



CrI.O.P.(MD)No.6684 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD) No.6684 of 2022

and

CrI.M.P.(MD).No.4635 of 2022

1.Ganapathyraja
2.Tamilselvi
3.Geethakumari

... petitioners

Vs.

1.State represented by its,
the Inspector of Police,
Alanganallur Police Station,
Madurai District.
In Crime No.20 of 2017

2.S.Silamparasan

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to Crime No.20 of 2017 dated 08.01.2017 on the file of the first respondent Police, Madurai District and quash the same.

For petitioners

: Mr.K.Suyambulinga Bharathi

For R-1

: Mr.S.Manikandan,
Government Advocate
(Criminal Side)



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Crl.O.P.(MD)No.6684 of 2022

For R-2

: No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash FIR in Crime No.20 of 2017 dated 08.01.2017 on the file of the first respondent Police, Madurai District

2. The case of the prosecution is that the second respondent / *defacto* complainant, viz., S.Silamparasan had a electronic shop in the name and style of Jeevan Electronics in Shop No.4-1/38 at Alanganallur from the year 1987 onwards. The said shop was originally belongs to one Kamatchi @ Rajammal, who was none other than the grandmother of petitioner Nos.1 and 3 and mother-in-law of the second petitioner herein. The second respondent was the tenant in the shop owned by the said Kamatchi @ Rajammal. After demise of the said Kamatchi @ Rajammal, the petitioners derived her property as legal heirs of the said Kamatchi @ Rajammal in the year 2016 and thereafter, there was a misunderstanding arose between the petitioners and the second respondent herein with regard to landlord and tenant dispute. Due to which, the second respondent had filed a suit before the learned Principal District Munsif,



Vadipatti in O.S.No.92 of 2016, for unlawful eviction. During the pendency of the said suit, on 11.12.2016, the petitioners herein along with other accused were trespassed into the second respondent's shop and took away all the articles from the shop, which was worth about Rs.4,00,000/-. Hence, the second respondent lodged a complaint before the first respondent Police and the first respondent Police has registered a complaint and subsequently, the same has been closed by the first respondent Police. Thereafter, the second respondent again has sent a complaint on 02.01.2017 to the Superintendent of Police, Madurai, who in turn, has been forwarded the same to the Inspector of Police, Vadipatti, but, no action has been taken by the first respondent Police. Hence, the second respondent has sent another complaint to the first respondent through a registered post and the same was received by the first respondent and FIR came to be registered against the petitioners in Crime No.20 of 2017 dated 08.01.2017 for the offence punishable under Section 379 IPC.

3. The learned counsel appearing for the petitioners would submit that though the case of counter arises on 11.12.2016, the complaint was came to be filed before the first respondent on 13.12.2016 and the said complaint was closed as “Mistake of fact” and again, the



second respondent made a complaint to the Superintendent of Police on 02.01.2017 and pursuant to which, the present FIR came to be registered.

However, till date, the Charge sheet has not been filed and there was a delay in filing the charge sheet which is barred under Section 468(2) of Cr.P.C. He would further submit that in respect of offence committed by the petitioner under Section 379 IPC, the maximum punishment is three years and the complaint came to be filed only on 08.01.2017. The respondent Police ought to have filed a charge sheet within the period of three years i.e., 09.01.2020, but, even after lapse of three years, charge sheet has not yet filed. He would further submit that the issue arose in the present issue is no longer *res integra* and it is covered by the Judgment of this Court in the case of ***A.Kaliyaperumal and others Vs. the Superintendent of Police, Cuddalore, Cuddalore District and others*** in Crl.O.P.Nos.433 and 4543 of 2024, dated 24.01.2024.

4. The learned Government Advocate (Criminal Side) appearing on behalf of the first respondent Police would submit that the present quash petition was filed in the year 2022. He would further submit that since this Court has granted an order of interim stay on 11.04.2022, thereby, the charge sheet has not yet filed till date. Hence, he prays for dismissal of the petition.



WEB COPY



CrI.O.P.(MD)No.6684 of 2022

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is seen that the present complaint has been filed in the year 2017, however, initial complaint filed by the petitioner was closed as “Mistake of Fact”. The second respondent has again sent a complaint to the Superintendent of Police on 02.01.2017 and pursuant to which, FIR came to be registered in Crime No.20 of 2017, dated 08.01.2017. However, till date, the charge sheet has not yet filed. Hence, the present case is barred by Section 468 (2) Cr.P.C.

6. Section 468 of Cr.P.C., reads as under:

"468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section

(2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;



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CrI.O.P.(MD)No.6684 of 2022

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

7. Therefore, the maximum punishment for Section 379 IPC is three years or with fine or with both, thereby, as per Section 468(2) I.P.C, the charge sheet should have been filed within three years from the date of occurrence.

8. Useful reference in this regard can be made to the decision of the Hon'ble Apex Court in ***Mrs.Sarah Mathew Vs. The Institute of Cardio Vascular Diseases, Dr.K.M.Cherian and others ((2014) 2 SCC 62)***. In the case on hand, three years have already been lapsed and the respondent Police have not filed the charge sheet, till date.



Crl.O.P.(MD)No.6684 of 2022

Therefore, considering from any angle, FIR registered against the petitioner will not sustain and therefore, accordingly, quashed.

9. Accordingly, the Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

21.02.2024

Index : Yes/No
Internet : Yes/No
TSG

To

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



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Crl.O.P.(MD)No.6684 of 2022

M.DHANDAPANI. J.

TSG

Crl.O.P.(MD)No.6684 of 2022

21.02.2024