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Crl.R.C.(MD)No.910 of 2021:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C. (MD)Nos.910, 912 & 906 of 2021

and

Crl.M.P (MD)Nos.10899, 10908 & 10887 of 2021

Crl.R.C. (MD)No.910 of 2021:

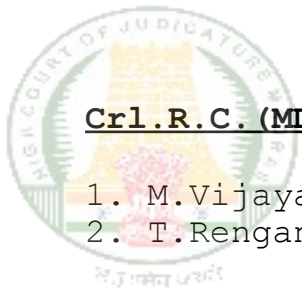
1. M.Vijayakumar	
2. T.Renganathan	... Petitioners/ Respondent Nos. 1&2/ Accused Nos. 1&2
	Vs.
1.The Inspector of Police, District Crime Branch, Karur, Karur District.	... 1 st Respondent/ Petitioner/Complainant
2. M.Raja	... 2 nd Respondent/ 2 nd Respondent / Accused No.3
3.S.Padmanaban S/o.Sudharsan, Chief Manager Rtd., State Bank of India, (Vangal Branch) Karur District. (R.3 <i>Suo motu</i> impleaded as per order of this Court dated 29.03.2022 in Crl.R.C.(MD)No.910 of 2021)	... 3 rd Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in CMP.No.5789 of 2019 in C.C.No.494 of 2006, on the file of Judicial Magistrate No.2, Karur, dated 26.10.2021 and set aside the same.

For Petitioners : Mr.R.Sundar

For Respondents : Mrs.M.Aasha
Government Advocate (Criminal Side) for R.1

Mr.V.P.Rajan for R.3



Crl.R.C. (MD)No.912 of 2021:

1. M.Vijayakumar
2. T.Renganathan

... Petitioners/
Respondent Nos. 1&2/
Accused Nos. 1&2

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Vs.

1.The Inspector of Police,
District Crime Branch,
Karur,
Karur District.

... 1st Respondent/
Petitioner/
Complainant
... 2nd Respondent/
2nd Respondent
Accused No.3

2. M.Raja

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in CMP.No.5788 of 2019 in C.C.No.495 of 2006, on the file of Judicial Magistrate No.2, Karur, dated 26.10.2021 and set aside the same.

For Petitioners : Mr.R.Sundar

For Respondents : Mrs.M.Aasha

Government Advocate (Criminal Side) for R.1

Crl.R.C. (MD)No.906 of 2021:

1. M.Vijayakumar
2. T.Renganathan

... Petitioners/
Respondent Nos. 1&2/
Accused Nos. 1&2

Vs.

1.The Inspector of Police,
District Crime Branch,
Karur,
Karur District.

... 1st Respondent/
Petitioner/
Complainant
... 2nd Respondent/
2nd Respondent
Accused No.3

2. M.Raja

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in CMP.No.5787 of 2019 in C.C.Nos.496 of 2006, on the file of Judicial Magistrate No.2, Karur, dated 26.10.2021 and set aside the same.



For Petitioners : Mr.R.Sundar

For Respondents : Mrs.M.Aasha
Government Advocate (Criminal Side) for R.1

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COMMON ORDER

These Criminal Revision Cases have been filed as against the order passed in CMP.Nos.5789, 5788, 5787 of 2019 in C.C.Nos.494, 495 & 496 of 2006 on the file of Judicial Magistrate No.2, Karur, dated 26.10.2021, thereby, allow this petition filed by the prosecution under Section 216 Cr.P.C.

2. The petitioners are accused in the complaint lodged by the third respondent, the first respondent registered a case in Crime No.5 of 2003 for the offences under Sections 406, 408, 409, 468, 471 and 420 IPC as against the petitioners and the second respondent herein. Alleging that during the years, 1998 - 2001, A1 and A2 were working as Branch Manager and Assistant Manager and A.3 was working as an Assistant in the State Bank of India, Vangal Branch in Karur District, they were all entrusted with the Bank money and had dominion over the bank money and permitted by the superior officers of the State Bank of India to deliver the bank money for all kinds of loans. During audit, it was found that some of the loan documents are not available and no such queries were available given under Section. The persons named have misappropriate the public money. Further, alleged that from the year 1999 to 2001 documents were created in their names by the accused persons to cheat bank money to the tune of Rs.16,20,000/- (Rupees Sixteen Lakhs and Twenty Thousand only). After completion of investigation the first respondent filed the final report and the same has been taken cognizance in C.C.Nos. 494 , 495 and 496 of 2006 by the learned Judicial Magistrate No.II, Karur. After a period of 12 years it is found that the vital documents which are necessary to establish to bring the charges to home were added along with the final report. Therefore, the first respondent filed a petition to mark those documents to prove the case of the prosecution. However, it was dismissed on the ground that it was filed belatedly. It was challenged before this Court in Crl.O.P(MD)No.17431 and 17433 of 2016 and this Court allowed the petition is as follows:-

"20. It is pertinent to note that this is a case of misappropriation, where huge amount of public money was swindled by the accused persons. Without considering the veracity of the case, the learned Magistrate has simply dismissed the applications on the ground that those applications were filed belatedly and those documents were produced

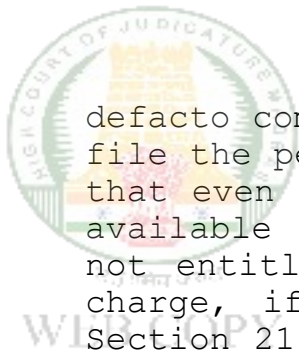


belatedly. It is the specific case of the defacto complainant that those documents have already been submitted to the investigating agency and the investigating agency had deliberately failed to produce those documents before the Court. The fact that the respondent Police have not filed any appeal as against the order of the learned Magistrate also supports the case of the defacto complainant.

21. In view of the foregoing discussions, the impugned orders are liable to be set aside and the same are accordingly set aside. The learned Judicial Magistrate No.II, Karur is hereby directed to entertain the petitions filed by the prosecution by receiving the documents and after verifying its genuineness and applicability, proceed with the case further in the manner known to law. Since, the charge sheets were filed in the year 2006, the learned Magistrate is directed to proceed with the case on day to day basis and dispose of the same as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order and report compliance to the Registry of this Court.

22. It appears that the witnesses have not been examined in this case and trial has not been proceeded further. Therefore, copies of the documents, which are now proposed to be marked, shall be furnished to the accused as contemplated under Section 205 Cr.P.C, enabling them to cross examine the witnesses."

3. On the basis of documents which were permitted and marked by the prosecution the first respondent filed a petition under Section 216 Cr.P.C to alter the charge from Sections 465, 471 read with 468 and 409 IPC to Sections 120(b), 465, 468, 471, 409 and 477(A) IPC and the Court below after considering the petition and counter filed by the petitioners herein, had allowed the same. Aggrieved by the same, only on the ground that the complaint was made with a delay on 04.06.2003 file occurrence took place from the year 1999-2001 FIR has been registered only for the offences under Sections 406, 408, 409, 468, 471 and 420 IPC. The investigation has been completed only after three years and filed the final report only for the charges under Sections 464 r/w 465 and 471 r/w 468 and 409 IPC. Therefore, there is absolutely no material to attract the offence under Section 120(b), 465, 468, 471, 409 and 477(a) IPC. It is settled proposition of law that neither the prosecution nor the



defacto complainant has got any right on under Section 216 Cr.P.C to file the petition requiring the Court to frame Additional charge and that even though P.W.1 or prosecution finds number of materials are available in the case for framing additional charges and they are not entitled to file this parties and the Court has to frame any charge, if it finds necessary. Section 221 is jointly read with Section 216 Cr.P.C will be seen even though specific charge was not framed and in the mean while if the Court is able to find out in offence is made out as against the accused on the apprehension of the offence, he may be convinced for the offence, though he was not charged with it.

4. Admittedly, in the case on hand, the third respondent herein while investigation handed over the documents to the Investigation Agency failed to produce the same along with the final report. Subsequently, they filed a petition to receive those documents and the same was allowed by this Court. On the strength of those documents which have filed by the Investigation Agency under the charges for the offences under Sections aforementioned are clearly made out and the Court below rightly allowed the petition. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below. All the Criminal Revision Cases are dismissed. The Court below is directed to follow the direction issued by this Court, in Crl.O.P.1743 of 2016 by order, dated 21.06.2019 and complete the trial as directed by this Court. It is needless to say that the respondents 1 and 2 are always at liberty to examine the prosecution witnesses on receipt of the documents, which were marked by the prosecution. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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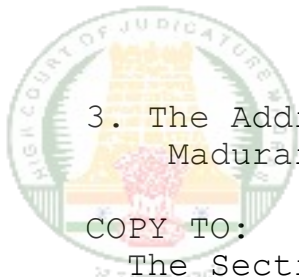
/ /2022

Sub Assistant Registrar(CS)

Mga

To:-

- 1.The Judicial Magistrate No.2, Karur,
2. The Inspector of Police,
District Crime Branch,
Karur, Karur District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Section officer, Criminal Section,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.R.SUNDAR, Advocate (SR-15284[F] dated 30/03/2022)

Crl.R.C.(MD)Nos.910, 912 & 906 of 2021
29.03.2022

_RD(09.05.2022) 6P 7C