



*Crl.R.C.(MD)No.396 of 2022  
and Crl.M.P.(MD)Nos.5087 & 6321 of 2022*

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

Dated : 15.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl.R.C.(MD)No.396 of 2022**  
**and**  
**Crl.M.P.(MD)No.5087 of 2022**

- 1.Shenbagaraj
- 2.Ganeshan
- 3.Lakshmi

... Petitioners/Injured victims  
PW.1 & L.W2 and L.W.7

Vs.

- 1.The State rep. Through its  
The Sub Inspector of Police,  
Kadupatti Police Station,  
Madurai District.  
(Crime No.110/2017)

... 1<sup>st</sup> respondent/Petitioner/Complainant

- 2.Raja
- 3.Usharani

...Respondents 2 & 3/Respondents 1 & 2/  
Accused Nos.1 & 2

**PRAYER:** Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 29.03.2022 made in Crl.M.P.No.77 of 2021 in C.C.No.113 of 2019 on the file of the learned Judicial Magistrate Court, Vadipatti and allow this Criminal Revision Petition.

For Petitioner : Mr.A.Saravanan  
For Respondents : Mr.B.Thanga Aravindh  
Government Advocate(Crl.side) for R1  
Mr.R.Ramadurai for R2 & R3

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### **ORDER**

This criminal revision case has been filed to set aside the order dated 29.03.2022 made in Crl.M.P.No.77 of 2021 in C.C.No.113 of 2019 on the file of the learned Judicial Magistrate Court, Vadipatti.

2.The case of the prosecution is that the second and third respondent are husband and wife. On 21.03.2017, one Ganesan and his wife Lakshmi and their son Shenbagaraj and some other persons assaulted the second and third respondents with iron rod and wooden log and also scolded with filthy language. Due to that, the second and third respondents sustained injuries. Thereafter, a complaint was lodged before the first respondent police and FIR was registered.

3.The defacto complainant in Crime No.110 of 2017 on the file of the first respondent police filed the revision, challenging the dismissal order passed in Cr.M.P.No.77 of 2021 filed by the learned Government Advocate(Crl.side)/respondent police to receive various photographs and the electronic evidence in support of the case of the defacto complainant. The said petition was dismissed by the learned trial Judge.



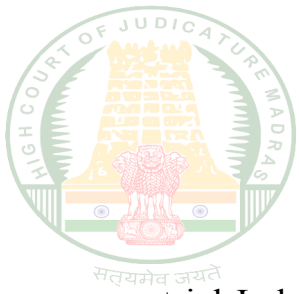
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4.The petitioners have made a complaint against the second and third respondent stating that they have assaulted and caused bleeding injury. The same was captured in the cell phone, but, the same was not collected from him by the investigating agency during the course of investigation. Hence, the respondent police filed a petition under Section 242(2) of Cr.P.C. and Section 173(2)(5)(8) of Cr.P.C. and the same was dismissed by the learned trial Judge. Aggrieved over the same, the defacto complainant filed this petition.

5.The learned Counsel for the petitioner submits that the petition was dismissed holding that the petitioner has no *locus standi*. In this case, the petitioner has sustained injuries and the same was captured in the phone and the electronic evidence is a material evidence to prove the case. Hence the respondent police correctly filed the application, but the learned trial Judge erroneously dismissed the same.

6.The learned Counsel for the second and third respondents submits that the petitioner has filed this petition after examination of P.W.1. Hence the same is not maintainable under Sections 242(2) & 173(2)(5)(8) of Cr.P.C. The learned

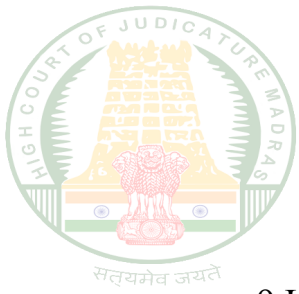


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trial Judge correctly dismissed the petition. Further, the learned Counsel submits the petitioner has filed this revision without any *locus standi*. He also submits that crime number is of the year 2017 and he has been appearing before Court. Hence allowing this petition will cause serious prejudice and also affect their right of speedy trial. With these submissions, he seeks for dismissal of this revision.

7.The learned Government Advocate(Crl.side) on instructions submits that the learned trial Judge is not correct to dismiss the petition, when material evidence was omitted to be collected during the course of the investigation. The Court has to entertain the petition in order to give the adequate opportunity to the complainant. In this case, he rightly filed the petition, but the learned trial Judge erroneously dismissed the same. In the said circumstances, he seeks for allowing this revision.

8.This Court has carefully considered the rival submission and perused the records.



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9. In the FIR, it is alleged that the petitioners herein have been assaulted by the second and third respondent. The investigation was conducted and the final report was filed and the same was taken on file in C.C.No.113 of 2019. Thereafter, the case was posted for examination of the witnesses. At the time of trial, it was brought to the knowledge of the learned Government Advocate(Crl.side) about the inadvertent omission on the part of the Investigating Officer to collect the electronic evidence. Hence he filed a petition under Section 242(2) of Cr.P.C. and 173(2)(5)(8) of Cr.P.C. In the said application, he specifically stated that to produce the electronic evidence, the certificate under Section 65(B) of the Evidence Act is necessary and the same is the material to prove the charges against the second and third respondent.

10. In the said circumstances, it is the duty of the learned trial Judge to accept the same and direct the investigating agency to conduct further investigation and call for additional final report. The said exercise is in consonance with the fair trial. The concept of fair trial includes the proof of the case in accordance with law. The inadvertent omission during the course of the investigation is not the ground to reject the additional evidence and when it subsequently comes to the knowledge of the Investigating Officer.



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11.In the said circumstances, the petitioner rightly filed the petition and the same was erroneously dismissed by the learned trial Judge. Hence this Court is inclined to set aside the same and the Investigating officer is directed to obtain necessary FSL report from the department by submitting the application **on or before 27.08.2024** and the FSL office is directed to furnish the report **on or before 14.10.2024** giving top priority to this case. After receiving the same, the investigating officer is directed to file the additional final report. On the basis of the same, the learned trial Judge is directed to proceed with the trial. At the time of marking this documents, it is open to the second and the third respondent to raise their objection, if any, relating to admissibility and relevancy and also they are entitled to question the delay in producing the said documents.

12.Accordingly, this criminal revision case is allowed with the following term:

*(i)the impugned order passed by the learned Judicial Magistrate Court, Vadipatti, dated 29.03.2022 in Crl.M.P.No.77 of 2021 in C.C.No.113 of 2019 is hereby set aside. Consequently, connected miscellaneous petition is closed.*

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NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
RJR/*sbn*

To

- 1.The learned Judicial Magistrate Court, Vadipatti.
- 2.The Sub Inspector of Police,  
Kadupatti Police Station,  
Madurai District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- 4.The Section Officer,  
Criminal Section(Records),  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

RJR/sbn

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