



Crl.O.P.(MD)No.17564 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 31.08.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.17564 of 2022

and

Crl.M.P.(MD) No.11875 of 2022

1.S.Nagendran
2.A.Marimuthu

... Petitioners
/Accused 1 & 2

Vs.

1. The Inspector of Police,
D2, Perungudi Police Station,
Madurai District, Madurai.
(Crime No.118 of 2013)
2. Late C.Rajagopal

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the First Information Report in Crime No.118 of 2013 dated 14.05.2013 on the file of the first respondent and quash the same as illegal.

For Petitioner : Ms.Seeni Syed Amma
for M/s.T.Lajapathi Roy

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R1
Mr.G.Karthik for R2



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Crl.O.P.(MD)No.17564 of 2022

ORDER

This petition is filed seeking for quashment of FIR in in Crime No.118 of 2013 dated 14.05.2013 pending on the file of the first respondent police registered against the petitioners under Sections 147, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act.

2. According to the prosecution, the defacto complainant had mortgaged the land belonging to his brother's wife by name Subbulakshmi to the first petitioner while borrowing a loan of Rs.3 lakhs. As a security, the first petitioner obtained power of attorney and basing on which, a sale agreement was executed as if defacto complainant has agreed to sell the land. When the defacto complainant demanded the documents pertaining to the loan agreement, the petitioners have threatened the defacto complainant with dire consequences. Based on a complaint lodged by the defacto complainant, a case has been registered against the petitioners under Sections 147, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Charging



Crl.O.P.(MD)No.17564 of 2022

Exorbitant Interest Act.

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3. Learned counsel for the petitioner submits that the second petitioner has advanced a loan to his sister-in-law, who is the second respondent/defacto complainant. When she has refused to repay the loan, the second petitioner had initiated complaint under Section 138 of Negotiable Instrument Act in STC No.601 of 2016 on the file of the learned Judicial FTC No.II, Madurai and in order to escape from the criminal liability a false case has been filed by the defacto complainant. He further contended that as per Section 468 of Cr.P.C., the first respondent police failed to file charge sheet within three years from the date of offence i.e. 14.05.2013 and thereby, there is a bar from taking cognizance of the offence.

4. The maximum punishment for the above offence under Section 147 of IPC is imprisonment of two years or fine or both whereas for the offence under Section 506(i), the maximum punishment is imprisonment of two years or fine or both and the maximum sentence can be awarded for offence under Section 4 of Tamil Nadu Prohibition of Charging



CrI.O.P.(MD)No.17564 of 2022

Exorbitant Interest Act is up to three years and fine which may extend up to Rs.30,000/-.

5. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceeding in the case of *State of Haryana v. Bhajanlal* reported in *1992 SCC (Cri) 426*, which reads as follows:-

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the



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Crl.O.P.(MD)No.17564 of 2022

accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.



Crl.O.P.(MD)No.17564 of 2022

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. As per the above law laid down by the Hon'ble Apex Court, as referred above, in case if there is a specific bar under any statute, the charge sheet is required to be quashed. In the case on hand, as already observed, there is a bar specifically imposed under statute under Section 468 of Cr.P.C. from taking cognizance in case if the charge sheet is not filed within three years in respect of the offences alleged against the petitioners. Therefore, FIR is required to be quashed. Since, learned counsel for the petitioners though mentioned other grounds seeking quashment of FIR, they are not relevant to discuss since this Court has



Crl.O.P.(MD)No.17564 of 2022

already come to the conclusion that the FIR is liable to be quashed under
Section 468 of Cr.P.C.

7. In the result, this Criminal Original Petition is allowed and the entire proceedings in Crime No.118 of 2013 dated 14.05.2013 pending on the file of the first respondent police are hereby quashed. Consequently, connected miscellaneous petition is closed.

31.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

1. The Inspector of Police,
D2, Perungudi Police Station,
Madurai District, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.17564 of 2022

DR.D.NAGARJUN, J.

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Crl.O.P.(MD)No.17564 of 2022

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