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Crl.M.P.No.1609 of 2024
in Crl.R.C.SR.No.4317 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.1609 of 2024 in
Crl.R.C.SR.No.4317 of 2024

Ramasamy

... Petitioner

Vs.

1.State rep. By
Inspector of Police,
Avinashi Police Station,
Tiruppur.

2.Manoharan

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 234 days in filing the Criminal Revision Petition against the order dated 10.02.2023 passed in Crl.M.P.No.4340 of 2021 in C.C.No.338 of 2013 passed by the learned Judicial Magistrate, Avinashi.

For Petitioner	:	Mr.G.R.Deepak
For R1	:	Mr.C.E.Pratap
		Government Advocate [Crl. Side]



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ORDER

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This Criminal Miscellaneous Petition has been filed to condone the delay of 234 days in filing the Criminal Revision Case against the final order passed by the learned Judicial Magistrate, Avinashi in Crl.M.P.No.4340 of 2021 in C.C.No.338 of 2013, dated 10.02.2023.

2.The petitioner/defacto complainant lodged a complaint before the respondent police on 02.05.2012 and a case in Crime No.469 of 2012 was registered against the second respondent.

3.The gist of the complaint is that the defacto complainant borrowed a loan of Rs.2,00,000/- from the second respondent and executed a Power of Attorney in respect of his immovable property of 4 acres. The second respondent misusing the said Power of Attorney created further encumbrance to the petitioner. When the petitioner questioned the same, he was abused and threatened. Hence, the complaint was lodged. On conclusion of investigation, charge sheet was filed for the offence under



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Section 4 of Tamil Nadu Prohibition of Charging of Exorbitant Interest Act and Section 506(i) of IPC. The trial in this case progressed substantially, the witnesses were examined, at that stage, the petitioner filed a petition under Section 173(8) Cr.P.C. In Crl.M.P.No.4340 of 2021 stating that case was registered only against the second respondent and one Santhanam had conspired with second respondent and registered the purpose of his property and threatening the petitioner to give Rs.45,00,000/- if he need the property back. The Trial Court without tenable reasons and further referring to the decision of the Apex Court in the case of **Reeta Nag vs. State of West Bengal and others** reported in **[2009] 4 MLJ(Crl.) 1004(SC)**, dismissed the petition which is not proper. Against which, the present revision petition is filed along with a condone delay petition.

4.The learned Government Advocate (Crl. Side) appearing for the first respondent filed his counter stating that FIR in Crime No.469 of 2012 was registered on the complaint of the petitioner on 02.05.2012. The contention of the defacto complainant is that he borrowed Rs.2,00,000/- from the second respondent on 15.10.2010 by executing a Power of Attorney with



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respect to his immovable property and thereafter, without the knowledge of the defacto complainant sold out the same to one Santhanam. When the defacto complainant questioned the same to the second respondent, he was threatened and intimidated. Hence, a case came to be registered under Section 4 of Tamil Nadu Prohibition of Charging of Exorbitant Interest Act and Section 506(i) of IPC. On conclusion of investigation, charge sheet filed and witnesses examined except for the Investigating Officer all other witnesses were examined. At this stage, the petitioner filing this petition is not correct. He would submit that the Apex Court in the case of ***Dinubhai Baghabhai Solanki vs. State of Gujarat*** reported in ***[2014] 4 SCC 626***, clearly held that the purpose of further investigation of any person who has been wrongly prosecuted cannot suffer the same and any person who has actually committed the offence should not escape. In that view of the matter, to bring out the truth application can be filed by the prosecution even after commencement of trial but it has not given any right to the defacto complainant. Further, the defacto complainant's right of further investigation extinguished immediately after framing of charges. Hence, opposed this petition.



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5.The learned counsel for the petitioner further relied upon the decisions of this Court as well as the Hon'ble Supreme Court in the case of ***Ganesan vs. SHO and another*** reported in ***2022 SCC Online Mad 3422***, ***Satishkumar Nyalchand Shah vs. State of Gujarat and others*** [***Crl.A.No.353 of 2020 dated 02.03.2020***], ***XXX vs. The State represented through The Inspector of Police and another*** [***Crl.A.No.562 of 2024***] and ***Jagdish Patni vs. Nikita Prakash Patni and others*** [***Special Leave to Appeal [Crl.] No.3806/2018***].

6.Considering the submissions and on perusal of the materials, it is well settled that at what stages further investigation petition can be filed by the defacto complainant. In ***Dinubhai Baghabhai Solanki's*** case, it has been clearly held that prosecution at any stage can file petition under Section 173(8) Cr.P.C. for further investigation and in this case it is the defacto complainant who filed the petition and his right extinguished immediately on framing of charges. In this case, the trial has proceeded substantially, even the said Santhanam has been examined as P.W.6 and now the case is only



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pending for examination of Investigating Officer. In view of the same, this Court is not inclined to entertain this Criminal Miscellaneous Petition and the same is dismissed. Accordingly, Crl.R.C.SR.No.4317 of 2024 stands rejected.

22.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No

cse

To

- 1.The Inspector of Police,
Avinashi Police Station,
Tiruppur.
- 2.The Judicial Magistrate,
Avinashi.



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M.NIRMAL KUMAR, J.

cse

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