BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2022

DELIVERED ON : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL. O.P. (MD) Nos.18710 of 2019, 985 of 2020 & 7319 of 2022
and
CRL.MP.(MD) No.433, 434 of 2020

Crl.O.P.(MD) No.18710 of 2019

1. Karthikeyan
2. Amutha Valli : Petitioners/Accused 1 & 2

Vs.

1. The Inspector of Police,
CBCID, Dindigul,
Dindigul District. : 1st Respondent/Complainant

2.Charuba Selvaraj : 2nd Respondent/ De-facto Complainant

(2nd Respondent is impleaded as per Order of this Court dated 22.01.2020 in Crl.M.P.(MD).No.11242/2019 in Crl.O.P.(MD).No.18710/2019)

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the learned Judicial Magistrate No-1, Dindigul to accept the fresh sureties in C.C.No.203 of 2018 pending on the file of the learned Judicial Magistrate Court No.I, Dindigul.

For Petitioners : Mr.V.M.Balamohan Thambi
For Respondent No.1 : Mr.R.Meenakshi Sundaram

Additional Public Prosecutor
For Respondent No.2 : Mr.D.R.Murugesan

Crl.O.P.(MD)No.985 of 2020

1. R.M. Karthikeyan
2. K. Amutha Valli : Petitioners/Accused 1 & 2

Vs.

1. The Inspector of Police,
District Crime Branch,
CBCID, Dindigul. : Respondent/Complainant

2.Charuba Selvaraj : Respondent/De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the C.C.No.203 of 2018 dated 03.10.2018 on the file of the Judicial Magistrate Court No.I, Dindigul and quash the same as against the Petitioners concerned.

For Petitioners : Mr.V.M.Balamohan Thambi
For Respondent No.1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
For Respondent No.2 : Mr.S.Ravi

Crl.O.P.(MD)No.7319 of 2022

Charuba Selvaraj : Petitioner

Vs.

1. The Inspector of Police,
CBCID, Dindigul,
Dindigul District.

2. R.M.Karthikeyan
3. Amuthavalli : Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to issue direction, directing the Judicial Magistrate No.I, Dindigul to dispose of the case in C.C.No.203 of 2018 within a stipulated time, as fixed by this Court.

For Petitioner : Mr.D.R.Murugesan

For Respondent 1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
For Respondents 2 & 3 : Mr.V.M.Balamohan Thambi

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COMMON ORDER

Criminal Original Petition (MD) No.18710 of 2019 had been filed to direct the learned Judicial Magistrate No-1, Dindigul to accept the sureties in C.C.No.203 of 2018 pending on the file of the learned Judicial Magistrate No.I, Dindigul.

2.Criminal Original Petition (MD) No.985 of 2020 had been filed to call for the records relating to C.C.No.203 of 2018, dated 03.10.2018 on the file of the learned Judicial Magistrate No.I, Dindigul and quash the same as against the Petitioners concerned.

3.Criminal Original Petition (MD) No.7319 of 2022 had been filed to direct the Judicial Magistrate No.I, Dindigul to dispose of the case in C.C.No.203 of 2018 within a stipulated time, as fixed by this Court.

4.The learned Counsel for the Petitioners in Crl.O.P.(MD)Nos.18710 of 2019 and 985 of 2020 Mr.V.M.Balamohan Thambi submitted his arguments. As per his submission, the Petitioners are arrayed as Accused Nos.1 and 2 in C.C.No.203 of 2018. The Petitioners are husband and wife. The first Respondent Police filed charge sheet against the Petitioners and two others in C.C.No.203 of 2018 on the file of the learned Judicial Magistrate No.VI, Dindigul for offences under Sections 420, 468, 471, 384, 506(i) and 120(b) of IPC and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. It is the case of the Petitioners that the father of the second Respondent G.D.Selvaraj was the owner of the shopping complex constructed in a land measuring 35 cents bearing Old Survey No.330C, 347/2 and Town Survey No.6 of Kodaikanal Municipality. The father of the second Respondent died on 02.10.2002 leaving his wife, son and daughter. The daughter is the second Respondent in these Criminal Original Petitions and the De-facto Complainant. It is the case of the Petitioners that the Petitioners purchased the shopping complex on

27.08.2004 from the second Respondent and her brother Noahsagar and the second Respondent's mother namely Vinothini Selvaraj. The entire sale consideration was paid and the Petitioners are in possession of the said property and rented to the tenants. The Petitioners are income tax assessees for a long time and the income tax returns during the relevant period of time reflected the purchase of the property. It is the case of the Petitioners that after ten years the second Respondent had lodged a complaint on 29.03.2013 before the Inspector of Police (Land Grabbing Cell), District Crime Branch, Dindigul. The second Respondent filed Crl.O.P.(MD)No. 5231 of 2014 before this Court. This Court had directed the Police to conduct enquiry on the complaint. The Inspector of Police, (Land Grabbing Cell), Dindigul, without conducting enquiry registered a case in Crime No. 42 of 2014. Challenging the registration of Crime No.42 of 2014 the second Respondent filed Crl.O.P.(MD)No.17619 of 2014 for transfer of investigation to the Inspector of Police, CBCID, Dindigul. This Court allowed the Criminal Original Petition and transferred the case from the file of Inspector of Police, Land Grabbing Cell, Dindigul to the Inspector of Police, CBCID, Dindigul by order dated 29.06.2015. The Crime Number was re-assigned as Crime No.1 of 2015 on the file of the Inspector of Police, CBCID, Dindigul. It is the further submission of the learned Counsel for the Petitioners that the tenants in the complex were not regular in payment of rent. Therefore, the Petitioners had filed R.C.O.P. before the learned Rent Control Court, Kodaikkanal. The learned Rent Controller allowed the R.C.O.P. and ordered eviction of the tenants. The Petitioners herein filed Execution Petition for execution of the decree for delivery of possession. Pending execution petition, the second Respondent herein colluded with the third party stranger created lease agreement and filed application under Order XXI, Rule 97 of CPC. The learned Execution Court after considering the entire evidence dismissed the obstruction petition on 13.08.2015 and held that the sale deed dated 27.08.2014 is valid document. Against the said order, they filed Civil Revision Petition before this Court. Pending Civil Revision Petition, the Respondent herein are impleaded as parties in the above Civil Revision Petition. Finally, this Court had dismissed the Civil Revision Petition and confirmed the order of the Execution Court and held that the sale deed dated 27.08.2004 is valid and binding on the second Respondent herein. It is the further contention of the learned Counsel for the Petitioners that the first Respondent Police without any proper investigation filed the charge sheet for the offences under Section 420, 468, 471, 384, 506(i) r/w. Section 120 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. It is the case of the

Petitioners that the Executing Court clearly held that the sale deed dated 27.04.2004 as valid document and the second Respondent has no right over the property. The brother and mother of the second Respondent had not lodged any complaint against these Petitioners. The complaint preferred by the second Respondent dated 29.10.2013 is barred by limitation. It is the further contention of the learned Counsel for the Petitioners that the offences alleged in the charge sheet under challenge will not attract against the Petitioners herein. The second Respondent had purposely implicated these Petitioners in the above case only with an intention to harass the Petitioners.

5.The Petitioners had already filed anticipatory bail petition before this Court in Crl.O.P.(MD) No.8927 of 2014 and this Court had granted anticipatory bail on 10.06.2014 with a condition to furnish sureties within fifteen days. As per the order of this Court, the Petitioners were not able to furnish sureties within the time. Therefore, the Petitioners herein filed Crl.M.P.No.2 of 2014 seeking extension of time. This Court had granted extension of time by granting two weeks further time as per order in Crl.M.P.No.2 of 2014 dated 08.09.2014.

6.In continuation of the same, as per the order of this Court in Crl.M.P.No.2 of 2014, dated 08.09.2014 the Petitioners herein surrendered before the learned Judicial Magistrate No.II, Dindigul and executed the bond with sureties within the period of two weeks. Now the learned Judicial Magistrate No.1, Dindigul, insist the Petitioners to approach the Court for anticipatory bail and stated that the sureties given by the Petitioners are missing from the file of the Court. Therefore, the Petitioners herein had filed Crl.O.P.No.18710 of 2019 and the same is pending. The complaint by the second Respondent is a false complaint. It is only filed with an ulterior motive to harass the Petitioners after ten years after the execution of the sale deed and till date no suit is filed to set aside the sale deed. There is no reason justifying the silence on the part of the second Respondent and their family members for more than 14 years. The complaint is totally motivated and could not be taken for the events that had taken place before and subsequent to the filing of these Petitions. Therefore, the learned Counsel for the Petitioners seeks to quash the charge sheet in C.C.No.203 of 2018 on the following grounds:

(i) The Complaint is barred by law of limitation.

(ii) Till date the second Respondent or her mother or brother had not filed any suit seeking declaration that the sale deed executed on 27.08.2004 is null and void.

Therefore, seeks to quash the charge sheet in C.C.No.203 of 2018 filed by the first Respondent and pending on the file of the learned Judicial Magistrate No.I, Dindigul. In support of his contention, the learned Counsel for the Petitioner had furnished the copies of the sale deed alleged to have been executed by the second Respondent, her mother and her brother. Copies of tax receipts regarding the property purchased under sale deed dated 27.08.2004 for the period from 2004 and 2018. Electricity bill for the properties purchased by the Petitioners. Copies of the Criminal Original Petition (MD) No.5231 of 2014 and copy of the order in Crl.O.P.(MD) No. 5231 of 2014. Copy of the order in Crl.O.P.(MD)No.17619 of 2014. Copy of the order in E.A.No.9 of 2018 in E.P.No.16 of 2016, E.A.No.11 of 2018 in E.P.No.18 of 2016, E.A.No.13 of 2018 in E.P.No.20 of 2016, E.A.No.12 of 2018 in E.P.No.19 of 2016, E.A.No.8 of 2018 in E.P.No.15 of 2016, E.A.No.9 of 2018 in E.P.No.16 of 2016, E.A.No.11 of 2018 in E.P.No.18 of 2016, E.A.No.13 of 2018 in E.P.No.20 of 2016. All these Petitions were dismissed by order dated 13.08.2018 by the learned District Munsif-cum-Judicial Magistrate, Kodaikkanal. Aggrieved by the same, the Petitioners in these Execution Petitions had filed Civil Revision Petitions in C.R.P.Nos. 1876 to 1880, 1905 of 2018 and 1981 of 2018. Copy of the same is also filed along with the typed set of papers. The learned Single Judge of this Court had by common order dated 13.02.2019 dismissed the C.R.P.(MD) Nos.1876 to 1880, 1905 and 1981 of 2018. Therefore, in the light of the above, the learned Counsel for the Petitioners seeks to quash the final report laid before the Court of the learned Judicial Magistrate No.I, Dindigul, pending as C.C.No.203 of 2018.

7.The learned Counsel for the Petitioners further submitted that the document bearing Registration No.810 of 2004 originally belong to one Selvaraj. After his death, his wife Vinothini Selvaraj, his daughter Charuba Selvaraj and his son Noahsagar executed the registered sale deed in favour of the second Petitioner Amuthavalli on 27.08.2004. On 29.10.2013 one of the vendors of the Petitioners viz., Charuba Selvaraj lodged a complaint before the Superintendent of Police, Dindigul alleging that the Petitioners herein cheated Charuba Selvaraj and obtained sale deed in favour of the second Petitioner. It is the submission of the learned Counsel for the Petitioners that the sale deed bearing document No.810 of 2004 was executed on 27.08.2004 by Vinothini Selvaraj, Charuba Selvaraj and Noahsagar and it was registered. Therefore, it was executed jointly by the wife and children of Late Selvaraj. While so, the complaint was lodged only by Charuba Selvaraj. The other parties to the sale deed/other vendor had not complained or challenged the sale deed till date. This complaint was lodged only after nine years of the registration of sale deed. They had not approached the Civil Court for cancellation of the sale deed within time. Also, the learned Counsel for the Petitioners submitted that the complaint of the second Respondent/De-facto Complainant is hit by Sections 91 and 92 of the Indian Evidence Act. Therefore, the complaint filed by the second Respondent/De-facto Complainant is not at all maintainable.

8. In support of his contention, the learned Counsel for the Petitioners relied on the following decisions of the Hon'ble Supreme Court as well as this Court:

8.1. In ***(2016) 10 SCC 767*** in the case of ***Satya Pal Anand -vs- State of Madhya Pradesh and others*** the Hon'ble Supreme Court has observed as follows:

> ***"A. Registration Act, 1908 – Ss. 32, 34, 35, 36, 69 and 87 – Recall of registration/Document if was properly presented for registration, reopening question of, after registration/Cancellation of registration of document after its registration – Competent authority therefor, is civil court alone, and none of the authorities/officers under 1908 Act have power in this regard***
>
> *– Said power, held, does not fall within scope of power of Registering Officer, including IG (Registration) or any other authority under 1908 Act, in absence of any express provisions to the contrary in the*

Central Act or in legislation/statutory rules of State concerned (State of M.P. in this case) under S. 69 or in any circular issued by competent authority of that State - The role of the Sub-Registrar (Registration) stands discharged, once the document is registered - Power to cancel the registration is a substantive matter - Remedy of appeal provided under the 1908 Act, in Pt. XII, in particular S. 72, is limited to the inaction or refusal by the Registering Officer to register a document - The power conferred on the Registrar by virtue of S. 68 cannot be invoked to cancel the registration of documents already registered - Specific Relief Act, 1963 - Ss. 31 to 35 - Transfer of Property Act, 1882 - Ss. 54, 58, 107, 118 and 123 - Andhra Pradesh Registration Rules, 1960, R. 26(k)(i)

B. Registration Act, 1908 - Ss. 32, 34, 35, 36, 69 and 87 - Recall of registration/Document if was properly presented for registration, reopening question of, after registration/Cancellation of registration of document after its registration - Grounds for – Fraud - Irregularity in procedure – Effect of

– Some irregularity in the procedure committed during the registration process, held, would not amount to a fraudulent action per se - Whether the irregularity was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation - That fact cannot be presumed - Party aggrieved by such registration of document is free to challenge its validity before the civil court - However, authorities under 1908 Act have no power in this regard (see Shortnote A) - Specific Relief Act, 1963, Ss. 31 to 35"

8.2. In ***2011 (2) CTC 1*** in the case of ***Latif Estate Line India Ltd., -vs- Hadeeja Ammal*** the Full Bench of this Court has held as follows:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

> *(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.*
>
> *(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.*
>
> *60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The appeals are referred back to the concerned Court for deciding the case on merits."*

8.3. In ***(2004) 11 SCC 253*** in the case of ***Harjinder Singh alias Bhola -vs- State of Punjab*** the Hon'ble Supreme Court has held as follows:

> *"C. Criminal Procedure Code, 1973 – S. 161 – Unexplained delay of three months in recording statement of witness – Adverse effect of."*

Therefore, the lodging of the complaint by the De-facto Complainant/second Respondent in the Criminal Original Petition (MD) Nos.18710 of 2019 and 985 of 2020 based on which FIR was registered by the Inspector of Police, Land Grabbing Cell, Dindigul and subsequently transferred to CBCID, Dindigul based on which charge sheet has been filed, is not at all maintainable as it is hit by Sections 91 and 92 of the Indian Evidence Act, Limitation Act and as per the reported ruling in ***(2004) 11 SCC 253*** in the case of ***Harjinder Singh alias Bhola -vs- State of Punjab.***

9.The learned Additional Public Prosecutor for the first Respondent vehemently objected to quash the charge sheet in C.C.No.203 of 2018 on the file of the learned Judicial Magistrate No.I, Dindigul, stating that the Investigation Officer/first Respondent had filed detailed counter in the Criminal Original Petitions. As per the submission of the learned Additional Public Prosecutor Mr.R.Meenakshi Sundaram, the properties comprised in Old Survey No.330C, Ward 'D', Block-V, New Town Survey No.6 measuring an extent of 35 cents belonging to G.D.Selvaraj who had constructed the complex in the said land and it was let out to various tenants. After his demise, the second Respondent in these Criminal Original Petitions viz. Charuba Selvaraj and her brother Noahsagar inherited the said property. The brother of the second Respondent/De-facto Complainant Noahsagar and the second Respondent Charuba Selvaraj had managed the said complex and in the course of time, she had got acquainted with Accused No.1 Karthikeyan/first Petitioner from Pattukottai and he is in the business of money lending. The brother of the second Respondent Noahsagar borrowed Rs.3,00,000/- from the first Petitioner/Accused No.1. The first Petitioner herein with an intention to grab the properties of the second Respondent/De-facto Complainant and her brother Noahsagar, informed her brother Noahsagar that he knew one another person from

Myladudurai and based on the blank cheque he would lend money. The first Petitioner/Accused No.1 asked the brother of the second Respondent/De-facto Complainant Noahsagar to get the power of attorney from other legal heirs in the name of the first Petitioner/Accused No.1 and after discharging the loan liability, it can be cancelled.

10.Believing the words of the first Petitioner/Accused No.1 a Power of Attorney Deed was executed in favour of the brother of the De-facto Complainant/second Respondent herein by name Noahsagar. Thereafter the first Petitioner/Accused No.1 brought the brother of the De-facto Complainant Noahsagar who is referred in the Charge Sheet as L.W-3 to the financier who is referred as L.W-1 who earlier arrayed as Accused in the present case and later became a Prosecution Witness as he gave statement under Section 164 Cr.P.C. The said person is referred as an Approver/Accused No.3 Parasuraman after getting blank cheque from the brother of the De-facto Complainant referred as L.W-3 Noahsagar, LW-1 given Rs.7,00,000/- by executing mortgage deed registered as Document No.384/2002 with condition that after eight months he should pay Rs. 50,00,000/-. Thereafter, as L.W-3 Noahsagar could not pay the loan amount to L.W-1, the first Petitioner/Accused No.1 took the L.W-3 before L.W-1 and thereby made the L.W-3 to make false agreement in respect of the property in dispute in favour of L.W-1 and for availing the loan of Rs. 50,00,000/- the first Petitioner/Accused No.1 made Noahsagar L.W-3 to execute the sale agreement vide Document No.32 of 2003 and the above-said amount of Rs.50,00,000/- had been retained by the first Accused Karthikeyan/first Petitioner herein for the earlier loan amount availed by L.W-3. The huge amount of Rs.50,00,000/- had been withdrawn by the first Petitioner/first Accused Karthikeyan on the same day of account opening by L.W-3 Noahsagar by misusing the signed blank cheques of Noahsagar L.W-3 and the same amount had been encashed by the first Accused/first Petitioner. The same had not been handed over to the family of the Complainant. Latter the first Accused/first Petitioner Karthikeyan got a General Power of Attorney from the family members of the second Respondent/De-facto Complainant and based on which the first Petitioner/Accused No.1 Karthikeyan had collected rental amount from the shop keepers of the properties in dispute and the interest amount was settled to Accused 3/Parasuraman now turned as approver. In the meantime, the first Petitioner/Accused No.1 Karthikeyan gave assurance to Accused No.3 Parasuraman regarding the payment of Sale Agreement amount of Rs. 50,00,000/- will be settled with *mala fide* intention of grabbing the complex property for purchase in favour of his wife/Accused No.2. After settling the amount of Rs.50,00,000/- to L.W-1, the first Petitioner/Accused No.1 by coercion and threat made the cancellation of sale agreement and sale deed in Doc. No.810 of 2004 dated 27.08.2004 were to be made on the Petitioner/Accused No.1 Karthikeyan's rental building over the case disputed property on the same day with the help of Accused No.3 Parasuraman now turned as approver and Accused No.4 Rajendrad the then Sub Registrar, Kodaikkanal, who subsequently died, with an ulterior plan of the first Petitioner/Accused No.1 Karthikeyan and his wife/Accused No.2 Amuthavalli. Thereafter, the first Petitioner/Accused No.1 had threatened the second Respondent/De-facto Complainant and her family members not to report the police about the registration of the sale deed. The first Petitioner/Accused No.1 made threat to the effect that he would murder the children of Noahsagar by throwing acid and would disturb the wife of Noahsagar and hence, the illegal act of the first Petitioner/Accused No.1 is sufficient material to prove that Accused No.1 Karthikeyan colluded and conspired with the other Accused including approver and the Sub Registrar committed the offences under Section 468, 471, 384, 420, 506(i) IPC, 420 IPC r/w. 120(b) and Section 4 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. The offences are *prima facie* made out against the Petitioners/A-1 and his wife/A-2. Now the Accused No.3 had turned as approver. The Accused No.3 had made statement under Section 164 Cr.P.C. accepting the conspiracy of the Accused No.1/Karthikeyan and Accused No.2/Amuthavalli for taking a case of disputed property. After completion of the investigation, the charge sheet had been filed before the learned Judicial Magistrate No.I, Dindigul against the first Accused/Karthikeyan and his wife/A-2 Amuthavalli and Accused No.4 Rajendran (since died) the then Sub Registrar, Kodaikkanal, A-3 Parasuraman now turned as approver and had given voluntary statement under Section 164 Cr.P.C. regarding the conspiracy of the acts committed by A-1 to A-3 and the deceased Rajendran. Thereafter, an application for Tender of Pardon under Section 306 Cr.P.C. was filed by Accused No.3 Parasuraman to be included in the list of witnesses. The contention of the Petitioners cannot at all be accepted in the light of the statement recorded from the Accused No.3 Parasuraman now turned as approver and whose statement is recorded by the learned Judicial Magistrate under Section 164 Cr.P.C. and application for Tender of Pardon under Section 306 of Cr.P.C. is enclosed with the final report. The first Accused/Karthikeyan had also threatened the victims of the crime not to report to the Police of his alleged crime of getting a sale deed executed by the brother of the De-facto

Complainant and also threatening both De-facto Complainant and her brother that he will murder them. The first Petitioner/Accused No.1 Karthikeyan got General Power of Attorney from the family members of the Respondent No.2 by Doc. No.114 of 2003 at Sub Registrar's Office, Kodaikkanal. Based on this General Power, the first Petitioner/first Accused collected rental amount from the shop keepers of the property. The interest amount was settled to Accused No.3 Parasuraman. The shop keepers also were threatened by the first Petitioner/Accused No.1 Karthikeyan for collecting all the rental amount. The shop keepers are paying the rental amount before the Court. The Prosecution had examined 80 witnesses and collected 221 documents and recorded the statement of 80 witnesses. As per 164 statement of the approver A-3 Parasuraman the *prima facie* offence alleged against the Petitioner/Accused Nos.1 and 2 are made out. Therefore, he sought to dismiss these Criminal Original Petitions.

11.In support of his contention, the learned Additional Public Prosecutor relied on the reported ruling of the Hon'ble Supreme Court in ***2009 2 CTC 163 [Ashabai Machindra Adhagale vs. State Of Maharashtra & Ors]*** wherein the relevant portion is extracted:

> *"12. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there*

> *is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code. and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases."*

12.He also relied on the reported ruling of the Hon'ble Supreme Court in ***2002 (3) SCC 89 [State Of Karnataka vs M. Devendrappa & Another]*** wherein the relevant portion reads as follows:

> *"8. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of private complainant as unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death."*

13.He further relied on the reported ruling of the Hon'ble Supreme Court in ***CDJ 2019 SC 855 [Chilakamarthi Venkateswarlu vs The State Of***

Andhra Pradesh] wherein it is held as follows:

> *"16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another [(2005) 1 SCC 122]."*

14.Also he relied on another ruling of the Hon'ble Supreme Court reported in ***2020 SCC OnLine SC 958 [Skoda Auto Volkswagen India Private Limited vs The State Of Uttar Pradesh]*** wherein it has been held as under:

> *"41. It is needless to point out that ever since the decision of the Privy Council in King Emperor vs. Khwaja Nazir Ahmed1, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in State of Haryana vs. Bhajan Lal2, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In S.M. Datta vs. State of Gujarat3, this Court again 1 AIR 1945 PC 18 2 (1992) Supp. (1) SCC 335 3 (2001) 7 SCC 659 cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."*

15.The learned Counsel for the De-facto Complainant/second Respondent also vehemently objected to quash the charge sheet stating that the Petitioners herein had not at all executed the sureties as per the order passed in Crl.O.P.(MD) No.8927 of 2014 granting anticipatory bail. When the learned Counsel for the Petitioners commences his arguments, the learned Counsel for the second Respondent/De-facto Complainant vehemently objected to hear the submission stating that the Accused are not reporting before the trial Court, they are evading and till date they had not executed bond and they had misrepresented before this Court stating that the earlier bail bond executed by them is missing from the Court records. It is not true. They had been playing fraud on the Court also and they had filed Petition stating that the learned Judicial Magistrate No.I, Dindigul had informed them that the bail bond executed by the sureties on behalf of the Petitioners/Accused Nos.1 and 2 are not found in the records. Therefore, the learned Judicial Magistrate No.I, Dindigul had directed them to get anticipatory bail from the High Court to execute the bail bond afresh.

16.On objection by the learned Counsel for the second Respondent, the learned Additional Public Prosecutor for the first Respondent submitted that this Court had directed the Accused Nos.1 and 2 through the learned Counsel for the Petitioners in Crl.O.P.No.985 of 2020 to furnish bail bond immediately within the next day and in which a report was called from the learned Judicial Magistrate No.I, Dindigul, to that effect, failing which the Crl.O.P.No.985 of 2020 will be dismissed with further direction to the learned Judicial Magistrate No.I, Dindigul. Only after such strong words from this Court, the learned Counsel for the Petitioners sought two days time and accordingly, two days time was granted. Only then, they had executed bond. In the meanwhile, this Court had called for remarks from the learned Judicial Magistrate No.I, Dindigul regarding the stage of the case as to whether the trial is commenced, if so, the stage of the trial.

17.The learned Counsel for the second Respondent/De-facto Complainant also invited the attention of this Court to the case status. The Petitioners herein Accused Nos.1 and 2 had not approached this Court with clean hands. They had played dilatory tactics with the Court as the summons issued to the Accused Nos.1 and 2 were not at all served from the year 2012. Also, the Petitioners had filed this Petition seeking to dispense with the certified copies of statement of witnesses as recorded in the charge sheet and had filed few copies of the witnesses statement which are in their favour selectively to seek quashing of the charge sheet which is also unfair. The diary extract from the Court of the learned Judicial Magistrate No.I, Dindigul wherein the summon was served only on 19.10.2019. The learned

Judicial Magistrate No.I, Dindigul, had directed them to produce appropriate orders from the Apex Court for bail and adjourned the case to 02.11.2019. From 02.11.2019 regularly they had been filing petition under Section 317 of Cr.P.C. and had not furnished the order of the Hon'ble Supreme Court till 18.08.2021 as mentioned by them. Therefore, the learned Counsel for the second Respondent objected to the submission of the learned Counsel for the Petitioners and also filed copies of the charge sheet wherein 161 Cr.P.C. statement of the witnesses are enclosed in the typed set furnished by the learned Counsel for the second Respondent.

18.In support of his contention, the learned Counsel for the second Respondent relied on the following rulings:

1. ***(2006) 4 SCC 359 [Minu Kumari and another -vs- State of Bihar and others]***
2. ***(2012) 9 SCC 460 [Amit Kapoor -vs- Ramesh Chander and another]***
3. ***(2013) 3 SCC 330 [Rajiv Thapar and others -vs- Madan Lal Kapoor]***
4. ***(2015) 14 SCC 559 [S.Krishnamoorthy -vs- Chellammal]***
5. ***(2016) 12 SCC 315 [Videocon Industries Limited and another -vs- State of Maharashtra and others]***
6. ***2022 SCC OnLine SC 484 [Ramveer Upadhyay and another -vs- State of U.P. and another]***

19.Also he had read out 161 Cr.P.C statement recorded from Accused

No.3/Parasuraman wherein it is stated that Accused No.1 had lent loan of Rs.7,00,000/- to the brother of the De-facto Complainant/second Respondent Charuba Selvaraj and had executed mortgage loan. Subsequently based on the mortgage loan the approver A-3 Parasuraman had insisted Accused No.1 to get a continuous mortgage deed from Noahsagar. Accordingly, Accused No.1 Karthikeyan got a registered continuous mortgage deed executed from Noahsagar by which Noahsagar was promised by Karthikeyan that Accused No.3 Parasuraman will extend loan for Rs.50,00,000/- and if Rs.50,00,000/- is not returned Noahsagar has to execute the sale deed along with the said continuous mortgage deed Noahsagar is alleged to have executed sale agreement deed on the insistence of Accused No.1 Karthikeyan and Accused No.3 Parasuraman. Rs. 50,00,000/- alleged to have been advanced by approver A-3 Parasuraman was encashed by Accused No.1 and the mortgage already executed by Accused No.1 for his property was released based on the property deeds in favour of the family of the De-facto Complainant thereby the said Accused No.1 Karthikeyan had cheated the family of De-facto Complainant.

20.In the guise of cancelling the mortgage deed and cancelling the sale agreement deed, the De-facto Complainant, her mother and her brother

Noahsagar were taken to the house of the Accused No.1 where the Sub Registrar, Kodaikkanal, Mr.Rajendran (since died) had cancelled the deeds and instead obtained sale deed from De-facto Complainant Charuba Selvaraj and her brother Noahsagar and her mother, registered it in his house in the presence of the deceased Sub Registrar and also it is stated that there were many people in the residence of Accused No.1 Karthikeyan and sensing something fishy, Accused No.3 approver Parasuraman left the place. Also in the same statement, he states that the sale agreement originally executed by Noahsagar in favour of the Accused No.3 Parasuraman on the date of alleged cancellation of the mortgage deed and the sale agreement deed in favour of Accused No.3 Parasuraman on the same day the Sub Registrar Rajendran (since died) had executed a sale deed in favour of the wife of the Accused No.1, A-2 Amuthavalli the second Petitioner. Accused No.1 had settled all his dues. Also towards settling the interest over the amount alleged to have been extended by Accused No.3 Parasuraman to Noahsagar the first Petitioner/first Accused Karthikeyan alleged to have obtained the lease amount from rental property for which sale deed was executed and that amount was paid towards interest. Rs.50,00,000/- obtained by Accused No. 1 had not been paid to Noahsagar. Therefore, the allegation of the De-facto Complainant herein that without paying the sale consideration by use of threat and coercion the first Petitioner/first Accused alleged to have executed sale deed by extending threat and coercion on the family members of the De-facto Complainant is made out in the 164 statement made by Accused No.3 Parasuraman approver before the learned Judicial Magistrate No.I, Dindigul. Therefore, it is the submission of the learned Counsel for the De-facto Complainant/second Respondent that this is not a fit case to quash the proceedings and submitted that the case is to be dismissed as having no merits. What are all submitted by the learned Counsel for the Petitioners/Accused Nos.1 and 2 have to be considered before the trial Court. Also the learned Counsel for for the second Respondent/De-facto Complainant submitted that as per the reported ruling cited by the learned Counsel for the second Respondent even if there is civil case, the criminal case can be proceeded simultaneously. It is the specific case of the De-facto Complainant that valuable property belonging to the family of the De-facto Complainant had been grabbed by the Petitioners herein by use of threat and criminal conspiracy along with Accused No.3 and the deceased Rajendran Sub Registrar, without paying any amount to the second Respondent. Therefore, the ingredients of conspiracy, the ingredients of threat and undue influence, the ingredients of cheating and the ingredients of land grabbing are all attracted. Therefore, the learned Counsel for the second Respondent

Mr.D.R.Murugesan submitted that this is not a fit case for quashing the Charge Sheet where the rulings cited by the learned Counsel for the second Respondent is applicable and the argument of the learned Counsel for the Petitioners is to be treated as valuable defence that should be considered only by the trial Court in the light of the ruling in ***State of Haryana -vs- Bhajan Lal*** reported in ***1992 Suppl.(1) SCC 335*** wherein guidelines had been issued to the High Courts to exercise the extraordinary power available to the High Courts under Section 482 of Cr.P.C. can be used sparingly and not leniently and only from the materials available in the Prosecution, the Court shall quash the Charge sheet or FIR. Therefore, the learned Counsel for the second Respondent seeks to dismiss the Criminal Original Petition (MD) Nos.18710 of 2019 and 985 of 2020 with a direction to the learned Judicial Magistrate No.I, Dindigul, to dispose of the case on merits within a specific time.

21.In the course of the arguments, this Court had sought remarks from the learned Judicial Magistrate No.I, Dindigul, regarding the stage of the case in the light of the vehement objection by the learned Counsel for the second Respondent that the Petitioners had been playing dilatory tactics with the Court thereby not co-operating with the Court of the learned

Judicial Magistrate No.I, Dindigul in disposing of the case. Also they had not executed the bail bonds in continuation of the anticipatory bail already granted. On perusal of the case status filed along with the Petition, it is found that the Petitioners had mentioned about the bail being granted by the Hon'ble Supreme Court. The learned Judicial Magistrate had insisted the Accused to produce the copy of the bail order granted by the Hon'ble Supreme Court.

22.In the typed set furnished by the learned Counsel for the Petitioners also the order in favour of the Petitioners had been furnished but the order from the Hon'ble Supreme Court is not found. Therefore, it is presumed that the Petitioners had misguided the learned Judicial Magistrate when the learned Judicial Magistrate had insisted the bail bond that it has been granted bail by the Hon'ble Supreme Court. Along with the Petition in Crl.O.P.(MD)No.985 of 2020 the Accused had filed Criminal Miscellaneous Petition seeking exemption from personal appearance of the Petitioners. Along with that, another Criminal Miscellaneous Petition had been filed seeking to release the earlier sureties who had executed bail bond before the trial Court and permit the Accused to file fresh bail bonds with different sureties.

23.Point for consideration:

Whether the charge sheet in C.C.No.203 of 2018 pending on the file of the learned Judicial Magistrate No.I, Dindigul is to be quashed?

24.On perusal of the case status filed along with this petition it is found that the Petitioners had not furnished the copy of the bail order from the Hon'ble Supreme Court. Also they had filed 317 Cr.P.C. petition regularly from 02.11.2019 onwards. The Accused 1 and 2 had succeeded in delaying the trial by not appearing before the Court from the date of taking it on file by the learned Judicial Magistrate No.I, Dingidigul. From 05.10.2018 the case was repeatedly adjourned to 14.11.2018, 01.12.2018, 19.12.2018, 09.01.2019, 13.03.2019, 24.04.2019, 26.06.2019, 07.08.2019. On all these days the adjudication of the learned Judicial Magistrate states that Accused summons not served and issue fresh summons to Accused.

25.Only on 19.10.2019 both the Accused were served and they were present. On the basis of the representation made by the Accused, the learned Judge had recorded as “for production of appropriate order from

Apex Court for bail, adjourned to 02.11.2019" Therefore, it is presumed that both the Accused had appeared before the Court and made representation that they had obtained bail order from the Hon'ble Supreme Court.

26.It is usual that when the Accused appeared on summons before the Court of the learned Judicial Magistrate, if they were not granted bail earlier and charge sheet had been filed and taken on file and numbered, it is for the learned Judicial Magistrate to seek bail bond from the Accused on their appearance on summons. Under that procedure, the Accused was enquired by the learned Judicial Magistrate without executing bail bond they are alleged to have mentioned about the bail being granted by the Hon'ble Supreme Court. That is the only presumption that can be drawn by this Court. In the facts and circumstances of the case as gathered from the records available before this Court, repeatedly summons had been issued and case had been adjourned but the Accused 1 and 2 did not appear. They appeared only on 19.10.2019. When they appeared, bail bond was not executed. Under those circumstances, in the type set filed by the learned Counsel for the Petitioners, there is mention of grant of anticipatory bail in Crl.O.P.No.8927 of 2014. In the type set filed by the Petitioners herein the copy of the order in Crl.O.P. (MD) No.5231 of 2014 is found which is a petition filed by the De-facto Complainant seeking direction against the Deputy Superintendent of Police (Land Grabbing Prevention Special Cell), Dindigul, wherein as per the order passed by this Court dated 01.04.2014, the Respondents were directed to register a case and in case if the Investigation Officer files closure report, notice shall be given to the De-facto Complainant. Since they had not registered a case within seven days they were directed to register a case as per the reported ruling of the Hon'ble Supreme Court in ***2013 4 Crimes 243 (SC)*** in the case of ***Lalita Kumari -vs- Government of Uttar Pradesh and others*** thereby directing the Land Grabbing Cell to register a case. Copy of the Crl.O.P.(MD)No.17619 of 2014 is also enclosed in the typed set filed by the Petitioners wherein also it is a petition filed by the second Respondent herein/De-facto Complainant seeking transfer of the investigation from the file of the Inspector of Land Grabbing Cell, Dindigul to Inspector of Police, CBCID in which order was passed on 29.06.2015 directing the second Respondent/CBCID to proceed with the investigation and directing the third Respondent/Inspector of Police, Anti Land Grabbing Wing, Dindigul, to hand over the case records to the second Respondent therein. Copy of the order passed in Crl.O.P. (MD)No.16809 of 2014 also enclosed in the typed set filed by the

Petitioners wherein as per the order passed by this Court dated 03.09.2018, the Inspector of Police, CBCID, Dindingul, was directed to file Charge Sheet within a period of one month from the date of receipt of a copy of the order. The Petitioners herein Accused No.1 and 2 had filed Crl.O.P.(MD)No.16809 of 2014 seeking to quash the FIR in Crime No.42 of 2014, dated 02.05.2014 on the file of the Inspector of Police, Land Grabbing Cell, District Crime Branch, Dindigul. When the case came up for hearing the learned Additional Public Prosecutor submitted that investigation had been transferred to the third Respondent Inspector of Police, CBCID, Dindigul. Also the learned Additional Public Prosecutor had mentioned that the investigation had already been completed. Based on the submission of the learned Additional Public Prosecutor the third Respondent Inspector of Police, CBCID, Dindigul was directed to file charge sheet within a period of one month and the Criminal Original Petition was disposed of by order dated 03.09.2018. From the entire materials in the typed set filed by the Petitioners, as rightly pointed out by the learned Counsel for the second Respondent and the learned Additional Public Prosecutor for the first Respondent, the Petitioners had filed only documents in their favour and they had avoided the documents which are against them. As pointed out by the learned Counsel for the second Respondent/De-facto Complainant this

Court by order dated 17.11.2022 had passed the following orders:

> *"Mr.V.M.Balamohan Thambi, learned Counsel appearing for the Petitioners in Crl.O.P(MD)Nos.18710 of 2019 and 985 of 2020, was about to commence the arguments.*
>
> *2.As per the remarks offered by the learned Judicial Magistrate No.I, Dindigul, in D.No.1680, dated 16.11.2022, the charge sheet has been laid by the CBCID and the same was taken on record as C.C.No.203 of 2018. The case has been pending for service of summons on the accused. The learned counsel appearing for the Petitioners/accused before the learned Judicial Magistrate No.I, Dindigul, stated that the accused had been granted bail by the Hon'ble Supreme Court.*
>
> *3.Believing the representation made on behalf of the accused, the learned Judicial Magistrate No.I, Dindigul, had sought for a copy of the order granting bail.*
>
> *4.In the light of the above, the Petitioners/accused shall appear before the trial Court by Monday, i.e., on 21.11.2022 and surrender before the the learned Judicial Magistrate No.I, Dindigul, failing which, these Criminal Original Petitions will be dismissed.*
>
> *5.On surrender of the Petitioners/accused, the learned Judicial Magistrate No.I, Dindigul, shall pass appropriate orders, seeking bond from them. If they fail to furnish bonds, she can act accordingly and send compliance to this Court.*
>
> *6.Call the cases on 22.11.2022, along with Crl.O.P(MD)No. 7319 of 2022."*

Accordingly, the Accused persons had executed bail bond before the Court concerned.

27.It is to be noted that the Petitioners/Accused Nos.1 and 2 had not at all executed the bail bod before the trial Court and had evaded to appear before the Court. Only when this Court had passed strong order on 17.11.2022, the Petitioners had executed bail bond. The case of the Petitioners that they were granted anticipatory bail by this Court also cannot be accepted by this Court.

28.As per the counter filed by the Investigation Officer the Petitioners had not granted bail in Crl.O.P.(MD)No.8927 of 2014 as per order dated 10.06.2014 with a direction to the Petitioners to surrender before the Court within 15 days from the date of receipt of a copy of the order. Subsequently, by order dated 08.09.2014 in Crl.M.P.(MD)No.2 of 2014 in Crl.O.P.(MD)No.8927 of 2014 further two weeks time was granted. The De-facto Complainant had filed copy application before the learned Judicial Magistrate No.II, Dindigul to furnish the surrender petition and sureties executed by Accused Nos.1 and 2. On 31.03.2015 the De-facto Complainant had filed copy application. The copy application filed by the De-facto Complainant was returned on 01.04.2015 by the learned Judicial Magistrate No.II, Dindigul, with an endorsement "Accused are not surrendered before this Court, no sureties accepted. Hence, copy application rejected". Only then the De-facto Complainant had approached the High Court with a petition in Crl.O.P.No.17619 of 2014 seeking transfer of the investigation in Crime No.42 of 2014 on the file of the District Crime Branch, Dindigul to the file of CBCID, Dindigul. On 29.06.2015 the CBCID, Dindigul, registered a case in Crime No.1 of 2015 after getting the order of the High Court in Crl.O.P.No.17619 of 2014 and after getting their case diary from the Inspector of Police, District Crime Branch, Anti-Land Grabbing Cell, Dindigul. On 03.10.2018 CBCID, Dindigul, had filed charge sheet under Section 420, 468, 471, 384, 506(i) of IPC, 420 r/w. 120(b) of IPC, 384 r/w. 109 IPC, 468 r/w. 109 IPC and Section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003. The Accused No.3 turned hostile. Accused No.4 died pending investigation. The charge sheet was laid against the Accused Nos.1 and 2 as absconding. As per the decision of the Hon'ble Supreme Court as well as this Court, when the charge sheet laid before the Court concerned showing that the Accused as absconding, the Court shall not issue warrant immediately and the Court has to issue summons, only when summons are refused warrant shall be issued. In this case, as per the case diary extract and from the status report of the learned Judicial Magistrate No.I, Dindigul, it is found that summons were sent from 05.10.2018 and repeatedly adjourned till 19.10.2019 only on which date the Accused were present before the Court. Based on the representation the Court had insisted to produce appropriate order from the Apex Court for bail and adjourned to 02.11.2019 and from 02.11.2019 onwards till 18.08.2021 the Petitioners had been repeatedly filing 317 petitions in Crl.O.P.No.18710 of 2019 to accept fresh sureties. Considering the fact that the sureties had been executed on 17.11.2022, the petition filed in Crl.O.P.(MD) No.18710 of 2019 is to be dismissed as infructuous.

29.The conduct of the Petitioner before the trial Court and before the Hon'ble Supreme Court is found unfair whereby they had been evading the due process as though they were granted bail. If they had been granted bail as pointed out in the counter by the Investigation Officer it is their duty to furnish sureties within the time specified by the High Court. They had not done so as per the order passed in Crl.O.P.(MD) No.8927 of 2014 dated 10.06.2014 and M.P.No.2 of 2014 dated 08.09.2014. Therefore, as pointed out by the Investigation Officer in the counter till the date of order of this Court dated 17.11.2022 in Crl.O.P.(MD) No.18710 of 2019 and 985 of 2020, sureties were not accepted. That shows that the Petitioners/Accused Nos.1 and 2 are not law abiding citizens.

30.If charge sheet is filed and the Accused are shown as absconding

Accused by the Investigation Officer, then it is the duty of the Court to send summons to the Accused. If the Accused appear on summons, it is the duty of the Court to seek bail bond from them. Not only bail bond from them but also furnish them sureties. If the Accused seeks time for furnishing sureties can been extended but the Accused are to execute the bail bond before the Court concerned. Here they had not done so till the date of hearing on 17.11.2022. Therefore, on the orders of this Court they had appeared before the learned Judicial Magistrate and executed sureties.

31.This Court had also sought remarks from the learned Judicial Magistrate No.I, Dindigul. As per the remarks offered by the learned Judicial Magistrate No.I, Dindigul, the Accused did not appear before the Court from 30.11.2020 to 08.11.2022. On 11.01.2021, the learned Counsel for the Accused filed memo stating that Crl.O.P.(MD)No.18710 of 2019 and Crl.O.P.(MD)No.985 of 2020 are pending. Therefore, the case was posted on 26.12.2022.

32.On perusing the Petitioners typed set as well as the Respondents typed set, it is found that there are 80 witnesses to be examined by the learned Judicial Magistrate. Accused No.3 is now turned as approver. If the approver sticks on his 164 statement during the course of the trial, in the conclusion of the trial, the trial Judge has the discretion to accept the plea of pardon by the Prosecution and treat him as a witness.

33.On the other hand, during trial the Accused No.3 Parasuraman who is shown as approver by the Prosecution turns hostile then the trial has to alter and Accused No.3 has to be arrayed as A-3 and witnesses have to be examined. In which case, what is available in the course of the evidence has to be invoked against all the Accused either to convict or acquit. As available from the materials before this Court furnished through the Petitioners typed set and the counter filed by the Investigation Officer, the rulings cited by the learned Additional Public Prosecutor in ***2009 2 CTC 163 [Ashabai Machindra Adhagale vs. State Of Maharashtra & Ors]; 2002 (3) SCC 89 [State Of Karnataka vs M. Devendrappa & Another]; CDJ 2019 SC 855 [Chilakamarthi Venkateswarlu vs The State Of Andhra Pradesh]*** and ***2020 SCC OnLine SC 958 [Skoda Auto Volkswagen India Private Limited vs The State Of Uttar Pradesh]*** and the rulings cited by the learned Counsel for the second Respondent/De-facto Complainant in ***(2006) 4 SCC 359 [Minu Kumari and another -vs- State of Bihar and others]; (2012) 9 SCC 460 [Amit Kapoor -vs- Ramesh Chander and another]; (2013) 3 SCC***

330 [Rajiv Thapar and others -vs- Madan Lal Kapoor]; (2015) 14 SCC 559 [S.Krishnamoorthy -vs- Chellammal]; (2016) 12 SCC 315 [Videocon Industries Limited and another -vs- State of Maharashtra and others] and ***2022 SCC OnLine SC 484 [Ramveer Upadhyay and another -vs- State of U.P. and another]*** it is not a fit case to quash the charge sheet. Here is a case where the Accused had played havoc with the De-facto Complainant's family members by enticing them one of the complainant's family members Noahsagar by granting him a short loan of Rs.7,00,000/- and misusing his belief in Accused No.1 and enticing him to execute a continuous mortgage deed in collusion with Accused No.3 Parasuraman who is a financier who had already advanced money to Accused No.1 and to whom Accused No.1 had repaid the debt executed mortgage of his property which was released on the strength of the mortgage loan executed by said Noahsagar and with that money Accused No.1 in collusion with Accused No.3 settled Accused No.1 and mortgaged and got back the property documents. Inspite of handing over the loan to Noahsagar, he had misused Rs.50,00,000/- and on the strength of sale agreement and mortgage deed, he had settled the property through collusion, threat and undue influence on the family members of the De-facto Complainant without paying any amount and executing a sale deed as though they have received the money and with man power, influenced him to threaten them. He had also executed such sale deed in his house with muscle men. Therefore, it is not a fit case. The Registrar was present in the house as per the statement of the approver Accused No.3 which is available in the typed set filed by the learned Counsel for the second Respondent where the approver sticks to Prosecution case which can be proved only during the trial. For the present *prima facie* case against the Accused is made out. The defence of the Accused that the complaint is hit by limitation will not hold good. Since the witnesses were threatened not to report before the Police they have cause to offer explanation for the delay. Also the fraud played by the Accused will be influenced only in the progress of the trial. Therefore, the De-facto Complainant having knocked the door of the Hon'ble High Court by filing Criminal Original Petition (MD) No.5231 of 2014 to register FIR with Anti-Land Grabbing Cell and subsequently, the learned Judicial Magistrate having returned the copy application that the Accused had not furnished the security in view of the anticipatory bail. The De-facto Complainant had approached once again the High Court with Crl.O.P.(MD) No.17619 of 2014 seeking transfer of the investigation from the file of the District Crime Branch, Anti-Land Grabbing Cell to the CBCID, Dindigul and the same was ordered by the Court. At the first instance, the District Crime Branch, Anti-

Land Grabbing Cell, Dindigul, was reluctant to register the case. Therefore, the then learned Single Judge of this Court while issuing direction in the light of the ***Lalita Kumari -vs- State of Uttar Pradesh and others [2013 (4) Crimes 243 (SC)]*** had directed the Anti-Land Grabbing Cell to register the FIR within seven days. Since the learned Single Judge had suspicion that they may close the case with a closure report the learned Single Judge had also observed in the order that if there is a closure report, notice to be given to the De-facto Complainant to raise their objection before the Court of the learned Judicial Magistrate concerned. Therefore, the apprehension of the De-facto Complainant that she will not get justice if the case is investigated by the District Crime Branch, Anti-Land Grabbing Cell, Dindigul, is justified and the learned Single Judge of this Court in Crl.O.P.(MD) No. 17619 of 2014 by ordering withdrawal of the case from the file of the District Crime Branch, Anti-Land Grabbing Cell, Dindigul and transferred to the file of the CBCID, Dindigul. On receipt of the Investigation file, the CBCID, Dindigul, had registered fresh case in Crime No.1 of 2015 in which investigation proceeded and culminating in filing of the final report which was taken cognizance by the learned Judicial Magistrate No.I, Dindigul and numbered as C.C.No.203 of 2018.

34.The reported ruling cited by the learned Counsel for the Petitioners cannot at all be accepted in the light of the specific facts projected by the Prosecution. Here is the case where the first Petitioner is alleged to have enticed the brother of the De-facto Complainant/second Respondent that he will get him loan of Rs.50,00,000/- by taking him to the financier who is now arrayed as Accused No.3 and approver. As per the statement recorded from the Accused No.3 under Section 164 Cr.P.C., Accused No.1 Karthikeyan had prevailed upon the brother of the De-facto Complainant to execute continuous mortgage deed and thereby obtained loan of Rs. 50,00,000/- which was deposited in the bank account of Noahsagar and misusing the cheque already obtained by Accused No.1 Karthikeyan from Noahsagar, after withdrawing the amount from the account of Noahsagar, the first Petitioner Karthikeyan had settled the dues of his own mortgage for the property belonging to Accused No.1 which was mortgaged by him already with financier Accused No.3 Parasuraman who turned as approver by the Prosecution and had given statement under Section 164 of Cr.P.C. and Accused No.1 had taken back the document of title deed of his own property in Thanjavur District from Accused No.3 who is a financier by profession. Also at the instigation of Accused No.1 Karthikeyan the brother of second Respondent/De-facto Complainant Noahsagar had executed a sale agreement deed also in favour of the third Accused Parasuraman. After getting back the documents of title deed of the property belonging to first Accused Karthikeyan, after withdrawing the amount from the account of Noahsagar, Accused No.1 had enticed the Accused No.3 to cancel the sale agreement deed and instead of obtaining a sale deed in the house of Accused No.1 in the presence of Sub Registrar by threat and coercion from the family members of the deceased Selvaraj, Vinothini Selvaraj, Charuba Selvaraj and Noahsagar. In the presence of shoddy elements, muscle men so as to foul play Accused No.3 after executing cancellation of sale agreement deed and executing clearance of mortgage had left the house of Accused No.1 that is the statement under Section 164 of Cr.P.C. recorded by the learned Judicial Magistrate which has some value *prima facie* at this stage. Whether it was true or not has to be put to test only during trial and not at this stage by exercising powers of this Court under Section 482 of Cr.P.C.

35.It is the specific case of the De-facto Complainant that the family members of the De-facto Complainant were threatened by Accused No.1 with his muscle power and man power not to go to Police station to register a case against them. Therefore, the period of delay cannot be invoked in this case as they had lost valuable property for a meagre amount of Rs.

7,00,000/- extended by Accused No.1 to the brother of De-facto Complainant Noahsagar and thereby enticing him to obtain more loan by executing continuous mortgage and executing sale agreement deed in favour of Accused No.3. Subsequently, those deeds were not cancelled and settled and instead of Accused No.1 obtained sale deed in his house in the presence of muscle power and threat and coercion and induced on family members of deceased Selvaraj including the De-facto Complainant. Since there was no action on the complaint given to the Superintendent of Police, Dindigul, the De-facto Complainant was forced to file a complaint before the learned Judicial Magistrate based on which also FIR was not registered. Therefore, she was forced to file a Criminal Original Petition (MD) No.5231 of 2014 seeking direction to register FIR. Only based on the order of the High Court in Crl.O.P.(MD) No.5231 of 2014, dated 01.04.2014, FIR was registered by the Inspector of Police, Land Grabbing Prevention Special Cell, Dindigul in Crime No.42 of 2014. Even after registration of the case, the District Crime Branch, Land Grabbing Prevention Special Cell, Dindigul, had not proceeded with the investigation whereupon the De-facto Complainant filed petition before the learned Judicial Magistrate seeking copy of the surety bond and bail order of the Accused in Crime No.42 of 2014 which was returned by the learned Judicial Magistrate No.I, Dindigul, stating that the

Accused had not executed any bail bond or furnished any sureties. Only then, the De-facto Complainant had approached once again the High Court in Crl.O.P.(MD)No.17619 of 2014 seeking transfer of investigation from the file of the Land Grabbing Prevention Special Cell attached to the District Crime Branch, Dindigul to the file of the CBCID, Dindigul. As per the order in Crl.O.P.(MD)No.17619 of 2014 dated 29.06.2015 the investigation file was ordered to be transferred to the CBCID, Dindigul. Only then the investigation had proceeded in laying of the final report. Even after laying of the final report showing the Accused as absconding, the Accused No.1 and 2/Petitioners 1 and 2 in Crl.O.P.(MD)No.985 of 2020 had not appeared before the Court from 05.10.2018 till 19.10.2019. Only on 19.10.2019 they appeared on which date it is submitted to the Court that they had been granted bail by the Apex Court based on which the learned Judicial Magistrate had adjourned the case to 02.11.2019 directing them to produce the order copy before the Court. From 02.11.2019 till 18.08.2021 they had not produced the said order copy and also not appeared but continuously they had been filing petition under Section 317 Cr.P.C. Those circumstances goes to show that the Petitioners/Accused 1 and 2 do not have any respect for the due process of law. That presumption is available to this Court from the materials placed before this Court. Therefore, the submission of the learned Counsel for the Petitioners that the second Respondent had come to Court after ten years after the registration of the sale deed cannot at all be accepted as there is no hard and fast rule regarding criminal case that too regarding delay. Invariably the delay will be taken care of before the trial Court. When the Prosecution is unable to explain the delay then the Prosecution loses its case. Here the facts and circumstances had been explained by the De-facto Complainant through her Counsel before this Court that she was not only heard but the family was prevented by the Accused herein from challenging the sale deed or reporting the matter to the Police. With great efforts they had filed Criminal Original Petition and obtained direction from the Court. Even after registration of the case, the investigation had not proceeded further. Therefore, the Complainant had approached once again the Court by exercising power of the High Court under Section 482 of Cr.P.C. seeking transfer of investigation. Under those circumstances, the submission of the learned Counsel for the Petitioners placing reliance on the decisions of the Hon'ble Supreme Court and the Full Bench of this Court will not hold good. Similarly, Section 91 and 92 of Indian Evidence Act cannot also be invoked as the Registration itself is doubtful. The Sub Registrar had gone to the residence of Accused No.1 and registered the documents as per the direction of the Accused No.1 in the presence of muscle men. Unfortunately Accused No.4 the Sub Registrar concerned died. Those facts are to be brought to the Court only during trial as per the materials placed before this Court by the learned Counsel for the De-facto Complainant/Second Respondent. The 164 statement of Approver/Accused No.3 who is the financier introduced by Accused No.1 to the brother of the De-facto Complainant Noahsagar is available to this Court. That 164 statement has some weightage before this Court. Also the Petitioners had cleverly obtained dispense with order not to furnish copies of the charge sheet. If the Petitioners had been diligent when he had appeared before the Court of the learned Judicial Magistrate on service of summons, he could have obtained statement of the witnesses for the entire charge sheet under 207 Cr.P.C. granted by the Court. Instead by evading summons from the Court, they had filed this Criminal Original Petition seeking quashing of the charge sheet and also getting exemption from filing certified copies of the charge sheet. If the materials were placed fairly before this Court, this Court would have perused those materials. Instead they had filed only documents that are convenient to their case. After obtaining such deed, the first Petitioner/Accused No.1 had threatened the tenants and filed RCOP to evict them. Those tenants had obtained permission from the Court by depositing rent into Court. While obtaining cancellation of sale deed, sale agreement deed in favour of Accused No.3 Parasuraman by Noahsagar, Accused No.1 Karthikeyan is alleged to have stated the Accused No.3 Parasuraman and a sale deed is executed in favour of Amuthavalli wife of Karthikeyan and he will pay the dues to the Accused No.3 from the rent collected from the tenants of the building. Under those circumstances, he has filed RCOP against the tenants of the building claiming he had obtained sale deed. Those are circumstances against the Petitioners. The registration of sale deed itself is doubtful in the light of 164 statement recorded by the learned Judicial Magistrate from Accused No.3 the financier Parasuraman who is now turned as approver by the Prosecution. It is to be agitated and put to test only before the trial Court. This Court exercising powers under Section 482 of Cr.P.C. cannot quash the complaint based on materials picked and chosen by the Accused 1 and 2 as Petitioners before this Court. The materials that were collected by the Prosecution had been placed by the learned Counsel for the second Respondent/De-facto Complainant including the case status obtained by the learned Counsel for the De-facto Complainant from the status uploaded on the website of the Court. Under those circumstances, the rulings cited by the learned Counsel for the Petitioners alone cannot be considered to quash the complaint. The facts in this case are different from the facts in the reported ruling. Under those circumstances, the facts are to be tested before the trial Court and this Court cannot exercise discretion under Section 482 of Cr.P.C. leniently as per the reported ruling of the Hon'ble Supreme Court in ***State of Haryana -vs- Bhajan Lal*** reported in ***1992 Suppl.(1) SCC 335***. Therefore, the submissions of the learned Counsel for the Petitioners/Accused Nos.1 and 2 are rejected.

36.Crl.O.P.(MD)No.18710 of 2019 is filed by the Accused 1 and 2 as Petitioners. The Petition is filed seeking direction to the learned Judicial Magistrate No.I, Dindigul, to accept the sureties in C.C.No.203 of 2018 pending on his file. As per the submission of the learned Counsel for the Petitioners, on a complaint from the second Respondent the District Crime Branch, Dindigul had registered a case in FIR in Crime No.42 of 2014 for offences under Sections 420, 465, 506(i) of IPC. The Petitioners in Crl.O.P.No.18710 of 2019 filed Crl.O.P.(MD) No.8927 of 2014 seeking anticipatory bail. Anticipatory bail was granted by the Hon'ble High Court in Crl.O.P.(MD)No.8927 of 2014 as per the order dated 10.06.2014 on condition to appear before the learned Judicial Magistrate No.II, Dindigul, and to execute the bond for Rs.10,000/- with two sureties for the like sum to the satisfaction of the learned Judicial Magistrate No.II, Dindigul and on condition that the Petitioners shall appear before the District Crime Branch as and when required for investigation. Since the Petitioners could not furnish sureties within the time stipulated, the Petitioners had filed M.P.(MD) No.2 of 2014 in Crl.O.P.(MD)No.8927 of 2014 before the Hon'ble High Court seeking extension of time. Accordingly, time was also extended by two weeks from the date of receipt of copy of the order in M.P.(MD) No. 2 of 2014. Accordingly, the Petitioners appeared before the learned Judicial Magistrate No.II, Dindigul, and furnished sureties. While so, the De-facto Complainant filed Crl.O.P.(MD) No.17619 of 2014 seeking transfer of the investigation in Crime No.42 of 2014 from the file of the District Crime Branch, Land Grabbing Cell, Dindigul, to the file of the CBCID, Dindigul. That petition was allowed on 29.06.2015 and FIR No.42 of 2014 pending on the file of the District Branch, Land Grabbing Cell, Dindigul was transferred to CBCID, Dindigul. After transfer of the case to CBCID, CBCID had registered a case as Crime No.1 of 2015 and filed charge sheet before the jurisdictional Magistrate, learned Judicial Magistrate No.I, Dindigul. On appearance by the Petitioners on 19.10.2019 the learned Judicial Magistrate had directed them to furnish sureties. Only on 02.11.2019 the Petitioners were able to furnish sureties. The learned Judicial Magistrate had not accepted the sureties and directed the Petitioners to file anticipatory bail before the High Court. Therefore, Crl.O.P.(MD) No.18710 of 2019 had been filed seeking direction to the learned Judicial Magistrate No.I, Dindigul, to accept the fresh sureties furnished by the Petitioners.

37.When Crl.O.P.(MD)No.18710 of 2019 case came up for hearing, Crl.O.P.(MD)No.985 of 2020 filed by the very same Petitioners seeking quash of the Charge Sheet in C.C.No.203 of 2018 was also tagged. When the learned Counsel for the Petitioner in Crl.O.P.(MD)No.985 of 2020 about to commence his arguments, the learned Counsel for the second Respondent/De-facto Complainant Thiru.D.Murugesan objected the Petitions stating that the Petitioners had not at all been attending the Court of the learned Judicial Magistrate from the date of taking the charge sheet on file that had been repeatedly adjourned for issuance of summons and the Petitioners had approached this Court seeking to quash the charge sheet. Even after obtaining anticipatory bail in Crl.O.P.(MD)No.8927 of 2014 and even after extension of time granted by the High Court, the Petitioners/Accused 1 and 2 had not at all appeared before the learned Judicial Magistrate No.I, Dindigul and executed bail bond. Therefore on 17.11.2022 this Court had directed the Petitioners/Accused 1 and 2 to appear before the trial Court by 21.11.2022 and surrender before the learned

Judicial Magistrate No.I, Dindigul, failing which the Criminal Original Petitions will be dismissed. Subsequently, remarks was received from the learned Judicial Magistrate No.I, Dindigul dated 21.11.2022 which reads as under:

> *"I most humbly submit that as per the direction of the Hon'ble Madurai Bench of Madras High Court in Crl.O.P.(MD)No.18710 of 2019 and 985 of 2020, dated 17.11.2022 both the Petitioners/Accused surrendered before this Court along with own Affidavit and identity proof on 21.11.2022 and their surrender was accepted. As the offence is Non-bailable offence both Petitioners/Accused were enlarged on bail today on executing own bond for sum of Rs.10,000/- each U/S 88 Cr.P.C. as per section 24 of Criminal Rules of Practice and on condition that both Petitioners/Accused is directed to produce two sureties for sum of RS.10,000/- each on the next hearing date (i.e.,) on 29.11.2022."*

38.Therefore, only in the light of the common order passed by this Court in Crl.O.P. (MD) Nos.18710 of 2019 and 985 of 2020, on 21.11.2022 only the Petitioners had surrendered before the learned Judicial Magistrate No.I, Dindigul and offered sureties and executed bail bonds. Therefore, the Petition filed in Crl.O.P.No.18710 of 2020 directing to learned Judicial Magistrate No.I, Dindigul, to accept the fresh sureties in C.C.No.203 of 2018 pending on the file of the learned Judicial Magistrate No.I, Dindigul is found to be mischievous considering the case status furnished by the learned Counsel for the second Respondent in Crl.O.P.(MD)Nos.18710 of 2019 and 985 of 2020/Petitioner in Crl.O.P.(MD)No.7319 of 2022 the De-facto

Complainant before the learned Judicial Magistrate No.I, Dindigul. Only when this Court had used strong word words against the learned Counsel for the Petitioners before ever commencing his argument in Crl.O.P.(MD)No. 985 of 2020 seeking quashing of the charge sheet in C.C.No.203 of 2018 on 17.11.2022, the Accused had appeared on 21.11.2022. It is found that they had successfully evaded the summons from the Court by not appearing before the Court and not executing the sureties as per the directions of the High Court in Crl.O.P. (MD) No.8927 of 2014. Only when this Court had used harsh words that if the Petitioners fail to execute the bond and furnish sureties in the light of the anticipatory bail granted in Crl.O.P. (MD) No. 8927 of 2014, both the Criminal Original Petitions will be dismissed, they had executed the bond.

39.As rightly pointed out by the learned Counsel for the De-facto Complainant, the Accused Nos.1 and 2 had successfully not appeared and evaded from appearing before the learned Judicial Magistrate No.I, Dindigul from the date of filing of the Charge Sheet on 05.10.2018, till 19.10.2019. On 19.10.2019 they had made representation that they had been granted bail from the Hon'ble Supreme Court. Therefore, the case was adjourned to 02.11.2019 for production of appropriate order from the Hon'ble Supreme

Court. From 02.11.2010 onwards their counsels had been filed Petitioner under Section 317 Cr.P.C. till 18.08.2021 as per the case status uploaded on the website of the Court.

40.Only on 17.11.2022 when this Court had directed them to appear failing which both Petitions in Crl.O.P.Nos.18710 of 2019 and 985 of 2020 will be dismissed, the Petitioners/Accused 1 and 2 had appeared and executed bond and report to that effect was received by this Court form the learned Judicial Magistrate No.I, Dindigul only after some arguments were heard in both parties in Crl.No.18710 of 2019 and 985 of 2020.

41.Since the Petitioners had appeared before the Court in the light of the direction passed by this Court with a warning that both the Petitions in Crl.O.P.(MD)Nos.18710 of 2019 and 985 of 2015 will be dismissed on 21.11.2022 if the Accused failed to appear before the Court of the learned Judicial Magistrate No.I, Dindigul and fails to execute the bail bond accordingly they had appeared and executed the bail bond. Therefore, the attempt of the Petitioners seeking direction to the learned Judicial Magistrate to accept the sureties (magistrial direction to the learned Judicial Magistrate to accept whatever the sureties furnished by them when the learned Magistrate having the discretion to reject the sureties if it is not found acceptable based on the practice followed by the Magistrates based on the guidelines issued from the High Court from time to time to the learned Magistrates who accepts the sureties and accepts bail bonds in furtherance of bail granted either by the Hon'ble Supreme Court or by the High Court, by the Sessions Court as per Section 88 of Cr.P.C. and Rule 22 of Rule of Criminal Practice) in spite of the warning given by this Court the Petitioners had furnished sureties which was accepted by the learned Magistrate exercising the discretion by the learned Judicial Magistrate No.I, Dindigul. Therefore, the Petition in Crl.O.P.(MD) No.18710 of 2019 is to be dismissed as infructuous.

42.From the circumstances discussed above, it is found that the Petitioners 1 and 2/Accused No.1 and 2 had played havoc with the family of the De-facto Complainant and they had played hide and seek with the High Court and Hon'ble Supreme Court. Therefore, it is not a fit case to quash the Charge Sheet under Section 482 of Cr.P.C., as per the guidelines issued by the Hon'ble Supreme Court in ***State of Haryana -vs- Bhajan Lal*** reported in ***1992 Suppl.(1) SCC 335*** and also in the guise of the reported decisions relied on by the learned Counsel for the second Respondent in ***(2006) 4 SCC 359 [Minu Kumari and another -vs- State of Bihar and others];***

(2012) 9 SCC 460 [Amit Kapoor -vs- Ramesh Chander and another]; (2013) 3 SCC 330 [Rajiv Thapar and others -vs- Madan Lal Kapoor]; (2015) 14 SCC 559 [S.Krishnamoorthy -vs- Chellammal]; (2016) 12 SCC 315 [Videocon Industries Limited and another -vs- State of Maharashtra and others] and ***2022 SCC OnLine SC 484 [Ramveer Upadhyay and another -vs- State of U.P. and another].*** Therefore, Crl.O.P.(MD)No.985 of 2020 is to be dismissed with a direction to the petitioners 1 and 2 to cooperate with the trial.

43.In the light of the above discussion, it is not a fit case to quash charge sheet in C.C.No.203 of 2018. Accordingly, **Crl.O.P.(MD) No.985 of 2020 is dismissed** with a direction to the Petitioners 1 and 2 to co-operate with the trial. The learned Judicial Magistrate No.I, Dindigul shall proceed with the trial giving top priority to this case and witnesses shall be examined on day to day basis that means from Monday to Friday continuously till the case is disposed of, all the 80 witnesses had to be examined on day to day basis throughout the month. If the accused 1 and 2 do not co-operate with the trial, the learned Judicial Magistrate No.I, Dindigul, shall cancel the bail bond and detain the Accused in prison for playing dilatory tactics as per the guidelines given in the reported ruling in ***P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560.***

44.Since the Petitioners had furnished sureties which was accepted by the learned Judicial Magistrate No.I, Dindigul, exercising her discretion on 21.11.2022, the prayer in the Crl.O.P.No.18710 of 2019 to accept the sureties in C.C.No.203 of 2018 pending on the file of the Judicial Magistrate Court No.I, Dindigul, has become infructuous. Accordingly, **Crl.O.P.No.18710 of 2019 is dismissed as infructuous.**

45.In the light of the detailed discussion in Crl.O.P.No.985 of 2020 and in the concluding portion of the same order, the prayer of the De-facto Complaint/Petitioner in **Crl.O.P.No.7319 of 2022** is considered and the **Criminal Original Petition is allowed.**

46.As per the reported ruling of the Hon'ble Supreme Court in ***Vinod Kumar vs. State of Punjab [2015 (1) SCALE 542]*** which was circulated throughout India by the Hon'ble Supreme Court through the Hon'ble High Courts making it to be circulated to the trial Courts throughout the State. This ruling is available to the trial Judge. Therefore, the learned Judicial Magistrate No.I, Dindigul, is directed not to grant adjournment to the Counsels appearing for the Accused so that the witnesses are to be recalled on a different date convenient to them thereby delaying the trial. Similarly the power under Section 311 of Cr.P.C. to recall witness at the whims and fancies of the learned Counsel for the Accused in this case shall not be considered leniently in the light of the reported ruling in ***Vinod Kumar vs. State of Punjab [2015 (1) SCALE 542].*** Also in the same decision, there was a direction to the trial Courts from the Hon'ble Supreme Court that there shall not be different cross examination as a routine matter and the exercise of 311 Cr.P.C. shall be sparingly used and there was a strict direction that witnesses to be examined on the same day and shall be cross-examined by the defence on the same day.

47.In the light of the above ruling, the Prosecution is directed to examine all the 80 witnesses on day-to-day basis. Similarly for every day the number of witnesses to be examined shall be determined by the learned Judicial Magistrate No.I, Dindigul in consultation with the learned Assistant Public Prosecutor or Special Public Prosecutor and the learned Counsel for the Accused. If the Accused fails to appear the bail shall be cancelled also the bond shall be cancelled and the learned Judicial Magistrate No.I, Dindigul even proclaim the Accused as Proclaimed Offender and initiate proceedings to attach their movable and immovable properties by giving wide publicity in all the newspapers including their photographs regarding absconding Accused.

48.Also during the course of trial, the learned Judicial Magistrate No.I, Dindigul, shall record the proceedings in such a manner that there shall not be coercion, undue influence and threat against the witnesses. If there are any threat, then the learned trial Judge has to exercise his/her power to extend protection to the witnesses and curtail the illegal activities of the Accused. The trial Judge has to act as trial Judge with discretion so that the trial proceeds fairly both to the Accused as well as the witnesses. The witnesses have the confidence to depose without fear.

49.As far as the approver evidence is concerned, the evidence of A-3 who had been transposed as approver witness the learned Judicial Magistrate No.I, Dindigul, shall follow the procedure regarding the approver evidence and order of pardon as per the Code of Criminal Procedure and as per the rulings available on this point.

50.With the above direction, the learned Judicial Magistrate No.I, Dindigul, is directed to dispose of the case within a reasonable period of three months from the date the trial is opened.

51.If the learned Judicial Magistrate No.I, Dindigul, is unable to dispose of the case within the time stipulated by this Court, she/he shall report the same to the High Court and seek extension of time.

11**.08.2023**

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

srm

To

1. The Inspector of Police,
   CBCID, Dindigul,
   Dindigul District.

2. The Judicial Magistrate No-1,
   Dindigul.

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

SATHI KUMAR SUKUMARA KURUP, J.

srm

Pre-delivery judgment made in

CRL.OP.(MD)Nos. 18710/2019, 985/2020 & 7319/2022

11.08.2023