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Crl.O.P.(MD)No.21818 of 2022



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 23.01.2023

Delivered on : 06.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**Crl.O.P.(MD)No.21818 of 2022**

**and**

**Crl.M.P.(MD)No.15353 of 2022**

Prabhuraj @ Praburaj

... Petitioner/  
Accused No.3

vs.

1.The Inspector of Police,  
Melur Police Station,  
Madurai District.  
(Crime No.846 of 2020)

...1<sup>st</sup> Respondent/  
Complainant

2.Algarsamy

...2<sup>nd</sup> Respondent/  
Defacto  
Complainant

**PRAYER :** Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the Crime No.846 of 2020 pending on the file of the first respondent police and quash the same in so for the petitioner.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For R1 : Mr.E.Antony Sahaya Prabahar  
Additional Public Prosecutor



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*CrI.O.P.(MD)No.21818 of 2022*



## **ORDER**

The above Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the case in Crime No.846 of 2020 on the file of Melur Police Station, Madurai District and quash the same.

2. The petitioner is the third accused in the case in Crime No.846 of 2020 on the file of the first respondent police.

3. The case of the prosecution is that on 02.06.2020 at 08.00 a.m. when the respondent police was in surveillance, the petitioner along with nine others were found playing cards by sitting in a round shape, that on seeing the police party, all the accused had attempted to take heels, but some of them were apprehended and that the cards along with a sum of Rs.2,820/- were recovered. Hence, the Special Sub Inspector of Police attached to Melur Police Station has registered an FIR in Crime No.846 of 2020 on 02.06.2020 against 10 persons including the petitioner herein for the offence under Section 12 of TN Gaming Act.



4. The main contention of the petitioner is that FIR was registered on 02.06.2020, but till now charge sheet has not been filed and that therefore, the impugned FIR is hit by Section 468(2) Cr.P.C.

5. The learned counsel appearing for the petitioner has relied on the decision of this Court in ***Rajasekar Vs. State represented by Inspector of Police and another*** reported in (2022) 2 MLJ (Crl) 396,

*“15. Now coming to the other ground of attack raised by the learned counsel for the petitioner that the very filing of the charge sheet after lapse of four years since the registration of the case is illegal as it is time barred and that the learned Judicial Magistrate ought not to have taken cognizance of the case, as the final report is clearly barred under Section 468 Cr.P.C.*

*16. It is necessary to refer the judgment of the learned Single Judge of this Court in Crl.O.P.(MD)No.18775 of 2021, dated 07.12.2021 in **Thinakaran and Others Vs. State represented by the Inspector of Police, Tirunelveli Junction Police Station and another** and the relevant passage is extracted hereunder:*

*“6. The learned counsel appearing for the petitioners drew my attention the decision reported in 1987 Cri LJ 360 (Kathamuthu V.*



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*Balammal). The Hon'ble Division Bench was called upon to answer the question as to whether the launching of a criminal prosecution after the lapse of the period of limitation prescribed under Section 468 of Cr.P.C, can the Court condone the delay after taking cognizance of the offences or whether such condonation of delay should precede the taking cognizance of the offences. In the aforesaid Judgment, the Hon'ble Division Bench categorically answered and held that any proceeding culminating in the conviction of a person in a criminal case, the cognizance of which has been taken after the expiry of the period of limitation as prescribed under Section 468(2) of Cr.P.C. without first resorting to Section 473 of Cr.P.C., is non est in the eye of law. The decision reported in 1978 Cri.L.J.116 (Sulochana V. State Registrar of Chits, Madras) was specifically disapproved.”*

***17. Another learned Judge of this Court in D.Senthilkumar Vs. The Inspector of Police, Prohibition Enforcement Wing, T.Nagar Unit, M.G.R.Nagar Police Station, Chennai – 600 083, (CrI.O.P.No.4307 of 2017, dated 09.09.2020) has held as follows:***



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*“7. Considering the rival submissions, it is seen that FIR was registered on 25.06.2015 on the same day the vehicle was seized for offence under Section 4(1)(a) Tamil Nadu Prohibition Act, 1937, for this offence the imprisonment is fixed for a term which may extended to three months or with fine which may extended to one thousand. As per Section 468(2) of Cr.P.C, the period of limitation for filing final report expires on or before 24.06.2016. Auto which was seized was ordered to be returned to the petitioner in C.M.P.No. 4384 of 2015 by order dated 26.11.2015 by XXIII Magistrate Court, Saidapet, Chennai, against which Crl.RC.No. 74 of 2015 was filed by the respondent Police before the Additional Sessions Judge, Chennai. It is seen that the Additional Deputy Commissioner of Police sent notice for confiscating the Vehicle on 08.10.2015, since the owner of the vehicle failed to make any objection the vehicle was confiscated and is in custody PEW unit and from 26.11.2015 to 31.07.2018 revision case was pending. It is seen that the respondent had filed the original documents during enquiry before them*



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*Additional Session Court, Chennai and due to which the charge sheet which was made ready on 21.09.2016, could not be filed before the concerned Magistrate Court. This is an explanation offered by the learned counsel for the respondent. There is no reason given why after disposal of criminal revision on 13.07.2018 till date the charge sheet is yet to be filed and numbered. Though as per 470 of Cr.P.C, exclusion of time in certain cases are available, in this case no such grounds are available. Further, no petition or reason given seeking condonation of delay as per Section 473 Cr.P.C is made. The valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. In any case, the exercise of power under Section 473 Cr.P.C., extending the period of limitation by condoning the delay in launching prosecution should precede the taking cognizance of the offence. This Court following the case of “Kathamuthu Versus Balammal reported in 1985 CrI.L.J 360”, finds the facts of the case no cognisance would be taken in Criminal No.205 of 2015 since it would be bar beyond the period of limitation.*



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*In view of the same the proceedings in Crime No.205 of 2015 is quashed.”*

*18. It is evident from the records that the incident was alleged to have occurred on 05.10.2007 and FIR came to be registered on 16.11.2007 and admittedly the charge sheet has been laid on 14.07.2011. Section 468 Cr.P.C. contemplates the period of limitation for taking cognizance of an offence and in case of the offence which is punishable with imprisonment for a period of term exceeding one year, but, not exceeding three years, the period of limitation shall be three years. In the present case, the major offence with which the accused were charged with, is under Section 506 (1) IPC and the same would attract the maximum punishment of two years imprisonment and as such, the period of limitation for taking cognizance is three years. In the case on hand, admittedly, charge sheet was filed after the expiry of three years. No doubt, Section 473 Cr.P.C. prescribes two exceptions and that the Court can take cognizance beyond the period prescribed under Section 468 (2) Cr.P.C., if the delay has been properly explained or that it is necessary in the interests of justice.”*

6. In the case on hand, as already pointed out, FIR came to be registered as earlier as on 02.06.2020 for the offence under Section 12 of TN Gaming Act.



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7. It is not in dispute that Section 12 of Gaming Act attracts the maximum punishment of three months or fine. Hence, final report should have been filed within a year. Admittedly, final report has not been filed so far. The prosecution has not offered any acceptable reason or explanation for the delay. Hence, this Court has no other option, but to say that the case is barred by limitation.

8. Now coming to the second contention of the petitioner that the common gaming house envisaged in Section 3 of Gaming Act is found missing in the FIR, that unless the gaming takes place in a common gaming house or public street, there will be no offence under Section 12 of the Act and that the very reading of the FIR does not reveal as to the place where the gaming had taken place. As rightly pointed out by the learned counsel appearing for the petitioner, in the FIR, it has been stated that near Kalugumalai, back side of Vellaripatti TVS company, but they have not specified the place where the gaming had taken place.

9. As rightly contended by the learned counsel appearing for the petitioner, since the prosecution has failed to specify the place and that since they have not shown that the gaming had taken place in the



common gaming house, this Court has no hesitation to hold that Section 12 of the said Act is not attracted.

10. Viewed from any angle, the very registration of the FIR is not maintainable. Hence, this Court concludes that the impugned FIR is liable to be quashed.

11. In the result, this Criminal Original Petition stands allowed and the impugned FIR in Crime No.846 of 2020 on the file of the first respondent is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

**06.02.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
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To

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



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**K.MURALI SHANKAR, J.**

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**Pre-delivery order made in**  
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**and**  
**Crl.M.P.(MD)No.15353 of 2022**

**Dated : 06.02.2023**