Kishan Singh, i.e. 15.06.1989, the appellants' father did not file the suit for specific performance which was subsequently filed on 6.2.1996 as Civil Suit No. 81/1996. Even if it is presumed that Kishan Singh was not aware of pendency of suit filed by the respondent Nos. 1 to 4, no explanation could be furnished that in case, the appellants' father filed another suit No. 1075/1996 for setting aside the decree dated 8.5.1996 in Civil Suit no.60/1989, why did he wait till the decision of that suit for lodging FIR, as



the civil and criminal proceedings could have proceeded simultaneously. The FIR has been filed only on 23.07.2002 i.e. after filing the RFA No. 2488/2002 before the High Court on 15.07.2002. Therefore, there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation whatsoever for the same.

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide: Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors.,



23.The case before us relates to a question of the genuineness of the agreement to sell dated 4.1.1988. The said agreement was between Kishori Lal and respondents and according to the terms of the said agreement, the sale deed was to be executed by 10.6.1989. As the sale deed was not executed within the said time, suit for specific performance was filed by the other party in 1989 which was decreed in 1996. So far as the present appellants are concerned, agreement to sell dated 22.10.1988 was executed in favour of their father and the sale deed was to be executed by 15.6.1989. No action was taken till 1996 for non-execution of the sale deed. The appellants' father approached the court after 7 years by filing Suit No.81/1996 for specific performance. However, by that time, the suit filed by the present respondents stood decreed. The appellants' father filed another Suit No.1075/96 for setting aside the judgment and decree passed in favour of the respondents 1 to 4. The said suit was dismissed by the Additional District Judge (Senior Division), Khanna on 10.6.2002. Subsequently, the appellants preferred RFA No. 2488/02 on 15.7.2002 against the aforesaid order, and the said appeal is still pending before the Punjab & Haryana High Court.

24.It is to be noted that the appellants' father Kishan Singh lodged FIR No.144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120-B IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No.1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law."



25. On the basis of the law laid down by the Apex Court, it is clear from the case of the prosecution that P.W.1 had approached A-1 for purchasing land and had taken a sum of Rs.3,00,000/= and accompanied A-1 to Kodaikanal, where they met A-2 to A-4 and under the guise of offering tea, P.W.1 and the other witnesses were left unconscious and the amount of Rs.3,00,000/-, which they were carrying was taken away by A-1 to A-4 with undue threat from A-5 to A-7. It is to be pointed out here that the case of the prosecution is that sedatives were used in the tea to make P.W.1 and other witnesses unconscious. If that is really to be accepted, it is the bounden duty of the prosecution to establish from where the sedatives, alleged to have been mixed in the tea consumed by P.W.1 and other witnesses, was purchased. In the absence of any connecting link between the accused and the sedatives used, mere assertion that sedatives were mixed in the tea to make the witnesses unconscious does not merit acceptance. Further, no evidence is placed on record by the prosecution to link A-5 to A-7 in the commission of the offence. The link between A-1 to A-4 and A-5 to A-7 is a necessity for bringing A-5 to A-7 as accused. However, no evidence worthwhile has been placed in this regard by the prosecution to establish their connection in this case, except saying that on the witnesses waking up, the door was opened by A-5 to A-7, who claimed to be police officials and who threatened the witnesses with dire consequences, if they try to pursue their efforts to retrieve their money.

26. The other lacunae that stares at the face of the prosecution is the identification of the accused in court by witnesses. It is the submission of the learned Addl. Public Prosecutor, by placing reliance upon the decision of Hon'ble Supreme Court in **CDJ 2003 SC 622** that P.W.1 identified the accused during the course of trial and identification in court is a substantive piece of evidence.

27. It is to be pointed out here that P.W.1 and the other witnesses have met A-2 to A-7 for the first time in Kodaikanal and that too for a very short duration. After such meeting, there was no occasion for them to meet A-2 to A-7 and they had thereafter seen them only in court during trial, that too after a period of almost 5 years. This Court is at a loss to understand as to how the witnesses were able to identify A-2 to A-7 after a period of almost five years. It is to be pointed out that no identification parade was conducted to enable the prosecution witnesses to identify the accused. The deposition of P.W.s 1 to 3 were taken during the year 2003 and the alleged date of occurrence is 15.5.1995, which is almost eight years. The prudent approach for the prosecution/investigation agency would have been to conduct a test identification parade to have the accused identified by the witnesses. However, for reasons best known to the prosecution, no

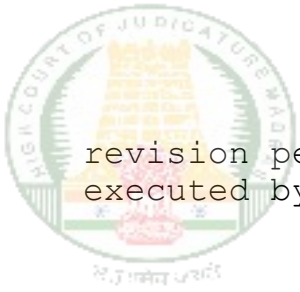


identification parade was conducted. It is true that identification in court is a substantive evidence. Equally so, this Court is bound to consider the whole aspect of the matter to come to a conclusion and not take the identification in isolation to arrive at a finding. Further, there are lot of contradictions in the identification of the accused by the witnesses. P.W.4 was not able to identify A-5 to A-7, who, it is alleged by the prosecution, claimed themselves to be police officers. Therefore, to place reliance on the substantive identification of the accused in court, on the facts and circumstances of the case, conduct of test identification parade would have been the prudent approach of the prosecution, which they have miserably failed to do and which strikes at the root of the prosecution case.

28.Yet another evidence that falls flat destroying the prosecution case is the place in which tea is said to have been served to the witnesses. While P.W.s 1 and 5 claim that tea was served, P.W.s 2, 3 and 4 claim that they were served with tea. Further, P.W.s 1, 2, 4 and 5 claim that tea was served in the ground floor, P.W.3 claims that tea was served in the first floor of the house. There is also a lot of contradiction as to whether the witnesses met A-1 to A-3 at Andipatti bus stand or at the house. Similar contradiction also looms large with regard to the person, who had taken the money, whether money was taken by A-1 and A-2 or by A-5 to A-7. These contradictions, though may at first glance look minor, however, on an entire conspectus of the case, these contradictions belie the version projected by the prosecution.

29.On an overall consideration of the materials available on record, the delay in lodging the complaint, which having not been properly examined coupled with the non-conduct of test identification parade to identify the accused and the further fact that contradiction in the evidence of the witnesses galore, this Court is left with no other alternative but to come to the only conclusion that the prosecution have not proved their case in the manner known to law. Therefore, the benefit flowing from the investigative lacunae deserves to be given to the accused and, accordingly, this criminal appeal is liable to be allowed.

30. Accordingly, the Crl. R.C.Nos.799 of 2008, 118, 320 and 321 of 2010 are allowed setting aside the conviction and sentence imposed on the appellants by the learned District Munsif-cum-Judicial Magistrate, Andipatti, in C.C.No.147 of 01 vide order dated 22.10.2007 as confirmed by the learned Additional Sessions Judge, Fast Track Court, Periyakulam in C.A. Nos.43, 42, 44 and 47 of 2007, vide order dated 21.08.08. However, insofar as Crl. R.C. No.320 of 2010, the revision petitioner having died pending the revision, the revision is dismissed with costs. Fine amount, if any, paid by the



revision petitioners shall be refunded to them. Bail bonds, if any, executed by the revision petitioners shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsg

To

- 1.The learned Judicial Magistrate
cum District Munsif,
Andipatti.
- 2.The Additional Sessions Judge
cum Fast Track Court,
Periyakulam.
- 3.The Inspector of Police,
Kanavilakku Police Station,
Andipatti,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.C.ArulVadivel alias Sekar, Advocate sr.86200

Crl.R.C.(MD)Nos.799 of 2008,
118, 320 and 321 of 2010
10.09.2019

NR(22/07/2020) 18P C