BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.06.2023

Pronounced on : 10.07.2023

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)Nos.19858 of 2018 & 22711 of 2018, 2202 of 2020
and 3077 of 2020
and
Crl.M.P(MD)Nos.9100 &9101 of 2018, 10679 & 10680 of 2018,
1124 & 1125 of 2020 and 1623 & 1624 of 2020

Crl.O.P(MD)No.19858 of 2018:

Kalyanasundaram .. Petitioner/Accused No.3

Vs.

1.The State Represented by,
The Inspector of Police,
District Crime Branch,
Madurai District.
(Crime No.31 of 2012) .. 1^{st} Respondent / Complainant

2.Murugan(died) .. 2^{nd} Respondent/Defacto Complainant

3.M.Saraswathi

4.M.Kannan

5.M.Palanikumar .. Impleaded respondents

[R2 to R4 impleaded as per the order dated 22.02.2023 in Crl.M.P(MD)No. 1319 of 2023 by KKRKJ]

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.C.No.52 of 2015 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same against the petitioner.

For Petitioner : Mr.Niranjan S Kumar

For R1 : Mr.M.Muthumanikkam
Government Advocate (Criminal side)

For R3 to R5 :Mr.R.Anand

Crl.O.P(MD)No.22711 of 2018:

P.Minnalkodi .. Petitioner/Accused No.2

Vs.

1.The State Represented by,
The Inspector of Police,
District Crime Branch,
Madurai District.
(Crime No.31 of 2012) .. 1^{st} Respondent / Complainant

2.Murugan(died) .. 2nd Respondent/Defacto Complainant

3.M.Saraswathi

4.M.Kannan

5.M.Palanikumar .. Impleaded respondents

[R2 to R4 impleaded as per the order dated 22.02.2023 in Crl.M.P(MD)No.1318 of 2023 by KKRKJ]

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.C.No.52 of 2015 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same against the petitioner alone.

For Petitioner : Mr.Niranjan S Kumar

For R1 : Mr.M.Muthumanikkam
Government Advocate (Criminal side)

For R3 to R5 : Mr.R.Anand

Crl.O.P(MD)No.2202 of 2020:

Kalyanasundaram .. Petitioner/Accused No.5

Vs.

1.Murugan(died) .. 1st Respondent/ Complainant

2.M.Saraswathi

3.M.Kannan

4.M.Palanikumar .. Impleaded respondents

[R3 to R5 impleaded as per the order dated 22.2.2023 in Crl.M.P(MD)No.1317 of 2023 by KKRKJ]

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the private complaint in C.C.No.81 of 2018 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same against the petitioner alone.

For Petitioner : Mr.Niranjan S Kumar

For R2 to R4 : Mr.R.Anand

<u>Crl.O.P(MD)No.3077 of 2020:</u>

Raman Petitioner/Accused No.4

Vs.

1.The State Represented by,
The Inspector of Police,
District Crime Branch,
Madurai District.
(Crime No.31 of 2012) .. 1st respondent/Complainant

2.Murugan(died) ..2nd Respondent/ Defacto Complainant

3.M.Saraswathi

4.M.Kannan

5.M.Palanikumar .. Impleaded respondents

[R3 to R5 impleaded as per the order dated 22.02.2023 in Crl.M.P(MD)No.1320 of 2023 by KKRKJ]

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the private complaint in C.C.No.52 of 2015 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same against the petitioner alone.

For Petitioner : Mr.K.Govindarajan
for Mr.V.Balaji

For R1 : Mr.M.Muthumanikkam
Government Advocate(Criminal side)

For R3 to R5 : Mr.R.Anand

COMMON ORDER

Since the complaint in these petitions are against the same offence and against the same occurrence, these petitions are taken up together and disposed of by way of this common order.

The first respondent police in Crl.O.P(MD)No.3077 of 2020, Crl.O.P(MD)No.19858 of 2018 and Crl.O.P(MD)No.22711 of 2018 has registered a case in Crime No.31 of 2012 for the alleged offence under Sections 120B, 406, 420 and 506(i) IPC and Sections 3 & 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. The same was altered into Sections 199, 120B, 406, 420, 468, 471 and 506(i) IPC and Sections 3&4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, upon receipt of the complaint from the second respondent against the accused persons including the present petitioners. Challenging the same, the petitioners have filed these Criminal Original Petitions.

2. ***The allegations in the final report filed by the first respondent police, which was taken on file in C.C.No.54 of 2015, are as follows:***

2.1. The second respondent Murugan/defacto complainant borrowed a sum of Rs.16 lakhs in the year 1999 from the first accused(Kannan) in C.C.No.52 of 2015, a close relative of the second accused (Minnalkodi) at the rate of interest of 7% per month. The remaining

Accused Nos.3 to 7 are the close relatives and friends of both the first and second accused. They jointly conducted illegal 'Kandhuvatti' (exorbitant interest) business. The learned counsel for the defacto complainant submitted that even after making the payment of interest, all the accused have demanded further enhanced exorbitant interest and asked to execute the general power deed and sale agreement relating to his family members' various properties as stated below:

Date and Nature of Document	***Doc No.***	***Name of Executant***	***In favour of***	***Witness***
22.05.2000-General Power of Attorney	161/2000 Vedarpuliyankulam property (1 acre and 24 cents) Nilaiyur Property (49 cents)	Complainant	A5-Rasu	
21.06.2000-General Power of Attorney	184/2000 House property	Complainant	A2-Minnalkodi	A5-Rasu
21.06.2000-General Power of Attorney	185/2000 House Property	Complainant's son Palanikumar	A4-Raman	A5-Rasu

27.12.2000-sale agreement	3441/2000 House property	A5-Minnalkodi	A5-Vallavan	A1-Kannan A4-Raman
27.12.2000-sale agreement	3442/2000 House property	A4 -Raman as GPA	A3-Kalyanasundaram	A1-Kannan A5-Vallavan (Rasu)

2.2. After obtaining the above documents, all the accused have calculated Rs.35 lakhs as interest for one year and clandestinely transferred the property in their name to satisfy the said interest amount as stated below:

Date and Nature of Document	***Doc No.***	***Name of Executant***	***In favour of***	***Witness***
10.12.2001-sale deed	2713/2001 House property	A2-Minnalkodi as GPA	A5-Vallavan	A5- Rasu
10.12.2001-sale deed	2712/2001 House property	A4- Raman as GPA	A3-Kalyanasundaram	A1-Kannan A6-Pottukaran
10.12.2001-sale deed	102/2001 Vedarpuliyankulam Property	A5-Rasu as GPA	A1-Kannan	A7-Marirajan

28.12.2001-sale deed	109/2002 90cents Vedarpuliyankulam property	Complainant's son Palanikumar	A1-Kannan	A1-Kannan A4-Raman

2.3. After that, they continuously demanded and collected interest upto the year 2004, and at the intervention of one Mr.Kanthasamy, who is arrained as L.W2 in the above C.C.No.52 of 2015, all the accused persons agreed to reconvey the property upon payment of further interest of Rs.20,00,000/- (Rupees twenty lakhs only) in addition to the receipt of Rs.95,00,000/- (Rupees ninety five lakhs only) as on 17.06.2004. The accused directed to pay further sum of Rs.10,00,000/-(Rupees ten lakhs only) without interest in respect of the house properties. The accused further directed to pay a further sum of Rs.10,00,000/-(Rupees ten lakhs only) with interest to reconvey property in respect of the vacant land. The defacto complainant paid Rs.5,00,000/-. So the accused executed General Power of Attorney in favour of L.W2. Thereafter, remaining Rs.5,00,000/- was paid. So, sale deeds in respect of two houses were executed in favour of the defacto complainant. After that, the defacto complainant paid the remaining agreed amount, but they did not reconvey the property. Instead, they told that the said amount was adjusted towards interest. So, they demanded further interest on 08.12.2011 criminally intimidating him.

2.4. So, the complaint was made to the Additional Superintendent of Police, Madurai, and the same was forwarded to the respondent police and a case was registered on 29.03.2012 against the above-accused persons for the alleged offences as stated supra. Thereafter, pending investigation, the defacto complainant filed the private complaint by making some allegations against the investigation officer and the same was taken on file in C.C.No. 81 of 2018 for the alleged offence under Sections 199, 120B, 406, 420, 468, 471 and 506(i) IPC and Sections 3 & 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. Challenging the same, Accused No. 5 filed the petition in Crl.O.P(MD)No.2202 of 2020. A2 & A3 filed the petitions in Crl.O.P(MD)Nos.22711 of 2018 and 19858 of 2018 respectively.

3. The same has been challenged by Accused No.4 in Crl.O.P(MD)No.2202 of 2020.

4. Pending the above Criminal Original Petitions, the defacto complainant died and his legal heirs impleaded themselves as parties to prosecute the above Criminal Original Petitions and one of the legal heirs is also listed as witness in the final report.

5. Mr.Niranjan S Kumar, learned Counsel for the petitioners [A2 & A3 in C.C.No.52/2015] in Crl.O.P(MD)No.22711 of 2018, Crl.O.P(MD)No. 19858 of 2018 respectively, and for the petitioner [A5 in C.C.No.81/2018]in Crl.O.P(MD)No.2202 of 2020 made the following submissions:

5.1. The complaint was made after 13 years from the date of the borrowal of money for interest without any explanation; hence, these three cases are liable to be quashed.

5.2. He further submitted that the defacto complainant, after 13 years, to grab the properties, executed vide sale deed documents, dated 10.12.2001 and 28.12.2001, filed the above cases with *mala fide* intention without any ingredients to constitute the offence.

5.3. He further submitted that the averment in C.C.No.81 of 2018 on the file of the learned Judicial Magistrate No.I, Madurai, is almost similar to C.C.No.52 of 2015, and hence, for the same set of allegations, both FIR as well as a private complaint have been made. The same was not correct as per law; therefore, the same is liable to be quashed.

6. Mr.K.Govindarajan, learned counsel, representing on behalf of the Accused No.4 in C.C.No.52 of 2015 made the following submissions:

6.1. There was no allegation specifically made against Accused No.4 in Crl.O.P(MD).No.3077 of 2020 and the complaint has been preferred after 13 years without taking any steps to set aside the sale deed in the manner known to law. The defacto complainant also preferred both FIR and the private complaint. Further, even in the said FIR and the private complaint, there was no specific allegation against this petitioner/A4; hence, he seeks to quash the C.C.52 of 2015.

7.1. Per contra, the learned Counsel for the defacto complainant submitted that all the accused are relatives of A2 and they all have the habit of collecting exorbitant interest in the name of 'Kandhuvatti' business and usurping the properties of the debtors apart from receiving periodical higher interest and also in the guise of interest arrears, they compounded the interest with principal amount. Further, they have the habit of receiving the documents at the time of issuing loan and after some time, they transferred the property in their name and demanded additional exorbitant interest for reconveyance. So, there is no delay in lodging the complaint as submitted by the learned Counsel for the accused. There are unequivocal statements of number of witnesses that the accused have received exorbitant interest periodically upto the year 2011 and thereafter, they demanded exorbitant interest. For the principal amount of Rs.16,00,000/-(Rupees sixteen lakhs only), they were said to have collected interest of Rs.95,00,000/-(Rupees ninety five lakhs only) between the year 1999 and 2004. They further demanded interest in the year 2004, ie., during the intervention of L.W2, Kanthasamy. Even after that, they received huge interest and further interest was also demanded in the year 2011. Hence, the complaint was made within the period of limitation. There is a continuous demand for exorbitant interest. As a result, it is a continuing offence. So, there is no substance in the plea of limitation as the complainant's case is covered under Section 472 Cr.P.C and not covered under Section 468 Cr.P.C as pleaded by the learned Counsel for the accused.

7.2. He further submitted that the submission of the learned Counsel for the accused in both CC Numbers with the same allegation, i.e., one based on the police complaint and another based on the private complaint, is not legally raised before this Court as ground for quash because of the specific provision under Section 210 of the Criminal Procedure Code. He further submitted that there were no proper pleadings of malafide, and the law on malafide is well settled by Court of law that without making any specific allegation against any specific authority, the plea of malafide is not maintainable. He further submitted that all the accused were mighty politicians of the ruling Party during the relevant period of ten years. Also, they collected the exorbitant interest with the help of their henchmen. There was threat to his life. Inspite of that, he made several complaints but there was no action taken. He finally submitted that the defacto complainant preferred complaint in 2011 on the verge of the tenure of the said Government. One honest senior police officer assumed the charge and ascertained the truth in the complaint and the case was registered. The investigating agency investigated after the new Party took charge of the Government. He also submitted that the investigation officer examined number of witnesses, they all stated that there had been continuous demand of exorbitant interest on the accused's side until 2011. Hence, the alleged latches are not grounds for quashing the cases and relied upon the judgment in **Amit Kapoor vs. Ramesh Chander and Ors.,** reported in **(2012) 9 SCC 460**.

8. Mr.M.Muthumanikkam, learned Government Advocate (Criminal side), also reiterated the above submissions, and he relied upon the following judgments:

i) Judgment of the Hon'ble Supreme Court in 2009(8)SCC617 [*State of M.P. v. Sheetla Sahai]*

ii) Judgment of the Hon'ble Supreme Court in 1996(4)SCC659-[*State of Maharashtra v. Som Nath Thapa]*

9. This Court considered the submissions made by all parties and perused the documents and the precedents relied upon by them.

10. The case was reserved for orders on 23-03-2023. Upon verifying the records, this Court finds that the defacto complainant sent two communications to the Registry of this Court. The material contents of the letters are as follows:-

10.(a). He made the allegation against the accused that they obtained the stay of the trial without disclosing the commencement of the trial by examining P.W.1 for three days and marking more than 24 documents. Hence, there is fraud in obtaining the stay order.

10.(b). He also disclosed that his health condition is deteriorating. He suffered from various old age related ailments and sought to dismiss the quash petition on the above grounds.

10.(c) To verify the above fact of commencement of the trial, this Court called for the records from the learned Trial Judge and found that the defacto complainant's statement of obtaining the stay suppressing the commencement of the trial is genuine. This Court continuously follows the principle that after framing the charges and opening up of the trial by examining the witnesses, the quash petition ought not to be entertained. So, to ascertain the said principle, after the summer vacation, this Court posted the case for clarification on 16.06.2023 and enquired with the learned Counsel for the petitioner regarding the above suppression of the fact of commencement of trial. The learned Counsel for the petitioner Mr.Niranjan S.Kumar stated that the accused had not disclosed the same. But, he placed the Hon'ble Supreme Court judgment in Crl.A.No.573 of 2018. The Hon'ble Supreme Court entertained the quash petition even after the trial commenced and quashed the proceedings. But, the learned Counsel fairly submitted that the Hon'ble Supreme Court laid no law in the judgment. Also, there was no discussion regarding the jurisdiction of the High Court to entertain the quash petition after the commencement of the trial.

10.(d). But, the Hon'ble Supreme Court in **Amar Chand Agarwalla v. Shanti Bose, (1973) 4 SCC 10 : 1973 SCC (Cri) 651 at page 15** has held as follows:-

> *"**17.** In our opinion, the High Court was not justified, in the particular circumstances of this case, in quashing the charge as well as the entire proceedings that had taken place before the Magistrate. It is not as if the accused had moved the High Court at the earliest stage when the Presidency Magistrate issued sommons to them. Nor had they approached the High Court when charges were framed against them. The accused had been summoned, after a judicial enquiry by the Chief Presidency Magistrate on December 26, 1967, under Sections 120-B/409 and 409 IPC. Before the Magistrate, the evidence, oral and documentary, was adduced by the complainant in the presence of the accused. On a consideration of such materials, the Presidency Magistrate framed charges against all the four accused as early as September 7, 1968. If the*

case of the accused was that the allegations in the complaint do not constitute the offence complained of or that the complaint has to be quashed for any ground available in law, they should have approached the High Court, at any rate, immediately after the charges were framed. The records disclose that it was the fourth accused, who moved the High Court to quash the proceeding on March 17, 1969, earlier than the other accused. Even by that date, several prosecution witnesses;. had been examined and they had also been cross-examined by the accused. Several items of documentary evidence had already been let in during the trial. Only two prosecution witnesses and a court witness remained to be examined. ***The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings."***

11. Based on the above judgment, this Court in catena of judgments, had not entertained the quash petition. In this case, P.W-1 was examined for more than 3 days and more than 26 documents were marked.

12. In all fairness, in the case of the quashing the charge sheet, the learned counsel must inform the stage of the case. The learned Counsel repeatedly insists that fair justice demands fair hearing and fairness in considering the submission. That being so, the Counsel is also expected to make honest submissions without suppressing the fact. The Advocate Act and the Bar Council Rules demand fair disclosure of the facts because the Counsel on record is deemed to be the officer of the Court. But, either inadvertently or intentionally, the above commencement of the trial has not been disclosed, which resulted in a grant of stay of trial while the examination of P.W.1 was halfway. The above fact is essential in this case for the reason that P.W.1 expired before he could complete his evidence during the pendency of this quash petition. So, after seeking clarification in this aspect, this Court has dealt with the issue on merits.

13.1. The learned counsels for the petitioners mainly seek to quash the above cases on the ground of delay in preferring the complaint. According to the learned Counsel for the complainant, the accused, Minnalkodi, was holding key-post in the then-ruling DMK party for 10 years, i.e., from 2001 to 2011. Also, the State was ruled by the then DMK party for a continuous period of 10 years. So, they were also more influential persons in the locality. Hence, they collected exorbitant interest by way of obtaining documents, namely, a power deed, and agreement to sell the properties in their relative's names, and automatically transferred the same in their name after the accumulation of the exorbitant interest. Hence, there was constant life-threat for ten years. Only when the honest Senior Police Officer assumed charge in 2011, on the verge of the rule of the said Party, he gave the complaint, and hence, there was no latches in preferring the belated complaint.

13.2. Apart from that, in this case, up to 2011, there was a periodical demand and receipt of exorbitant interest, and the number of witnesses have spoken about the same. The said witnesses have no motive against the accused persons. The relevant portion of 161 Cr. P.C statement of the L.W.2, translated in English is as follows:

> *"I know Murugan, son of Karanthamalai, from his childhood. The said Murugan was initially engaged in Real Estate and private construction business,*

and he also started doing Government contract work in 1999. Since taking the Government contract work, he borrowed money on interest from Thirunagar contractor Kannan and was doing his contract work. In 2002, Murugan came to me and stated that he borrowed a sum of Rs.16 lakhs from VAO Kannan and paid all the interest. But Kannan demanded him excess interest and still principal and interest have to be settled by Murugan; Kannan transferred his two houses situated at Balaji Nagar and 2 ½ acre land at Puliyankulam in his name by using the power-of-Attorney signed by Murugan and his son and also informed him that when he settled the total sum of Rs.35 lakhs to Kannan, he will return his properties. Hence, Murugan asked me to settle the interest dispute between him and Kannan. I went there along with Murugan and informed him till now, Murugan has paid Rs.35 lakhs for the borrowal of Rs.16 lakhs and also enquired about the rate of interest. For that, Kannan replied to me interest @ 7%.. After negotiation, he reduced it to 5% till he repaid Rs. 35 lakhs and then agreed to register the property in *the name of Murugan. From 2002 to 2004, Murugan settled the entire interest and a sum of Rs. 15 lakhs from the principal amount. Hence, Kannan stated that the remaining amount of Rs.20 lakhs has to be repaid by Murugan. After that, Murugan again came to me and informed me that he borrowed a sum of Rs.16 lakhs from Kannan and repaid a sum of Rs.95 lakhs till then. Hence, he is not able to settle no money to him. Hence, I asked Kannan to come to a settlement and to return Murugan's property to him. Finally, Kannan came to an arrangement that Murugan has to pay Rs.5 lakhs without interest immediately. For another Rs. 5 lakhs, Kannan will make a power of attorney deed in my name for two years, and after Murugan repaid the said Rs.5 lakhs without interest, I could make a sale deed with Murugan for his two houses. Further, if Murugan paid Rs.10 lakhs with interest, Kannan would return his land comprising 2 ½ acres to Murugan. Likewise, Murugan repaid all the amount. Still, after receiving all money, Kannan did not return the properties to Murugan as per the oral arrangement and informed him that he repaid* *interest only. Hence, he did not return his properties and also hurled a life threat to Murugan. On 08.12.2011. Murugan came and informed me about this incident. I advised him to give a complaint to the Police as per law."*

13.3. Till date, the possession of the entire property is with the defacto complainant and his legal heirs. Hence, it is for the trial Court to accept or reject the explanation upon recording the evidence in the trial. At this stage, it is not for this Court under Section 482 Cr.P.C, to render the finding as to whether the delay is explained or not on appreciation of 161 Cr.P.C, statement.

13.4. Delay in lodging complaint is not a ground for quashing the FIR., the same is fortified by the law declared by the Hon'ble Supreme Court in **Skoda Auto Volkswagen (India) Pvt. Ltd., vs. State of Uttarpradesh and others** reported in **2021 (5) SCC 795** held as follows:

"18. The mere delay on the part of the third respondent complainant in lodging the complaint, cannot by itself be a ground to quash the FIR.

> ***The law is too well settled on this aspect to warrant any reference to precedents. Therefore, the second ground on which the petitioner seeks to quash the FIR cannot be countenanced."***

13.5 Looking from another angle, as per the law laid down by the Hon'ble Supreme Court, the complainant preferred the complaint within the time, then there is no question of entertaining the plea of delay to quash the proceedings. Further, the petitioner's case of false implication is based on delay in preferring the complaint before the respondent police has to be decided based on the evidence to be recorded during the trial. In this aspect, it is relevant to follow the ratio of the Hon'ble Supreme Court judgment in;

Japani Sahoo v. Chandra Sekhar Mohanty [(2007) 7 SCC 394]

> "***14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders).*** *The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court*

of law has no power to throw away prosecution solely on the ground of delay.

52. *In view of the above,* ***we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court.*** *We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings."*

13.6. The above view is affirmed by the Constitution Bench of the Hon'ble Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases,** reported in **AIR 2014 SC 448,**

> ***51.*** *In view of the above,* ***we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.*** *We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority*

for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

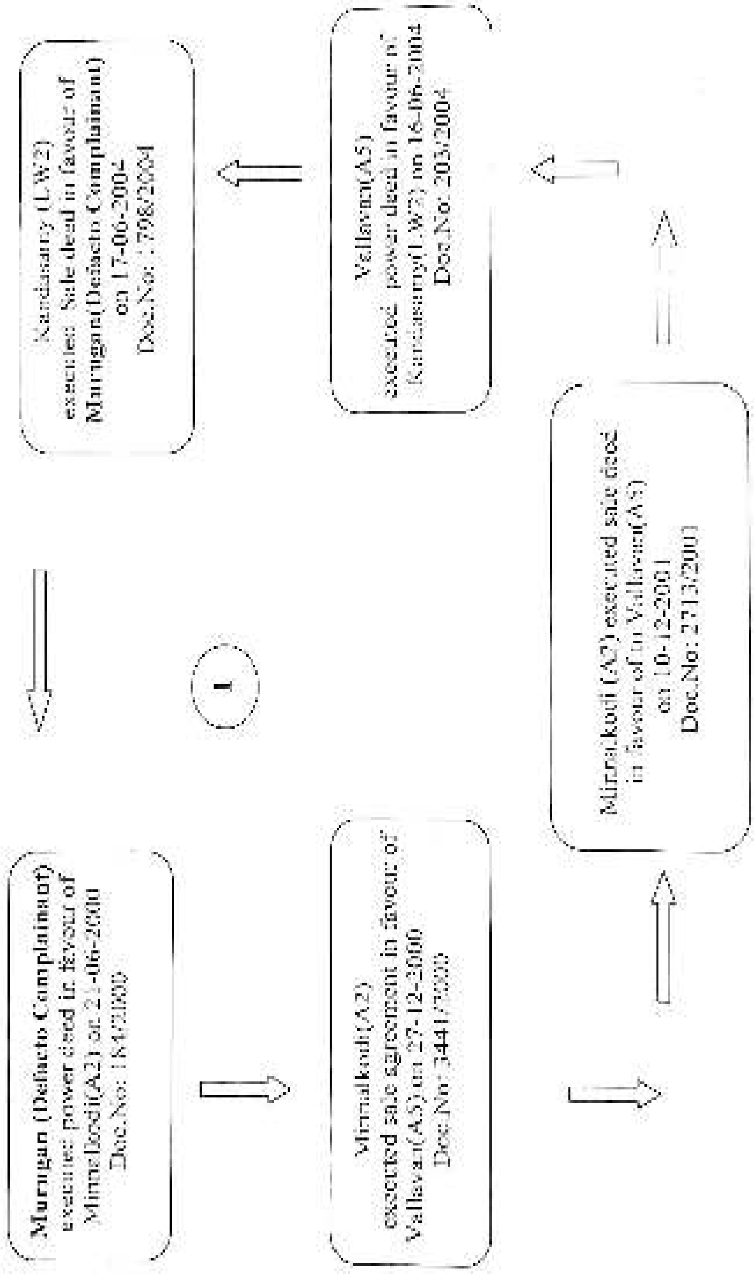
14. In this case, as per the statement of the defacto complainant and LW2, the accused is said to have demanded exorbitant interest for the execution of a reconveyance deed in respect of the properties and criminally intimidated on 08.12.2011. *Prima facie,* there is continuing offence. Hence, the complaint was made in the year 2012. The same is within the period prescribed under the Code of Criminal Procedure. The complaint was particularly preferred within the time from the last date of demand of exorbitant interest ie., 08.12.2011. Hence, the contention that the delay in preferring the complaint has not been explained can not be accepted and it deserves to be rejected.

15. Further, the Government brought the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, with the following object.

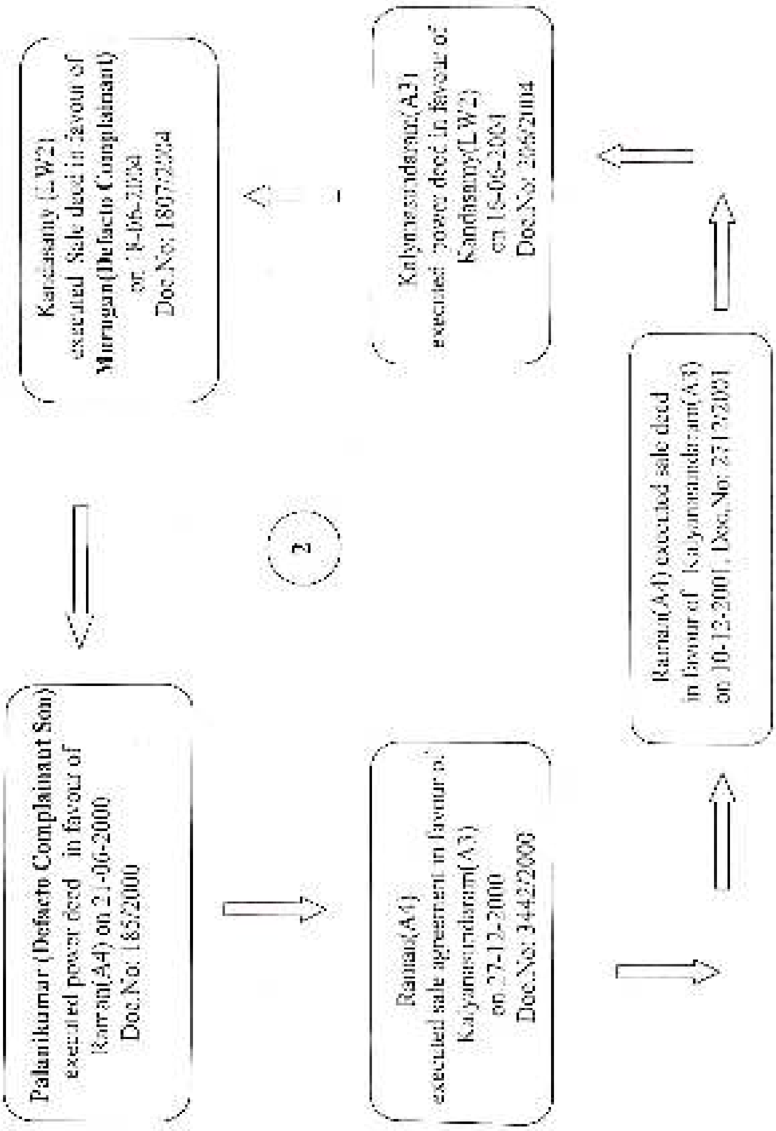
"An Act to prohibit the charging of exorbitant interest by any person and matters incidental thereto."

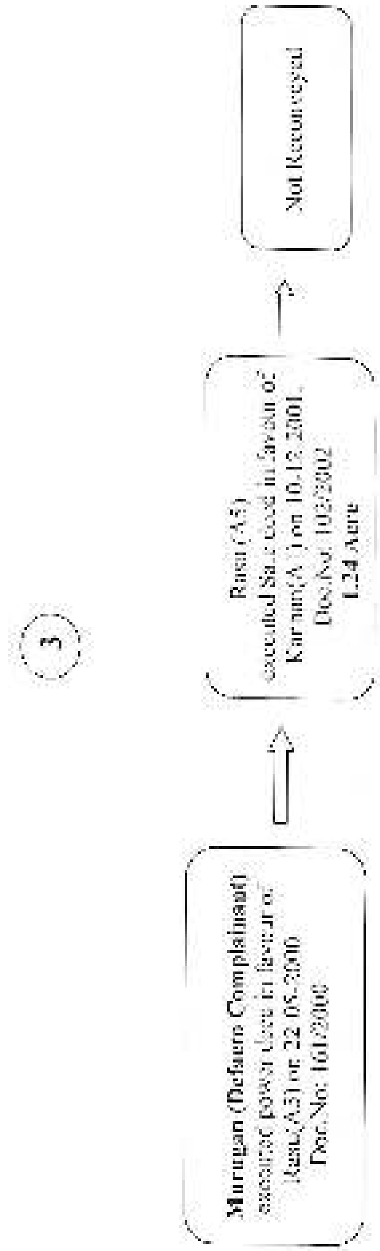
> *"In order to obviate the difficulties experienced by the public at large, falling prey to any person charging exorbitant interest like daily vatti, hourly vatti, kandhu vatti, meter vatti and thandal, the Government have decided to prohibit lending money for such exorbitant interest and to provide for stringent punishment therefor and decided to enact a new legislation for the purpose."*

16.1. From the reading of the 161 Cr. P.C. statement of the defacto complainant, his son, and independent witnesses Kanthasamy, Mari, Rathinam, and Mahamuni, this Court finds that there had been continuous demand and receiving of exorbitant interest on the side of the accused. From the sequence of the events narrated by the independent witness L.W.2 Kanthasamy corroborating the version of L.W.1 and L.W.3, it is clear that all the accused jointly collected exorbitant interest by obtaining the deed of power of attorney, agreement to sale in their name and made alienation among themselves and retransferred after collecting the huge exorbitant interest.


Murugan (Defacto Complainant) executed power deed in favour of Minnalkodi(A2) on 21-06-2000 Doc.No: 184/2000
Minnalkodi(A2) executed sale agreement in favour of Vallavan(A5) on 27-12-2000 Doc.No: 3441/2000
Minnalkodi (A2) executed sale deed in favour of to Vallavan(A5) on 10-12-2001 Doc.No: 2713/2001
Vallavan(A5) executed power deed in favour of Kandasamy(LW2) on 16-06-2004 Doc.No: 203/2004
Kandasamy (LW2) executed Sale deed in favour of Murugan(Defacto Complainant) on 17-06-2004 Doc.No: 1798/2004
I

16.2. Further, it is the case of the defacto complainant that A1 obtained power of attorney, and agreement to sale from the defacto complainant and his son regarding number of properties, including houses. Based on the said documents, the accused themselves entered into sale transaction for accumulated exorbitant interest. After the collection of substantial exorbitant interest, the said accused executed a power deed in favour of the L.W.2. L.W.2 after making some payment of further exorbitant interest was authorized to reconvey the said two properties in the name of the defacto complainant and his son. After receipt of the remaining interest, two properties were reconveyed in the name of the defacto complainant. But, for a different reason, the accused demanded further exorbitant interest to reconvey the remaining properties. So, retransfer of the remaining properties had not taken place. From the circle of transfer and retransfer of the properties stated below in the diagrams, it is clear that the accused is said to have committed various offences as alleged by the prosecution, including Section 120(B) IPC.


Palanikumar (Defacto Complainant Son) executed power deed in favour of Raman(A4) on 21-06-2000 Doc.No: 185/2000
Raman(A4) executed sale agreement in favour of Kalyanasundaram(A3) on 27-12-2000 Doc.No: 3442/2000
Raman(A4) executed sale deed in favour of Kalyanasundaram(A3) on 10-12-2001, Doc.No: 2712/2001
Kalyanasundaram(A3) executed power deed in favour of Kandasamy(LW2) on 18-06-2004 Doc.No: 206/2004
Kandasamy (LW2) executed Sale deed in favour of Murugan(Defacto Complainant) on 18-06-2004 Doc.No: 1807/2004
2


3
Murugan (Defacto Complainant)
executed power deed in favour of
Rasu(A5) on 22-05-2000
Doc.No: 161/2000
Rasu (A5)
executed Sale deed in favour of
Karnan(A1) on 10-12-2001,
Doc.No: 102/2002
1.24 Acre
Not Reconveyed

16.2. From the above events, it is clear that all the accused conspired together and acted as a team to collect the exorbitant interest. Hence, there is a prima facie material to frame the charge under Section 120(B) IPC and other offences.

17. The Hon'ble Supreme Court, in the following judgments, specifically laid down the law that at the stage of framing charges, strong suspicion is enough. Further, the principle of appreciation of evidence to be followed in the case of an appeal against conviction differs from the principle of appreciation of the statement recorded under Section 161 Cr.P.C and the documents furnished to the accused under Section 207 Cr.P.C to quash the final report.

17.1. It is relevant to quote the principle laid down by the Hon'ble Supreme Court in **2009(8)SCC617** [***State of M.P. v. Sheetla Sahai]***

> *"51. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different. A distinction must be borne in mind that whereas at the*

time of framing of the charge, the Court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

54. The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the Court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the Court shall not put the accused to harassment by asking him to face a trial. (See State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820] .)"

17.2. 1996(4)SCC659-[*State of Maharashtra v. Som Nath Thapa]*

"31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds

place at p. 1007 of 1987 Edn.
32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

17.3. Applying the above principles, the prayer for quashing the final report can not be accepted because all the witnesses specifically stated that there was a continuous demand and receipt of the exorbitant interest. So, it is for the trial Court to appreciate their evidence at the time of the trial. Therefore, this Court finds *prima facie* materials to frame the charges against the accused. Accordingly, this Court does not accept the contention of the learned Counsel appearing for the accused that the delay in registering the case creates suspicion.

18. The submission of the learned Counsel for the accused that the subsequent private complaint in C.C.No.81 of 2018, after the filing of the final report in the police case in C.C.No.52 of 2015 with a similar allegation, is not a ground for entertaining the quash petitions for the reason that the Criminal Procedure Code under Section 210 Cr.P.C, laid down the procedure to meet out the similar situation and the same has to be considered by the trial Court at the time of trial. This Court does not find any material from the record to exercise the inherent power under Section 482 Cr.P.C to quash the above criminal proceedings on the above said ground.

19. Further, as rightly contended by the learned Counsel for the defacto complainant and the learned Government Advocate(Criminal side) the petitioner's case does not come within the parameter of the principle laid down by the Hon'ble Supreme Court, in the following cases of **Amit Kapoor vs. Ramesh Chander and Ors.,** reported in **2012(9)SCC460:**

> *"17. .... Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is*

ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19.At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and State by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227.

If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-...(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not: It the evidence which the Prosecutor proposes to *adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.*

***27.** Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the

Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice.

27.10) It is neither necessary nor is the Court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that *there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.*

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16) These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.

20. So, all the contentions of the learned Counsel for the petitioners are intrinsically intertwined with factual aspects. The same could be agitated only before the trial Court. This Court's jurisdiction to exercise the inherent power under Section 482 Cr.P.C is very much limited to appreciate the factual aspects. Hence, this Court finds no merit in entertaining the above petitions.

21. Further, the judgment relied upon by the learned Counsel for the petitioners in Crl.A.No.581 of 2023 **[Sarabjit Kaur v. State of Punjab and another]** does not apply to the facts of the present case where the Hon'ble Supreme Court, upon considering the factual aspects that the complainant without filing suit for specific performance based on the sale agreement or recovery of advance amount, very belatedly filed the private complaint, that too, after the closure of the said complaint by the investigation agency with a direction to file the Civil suit before the appropriate forum, held that the continuation of the proceedings is the abuse of process of law. No such circumstances are available in these cases. The specific allegation is that the accused periodically received the exorbitant interest and also demanded the exorbitant interest to make the reconveyance which is an offence under the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. Several other materials are also available to frame the charges for the other offences.

21.1. Similarly, the judgment cited by the learned Counsel for the petitioners in Crl.A.No.1224 of 2022 **[Wyeth Limited and Ors. v. State of Bihar and Anr.]** also not applicable to the present cases where the Hon'ble Supreme Court, while considering the factual circumstances that the complainant filed the suit for the enforcement of the contract and in the said suit, the High Court passed an order to appoint the Court receiver for taking the possession of the goods and pending the same, the Police registered the case without any criminal element. Hence, the Hon'ble Supreme Court quashed the proceedings accepting the accused's contention regarding the delay. But the factual circumstances are different in the present case, i.e., the independent witnesses specifically stated that the accused demanded exorbitant interest to make reconveyance; hence, the above-said judgment is not applicable.

22. Accordingly, all the Criminal Original Petitions are dismissed with the following directions:

> "**1**.The learned Judicial Magistrate No. I, Madurai, hereby directed to dispose of both the cases in C.C.No.52/2015 and C.C.No.81/2018 by following the procedure provided in Section 210 of Cr.P.C within four months from receipt of a copy of this order.
>
> **2.** It is further ordered to dispense with the personal appearance of the petitioners/accused before the trial Court on condition that they shall appear during the proceedings under Section 313 of Cr.P.C., and at the time of passing of judgment and on the hearings, specifically directed by the trial Court.

3. The petitioners shall give an undertaking in the form of an affidavit that a counsel on all hearing dates will duly represent them and that the Counsel representing them will cross-examine the prosecution witnesses on the same day of chief examination. The petitioners shall not dispute the identity of the witnesses and accused. The petitioners shall appear before the Court if their presence is insisted upon by the trial Judge for identification. If the petitioners adopt dilatory tactics, it is open to the trial Court to insist for their appearance and deal with the petitioners as per the judgment of the Hon'ble Supreme Court **in State of Uttar Pradesh Vs. Shambunath Singh**, reported in **2001 (4) SCC 667."**

Consequently, connected miscellaneous petitions are closed.

10.07.2023

NCC : Yes/No
internet: Yes/No
Index : Yes/No
PJL

To

1. The Judicial Magistrate No.I,
Madurai.

2.The Inspector of Police,
District Crime Branch,
Madurai District.

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

K.K.RAMAKRISHNAN,J.

PJL

order made in
Crl.O.P(MD)Nos.19858 of 2018, 22711
of 2018, 2202 of 2020
and 2077 of 2020
and
Crl.M.P(MD)Nos.9100 &9101 of 2018,
10679 & 10680 of 2018,
1124 & 1125 of 2020 and 1623 & 1624 of 2020

10.07.2023