

(1976) 01 MAD CK 0028

In the Madras High Court

Case No : Criminal R.C. No. 728 of 1975 and Criminal R.P. No. 725 of 1975

Karumuthu S. Chockalingam

APPELLANT

Vs

T. Kannoppan, Executive Director, Thiagaraya(sic) Mills,
Kappalur, Madurai and others

RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203
Penal Code, 1860 (IPC) — Section 447

Citation : (1976) LW(Cri) 60

Hon'ble Judges : Paul, J

Bench : Single Bench

Advocate : S. Chellaswamy, for the Appellant;

Final Decision : Allowed

Judgement

Paul, J.—Crl. R.C. No. 728 of 1975 has been preferred by one Karumuthu S. Chockalingam, whose private complaint against four persons alleging offences under Ss. 447, 448, 379 and 380 I.P.C. was dismissed by the learned Judicial Second Class Magistrate III, Madurai u/s 203, CrI.P.C, CrI M.P. No. 461/75 has been filed by the revision Petitioner, raising certain additional grounds in the aforesaid criminal revision case. The Criminal Revision case came up for admission and since even if it is admitted, this revision being against the order of dismissal of a complaint u/s 203, Code of Criminal Procedure the accused persons would not be entitled to any notice, elaborate arguments were advanced by the learned Counsel for the revision Petitioner and the matter was heard fully.

2. In his private complaint filed before the Judicial Second Class Magistrate of Madurai, the complainant-revision petitioner has made the following allegations. He is the Director of the Sri Sivagami Mills Limited, Madurai, the Rukmini Mills Limited, the Sri Rajendra Mills Limited and the Sri Sivagami Computer Service Private Limited and was a Director of the Sree Meenakshi Mills Limited from 1973 to 1974 and is a Graduate in Electrical Engineering Administration of the Michgar,

Technological University, and is a grandson of the late Karumuthu Thiagaraja Chettiar and a son of T. Sundaram Chettiar who pre-deceased his father Karumuthu Thiagaraja Chettiar who died on 29th July 1974. Being the son of a predeceased son of Karumuthu Thiagaraja, Chettiar, he, the complainant is one of the legal heirs of the late Karumuthu Thiagaraja Chettiar who died possessed of declared jewellery as well as undeclared jewellery, unaccounted money, curios, costly carpets and other valuable articles which had been kept in the main bungalow of the Sree Meenakshi Mills Limited where he was residing during his lifetime and after his death his heirs were joint owners of those assets and were in joint possession of the same and those assets had not been partitioned among the legal heirs and actually the shares that stood in the name of the late Karumuthu Thiagaraja Chettiar in various companies and other properties, movable and immovable, owned by him have not yet been partitioned among the heirs. However, a written agreement dated 3rd November 1974 was executed between the legal heirs whereby shares in companies which stood in different names were exchanged and transferred and the written agreement was preceded by an oral agreement regarding the division of the business and it was agreed in September, 1974 that the parties should vacate the premises occupied by them in case the management was not in the hands of the parties who were in occupation of the premises. Under the written agreement dated 3rd November 1974 the controlling interest and the management of the Sree Meenakshi Mills went to T. Manickavasagam Chettiar, S. Thiagarajan and K.S. Sethu. The main bungalow in the Meenakshi Mills which was owned by the Sri Meenakshi Mills and which was in the occupation of the late Karumuthu Thiagaraja Chettiar till his death, had been by a lease agreement dated 8th February 1973 leased out by the Sree Meenakshi Mills to Thiagaraja Chetty and Sons, Private Limited and by a rental agreement dated 10th February 1973 Thiagaraja Chetty and Sons Private Limited had sublet the premises to Karumuthu Thiagaraja Chettiar for a period of 6 years but that sublease came to an end in the death of Kar mutha Thiagaraja Chettiar. While matters were so the first accused T. Kannappan, the Executive Director of the Thiagaraja Mills, Kappalur, as if he and his mother the 2nd accused were losses of the aforesaid premises caused the clerk in the office of the Thiagaraja Chetty and Sons Private Limited to write a letter to him demanding the arrears of rent as lessee and made payments and got a receipt just to make it appear that he and his mother were lessees, but they got back the amount of Rs.9,600/-which had been so paid; whereupon Thiagaraja Chetty and Sons Private Limited wrote to the first accused to return the stamped receipt. Since it had been agreed that all properties belonging to the respective Mills can be occupied only by those to whom the management and shares of the Mills had been transferred and the party occupying property which does not belong to him should vacate the same, the second accused (who is the mother of the first accused) Srimathi Radha, the Managing Director of the Thiagaraja Mills, Kappalur had to vacate the Meenakshi Mills bungalow before November, 1974 ; but she was allowed to stay on in that bunglow till July 1974 even after which she failed to Vacate the bungalow under some pretext or the other. But the

complainant's brother S. Thiagarajan was insisting that the first and second accused should vacate the bungalow, and on 29th August 1975, learning that the first and the second accused were about to vacate the bungalow, the complainant's brother Thiagaraja wanted to get the boxes and baggages sought to be removed from the bungalow examined for the purpose of finding out whether they contained the jewellery, money and other valuable articles belonging to the estate of the late Karumuthu Thiagaraja Chettiar which had been kept in the bungalow but the first and second accused bluntly refused to allow such examination and on the same day they locked up the rooms and safes, in the bungalow and left the bungalow and handed over only the key of the main door to the Sree Meenakshi Mills Office, but took away the other keys with them and the bungalow remained locked till 30th September, 1975, but on the morning of 30th September, 1975 the first accused came with Sri V. K. Thiagarajan, a Deputy Superintendent of Police from Madras and Sri Ramanujam, the local Circle Inspectors of Police, C.I.D. and some other C.I.D. Inspectors from Madras and with two vans of the armed reserve police, surrounded the main bungalow in the compound of the Meenakshi Mills and the first accused with the aid of the Police and with goondas employed by the third accused entered into the bungalow and locked all the doors and windows of that bungalow from the inside, packed various movable properties belonging to the estate of Karumuthu Thiagaraja Chettiar including declared jewellery and undeclared jewellery, unaccounted money and other valuable articles belonging to the estate of the late Karumuthu Thiagaraja Chettiar and took away those movables to unknown destinations in lorries cars, and tractors with trailers, making about 14 trips for the purpose of taking away the said movables from the bungalow during a period of 3 days and the third accused who is the Director of the Sri Visalakshi Mill Limited with his son brought goondas and intentionally aided the first accused in the removal of those movables and the watchman and other staff members of the Sree Meenakshi Mills were warned by the D.S. P. not to come near the bungalow or to inspect the vehicles in which those goods were being removed under the threat that they would be detained under the M. I. S. A. if they disobeyed his order and the police officials told the complainant's brother and other members of the family that they were acting under the I.G.'s instructions.

3. It is further asserted in the complaint that the fact that a D.S.P. was sent from Madras would show that the I.G. would not have given the directions and even assuming, but without admitting, that he had given such directions, he would not have done so without the intervention of the higher authorities and in this case it was clear that the higher authority was the fourth accused, the Minister for Law of the Madras Government who had intervened and extended unofficial police help to the first and second accused for so taking away the movables and even subsequently after the removal of the movables the police force was kept there and the legal heirs and owners of the property were not allowed to enter the bungalow. It is further asserted in the complaint that subsequent developments which took place clearly showed that the fourth accused had taken the side of

the first and second accused against the legal heir with the intention of causing gain for himself and the first and the second accused, and for causing loss to the complainant and other legal heirs and after the aforesaid offences of theft and criminal trespass had been committed with the active aid of the third and fourth accused, the fourth accused brought pressure to bear on the legal heirs of Karumuthu Thiagaraja Chettiar to agree to the terms of the first and second accused and the fourth accused sent word through the complainant's brother asking the complainant to go and meet him, but the complainant refused to do so and the fourth accused sent word to the complainant's brother and his uncle's son to go and meet him and to submit to the terms proposed by him and he held three or four conferences in his residence at Madras and one Periannan, Managing Director of Hotel Allantic was brought in by the fourth accused and all these would indicate that the fourth accused had allowed himself to be involved in a purely domestic matter of the family. The complainant has further stated in his complaint that he would produce the tape recording of the discussions which the fourth accused had as stated above; and that it was the fourth accused who had the key of the bungalow and on 5th October 1975 the fourth accused sent Periannan to prepare an inventory of the articles left in the bungalow and it was found that only some curios and a few jewels kept in a safe, for which the first and the second accused did not have the key (which was house with the Meenakshi Mills Office), were found; and on the 22nd, 23rd and 24th of October, 1975, the income tax Department raided the Meenakshi Group of Mills and Bungalows and the income tax Officials asked the brother of the complainant for the key of the main bungalow whereupon the complainant's brother told the officials that the key was with Periannan and Periannan was contacted and he said that the key was with the fourth accused.

4. I have extracted the above material allegation in the complaint in extenso, for a better appreciation of the matter. The learned Judicial Second Class Magistrate after recording the sworn statement of the complainant and after examining the two witnesses N. Srinivasan and Narasimhan produced by the complainant considered the matter and found that there were no sufficient grounds for proceedings with the complaint and he dismissed the complaint u/s 203 Cr. P.C. It is now contended that this order of the learned Judicial Second Class Magistrate was illegal and has to be revised.

5. The question therefore is whether the order of the learned Second Class Magistrate dismissing the complaint of the revision Petitioner u/s 203, Crl. P.C. is illegal and to be set aside.

6. The learned Second Class Magistrate has dismissed the complaint u/s 203 Cr. P.C. on the following grounds. Firstly, that a perusal of the sworn statement of the complainant shows that even after the death of Karumuthu Thiagaraja Chettiar, accused 1 and 2 who are the son and wife respectively of Karumuthu Thiagaraja Chettiar continued to live in the same bungalow and had paid rent to Thiagaraja Chettiar and Sons Limited, and got receipts from the mother of the

complainant who is a director of Thiagaraja Chettiar and Sons Limited, and there were sufficient materials to hold that accused 1 and 2 vacated the house on 29th August 1975 and as such it was difficult to hold that the accused are liable for offences under Sections 447 and 448 I.P.C. Secondly those, there are no materials on record making out offences under Sections 379 and 380 I.P.C." for accused 1 and 2 who were living in the house were having physical possession and custody of the movables in question of which there has been no partition" and there is no evidence to show what things were removed from the bungalow, and in any event there are no materials on record to show that accused 2 to 4 abetted the commission of criminal trespass and theft by accused-1. Thirdly, there is a long delay in the presentation of the complaint in Court.

7. The learned Second Class Magistrate has further observed that except for a vague allegation in the complaint that the second accused abetted the commission of the offences of theft and criminal trespass, there was nothing in the complaint or in the sworn statements of the complainant and those of the witnesses, which would show that the second accused took an active part in the removal of the articles; and further the complainant himself was not a witness to the occurrence and had no personal knowledge about the removal of the articles by the first accused or about accused-3 going with goondas to give aid to the first accused in the commission of the offence of theft and that even though the complainant had stated in his sworn statement that two of the witnesses cited in the complaint could identify the goondas brought by accused-3 from the Visalakshi Mills, those persons had not been added as accused in that case. He was further observed that the averment in the complaint that the fourth accused was keeping the key of the main gate of the bungalow and had intentionally aided the first and the second accused committing theft of the aforesaid movables was only a surmise and that the sworn statement of the complainant and the statements of the two witnesses examined on behalf of the complainant and the enclosures showed that the allegations against the fourth accused were absolutely baseless and there were nothing on record to indicate when and where accused-4 instigated any of the other accused to commit the offences and it is quite unlikely that the top most police officers in the State would have been instigated by a responsible person like accused-4 to commit such acts especially when accused-4 not shown to have had any personal interest in the estate of Thiagaraja Chettiar and "the case of the complainant that only at the instigation of accused-4 the alleged offences were committed by accused 1 to 3 appeared to be fantastic and even if it assumed that accused-4 gave any instructions to give police protection it must be deemed to have been given by him only in the course of the discharge of his duty as a public servant for which sanction is necessary for prosecution" and that the fourth accused had been arrayed as an accused with some ulterior motive.

8. I shall now proceed to discuss each of these reasons given by the learned Second Class Magistrate for dismissing the complaint and see whether they are valid reasons.

9. A Magistrate cannot dismiss a complaint u/s 203, Cr. P. C. without considering whether there is prima facie evidence of a criminal offence and in exercising his discretion u/s 203 the Magistrate should not allow himself to be influenced by consideration of the motive by which the complainant may have been actuated in moving in the matter; nor by any other consideration outside the facts which are adduced by the complainant in support of his complaint.

10. The decision whether there is sufficient ground for dismissing a complaint u/s 203, Cr. P.C. must be reached by the exercise of discretion based on judicial considerations. The motive and conduct of the complainant are not relevant considerations and in the absence of any finding that the complaint is false or unsustainable on the evidence likely to be available, the passing of an order of dismissal would constitute an irregularity with which the High Court has jurisdiction to deal. (Vide: Gangu Reddi v. Samarapathi Mudali AIR 1916 Mad. 303).

11. As has been held by the Supreme Court in Vadilal Panchal v. Dettatraya Dulaji Ghadi-gankor and another AIR 1960 S.C. 1913 .

S. 203, Cr. P.C. makes it clear that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment; and in arriving at his judgment he is not fettered in any way except by judicial considerations.

It is true that one of the objects behind the provisions of Section 202 is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. Whether the complaint is frivolous or not has at that state, necessarily to be determined on the basis of the material placed before him by the complainant. For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for process and not whether there is sufficient ground for conviction whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the state of enquiry. The object of the provisions of Section 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath." (Vide: Mohammedkutti v. Abdurahiman kutty 1966 M.L.J. (Cri.) 50 .

The reason for dismissing a complaint should be based on inference or facts arising from or disclosed by (1) the complaint; (2) the examination of the

complement; (3) the investigation, if any made under the powers conferred by S 202, Cr. P.C. (Vide-Mustafa Rahim v. Motilal Chunilal 9 B.L.R. 742 .

12. Examining the first reason given by the Second Class Magistrate, it appears as if the Magistrate, felt that because even after the death of Karumuthu Thiagaraja Chettiar, accused 1 and 2 who are said to be the son and wife respectively of Karumuthu Thiagaraja Chettiar continued to live in the same bungalow and paid rent to the Thaiyaraja Chettiar and Sons Ltd., and vacated the house on 29th August, 1975, they could not be held liable for an offence u/s 447 or Section 448, I.P.C. and since accused 1 and 2 were having physical possession and custody of the movables in the bungalow and there is no evidence to show what things were removed from the bungalow an offence u/s 379 or u/s 380, I.P.C., cannot be made out. But then. it on 29th August 1975 they had vacated the Bungalow in pursuance of an agreement which according to the complainant had been arrived at earlier and if subsequently any trespass was committed into the house by them with any of the intents specified in Section 441 I P.C. Again even though they had been in physical possession and custody of the movable in the bungalow it has to be remembered that their custody was also on behalf of all the heirs of Karumuthu Thiagaraja Chettiar and if they had subsequently removed those movables and appropriated them they may be liable for theft.

13. With regard to the delay in presenting the complaint in Court, according to the complainant the occurrence which was the subject-matter of the complaint took place from 30th September to 2nd October 1975. The complaint was given into the Court on 17th November 1975 and the sworn statements of the complainant and the two witnesses were recorded on 17th November 1975. Therefore undoubtedly there was a delay of nearly a month and a half in preferring the complaint; but merely on account of delay a complaint cannot be dismissed.

14. In Balarani Kali v. Jaganath Kali and another AIR 1967 Cal. 103 (sic) it has been observed that mere lapse of time between the commission of the offence and date of complaint is no ground for throwing out a complaint, though that may be a relevant consideration at the trial for assessing evidence when that is adduced.

15. Coming now to the question of the want of sanction for prosecution of accused-4 to which also the learned Second Class Magistrate has referred sanction to prosecute would only be necessary where, as held by the Supreme Court in Probhakar v. Sinari V. Shankor Anant Verlekat 1969 M.L.J. Cri. 484 , the acts alleged against the accused were such as could be regarded as having been committed by him while acting or purporting to act in the discharge of his official duties.

16. The Supreme Court has observed in Amrik Singh Vs. The State of Pepsu, that "it is not every offence committed by a public servant that requires sanction for

prosecution u/s 197(1) CrI P C. nor even every act done by him while he is actually engaged in the performance of his official duties but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary ; and that would be so, irrespective of whether it was, in fact; a proper discharge of his duties because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could arise at the stage of the grant of sanction which must precede the institution of the prosecution. If the act complained of hinges on his duties as a public servant, then sanction is requisite. But if they are unconnected with such duties then no sanction is necessary. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction u/s 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts then no sanction would be required."

17. In *Dowlath Vs. Dey*, District Forest Officer, it has been observed that "where a public servant, purporting to discharge his official duties does an unlawful act for which he is prosecuted, the question of sanction would arise only if it is found that the acts committed by him were in discharge of his official duties. It is not a pure question of law but a mixed question of law and fact and has to be decided after investigation and cannot be short-circuited by summarily throwing out the complaint "

18. In *H.H.B. Gill and Anr. v. The King-Emperor* 1948 2 M.L.J. 6 the Privy Council has held that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty ; and the test as to the necessity for sanction is whether the public servant if challenged, can reasonably claim that, what he does he does in virtue of his office.

19. Therefore the point that has to be determined in each case is whether the offence was committed in the discharge of official duty and if there was no necessary connection between the act complained of and the official duty and the performance of those duties and official status furnish only the occasion or opportunity for the acts, no sanction would be required.

20. In *Kamisetty Raja Rao v. T Rama-swami* ILR Mad. 750 it has been observed that a prosecution for an offence arising out of an abuse of official position by an act not purporting to be official does not require sanction u/s 197, Cr.P.C.

21. In the case now before me, the insinuation that has been made is that accused-4 as the Law Minister of the Government of Tamil Nadu, had caused a police force to be sent to help the first accused in removing the valuables from the house. It may be noted that the fourth accused, Mr. Madhavan, though is a

Minister for Law of the Government of Tamil Nadu, is not in charge of the police portfolio. Therefore it was not even his duty to provide police help issue directions to the police. Therefore there is no relation at all between the official position of accused-4 and the acts complained of in this case which according to the complainant amount to offences under Ss.448, 380 I.P.C. etc. Therefore no sanction for prosecution would be necessary.

22. Now, having disposed of the main grounds on which the learned Magistrate has based his order of dismissal of the complaint, I will proceed to examine the materials that were available to make all Prima facie the various offences alleged in the complaint at the time when the Magistrate dismissed the complaint under S 203 Cr. P C. and the materials that all likely to be available of all the evidence the complainant proposes to adduce is adduced and find all whether there are no grounds to proceed further in respect of these accused or any of them.

23. Even assuming that on 30th September 1975 and the subsequent days a number of movables belonging to the estate of the late Karumuthu Thiagaraja Chettiar and kept in his bungalow in the Meenakshi Mills were removed from there, there are no materials at all available to show that the second accused participated in any way in the removal of these articles or instigated or abated the removal of these articles. It is however alleged in the complaint that the first and the second accused stoutly refused to allow an inspection of the boxes and baggages which were sought to be removed from the bungalow, on 29th August, 1975 when the first and the second accused were about to leave the bungalow and on that day both the accused locked up the rooms and safes and the main door and left the house , carrying with them all the keys except that of the main door and on 30th September it was the first accused who came with the police force and removed the various movables, though the complainant does not know what were the movables so removed. The complainant in his sworn statement has only repeated the aforesaid allegations. He admitted in his sworn statement that he was not present in the house when accused 1 and 2 vacated the building on 29th August 1975 and does not know personally what happened on that day and whether all the keys were taken by accused 1 and 2. The two witnesses whom he examined were employees of the Meenakshi Mills. They only speak to the removal of the articles from the Mill premises on 30th September, 1975 and the subsequent days, some of the other witnesses who have been cited in the complaint also are to speak to the removal of the articles from the mill bungalow on those days and the two income tax Officers who have been cited in the complaint are to speak to Perianan informing Sri Mohan Gandhi that the key of the bungalow was with the fourth accused. No materials are available and are likely to be made available even by examination of the rest of the witnesses to connect the second accused with the removal of the articles from the bungalow, assuming that such a removal took place. Hence the dismissal of the complaint u/s 203, Cr. P.C. as far as the second accused is concerned, is perfectly justified.

24. As far as the fourth accused is concerned, the allegations in the complaint

and in the sworn statement are that on the 30th September and the following three days the first accused came with a police force consisting of Sri V.K. Thiagarajan, the Deputy Superintendent of Police, Madras, Sri Ramanujam, the local Circle Inspector of Police, C. I. D. and some other C. I. D. Inspectors and with two vans of the armed Reserve Police and surrounded the bungalow and that various articles were removed from the bungalow in a number of vehicles and subsequently the fourth accused, as told the complainant by the brother, had discussions with the complainant's uncle's son and brought pressure to bear on the legal heirs of Karumuthu Thiagaraja Chettiar to agree to the terms of the second and first accused and it appeared that the key of the bungalow had been handed over to the fourth accused after the removal of the articles and the fourth accused sent one Periannan to prepare an inventory of the articles left in the bungalow. It is further alleged that when the income tax officials wanted from Thiagarajan, the brother of the complainant, the key of the main bungalow, the latter informed the officials that the key had been taken away by Periannan and Periannan informed Mohan Gandhi, the income tax Officer that the key was with the fourth accused and would be handed over to the income tax Officer only if an assurance was given that the key would be returned to the fourth accused and that this clearly showed that the fourth accused allowed himself to be totally involved on the side of the first and second accused against the legal heirs and had added the first and second accused in committing theft of the aforesaid movables with the help of the police and the police force would not have been brought for the illegal purpose but for the active aid given by the fourth accused. In the sworn statement the complainant has alleged that he and others came to know that the I G. of Police had not given any orders for police assistance in removing those articles and that it was the fourth accused who used his influence to send the formidable police force to be at the disposal of the first accused to loot the house with the dishonest intention of all the

four accused sharing the loot and the fourth accused called the family members for several discussions and forced the family members to agree to the terms and conditions of accused 1 and 2 and asked the family members to forego the unaccounted jewellery and un-accounted money and the declared jewellery, etc.

25. Apart from these insinuations in the complaint and in the sworn statement, there is nothing to show that the fourth accused had anything to do with the removal of the articles from the bungalow. I asked the learned Counsel for the revision Petitioner as to whether any other materials are available apart from the allegations in the complaint and in the sworn statement which would support the complainant's case against the fourth accused. The learned Counsel for the revision Petitioner thereupon said that a tape-recording of the discussions which the fourth accused had with the other members of the family with regard to the movables of the estate of the late Karumuthu Thiagaraja Chettiar was available and that would show that the fourth accused actively interested himself in the matter of accused 1 and 2 getting for themselves certain undeclared assets and jewellery of the late Karumuthu Thiagaraja Chettiar, and suggested that it could

be mentioned to the income tax Department that the jewellery were lost and there was complicity in the commission of the offence. Therefore the pieces of evidence against the fourth accused are only to effect that a police force came with the first accused for removal of the articles and it was headed by D S.P. sent from Madras who was formerly attached to the fourth accused and that subsequently the fourth accused on behalf of accused 1 and 2 had discussions with the complainant's uncle's son and brother with regard to the undeclared jewellery, money etc., belonging to the late Karumuthu Thiagarajan Chettiar and pressed forward the claim of accused 1 and 2 to these assets and Periannan said that the key of the bungalow was also with the fourth accused. These are all the materials available and are likely to be made available even by an examination of all the remaining witnesses in support of the complainant's assertion that the fourth accused abetted the commission of offences of house trespass and theft of the movables from the bungalow. But then the aforesaid material would not show prima facie that it was the fourth accused who sent the police force with the first accused; nor would it show prima facie that the fourth accused, in any manner instigated or helped in the removal of the movables from the bungalow. From the mere fact that the police force was headed by a D.S.P. who was formerly attached to the fourth accused and subsequently the fourth accused had some discussions with the members of the family regarding the division of the movable assets belonging to the estate of Karumuthu Thiagaraja Chettiar and even had the key of the bungalow with him, it cannot be inferred that the removal of the articles from the bungalow was done at the instigation of or with the help of the fourth accused. Therefore as rightly pointed out by the learned Second Class Magistrate the case against the fourth accused rests purely on surmises. There are therefore no grounds to proceed with the complaint against the fourth accused and the dismissal of the complaint against the fourth accused was perfectly justified.

26. Coming now to accused 1 and 3, no doubt the complaint and the sworn statement speak to the presence of accused 1 and 3 at the time when these articles were removed and it is alleged that the first accused came with a police force and the articles were then removed from the mill bungalow and it is also stated that accused 3 with his son brought some persons and intentionally aided the first accused in the removal of the movables. In the sworn statement also it is stated that accused-3 was present during the removal and brought certain goondas employed in the Visalakshi Mills. Therefore, Prima facie there are grounds to proceed with the complaint so far as accused 1 and 3 are concerned. One of the factors which persuaded the learned Second Class Magistrate to dismiss the complaint against all the accused is that in his view this is a civil dispute. But then, if the articles that were kept in the bungalow were assets belonging to the estate of the late Karumuthu Thiagaraja Chettiar, even though accused 1 & 2, who were occupying the bungalow even after the death of Karumuthu Thiagaraja Chettiar were in custody of these articles their possession of the same would be on behalf of the heirs of the late Karumuthu

Thiagaraja Chettiar and if accused 1 and 2 are also the heirs of Karumuthu Thiagaraja Chettiar then their possession of those articles would be constructive joint possession with the other heirs(sic) and if those articles had been removed by the first accused without the consent of the other heirs, dishonestly, that would prima facie amount to theft of the articles. Therefore, on the allegations in the complaint and in the sworn statements, there are grounds(sic) to proceed further with the complaint in so far as accused 1 and 3 are concerned. Therefore the order of dismissal of the complaint u/s 203, Cr P.C. so far as accused 1 and 3 are concerned has to be and is set aside and further enquiry ordered into that complaint in so far as they are concerned. Crl.M P. No. 4461/75 is allowed.