



Crl.O.P.(MD)Nos.11261 and 15527 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.O.P.(MD)Nos.11261 and 15527 of 2020

and

Crl.M.P.(MD)Nos.5139, 5140, 7581 and 7582 of 2020

1.Ramaiah ... Petitioner/A1 in Crl.O.P.(MD)No.11261 of 2020
2.Shanmugaraja ... Petitioner/A4 in Crl.O.P.(MD)No.15527 of 2020

vs.

1.The State Rep. Through
The Deputy Superintendent of Police,
Anti-Land Grabbing Special Wing,
Ramanathapuram.

... 1st Respondent/Complainant
in Crl.O.P.(MD)No.11261 of 2020

2.The State of Tamil Nadu
Rep. by the Inspector of Police,
District Crime Branch,
Ramanathapuram Police Station,
Ramanathapuram.
Crime No.7 of 2018

... 1st Respondent/Complainant
in Crl.O.P.(MD)No.15527 of 2020

3.Tmt.Vasiath Rahma (Died) ... 2nd Respondent/Defacto Complainant
in both petitions

4.I.Oli Mohamed ... 3rd Respondent in Crl.O.P.(MD)No.15527 of 2020
[R3 is impleaded vide order of this Court in
Crl.M.P.(MD)No.2558 of 2021, dated 29.03.2023]



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Common Prayer:- Petitions filed under Section 482 of Cr.P.C., to call for the records relating to charge sheet in C.C.No.408 of 2019 on the file of the learned Judicial Magistrate No.II, Ramanathapuram and quash the same against the petitioners alone.

For Petitioner (in Crl.O.P.(MD)No.11261 of 2020)
: Mr.G.Prabhu Rajadurai
for Mr.J.Anandakumar

For Petitioner (in Crl.O.P.(MD)No.15527 of 2020)
: Mr.J.Barathan

For Respondents (in both petitions)
: Mr.A.Albert James
Government Advocate (Crl. side) for R1

R2-Died
For Intervenor (in both petitions)
: Mr.R.Venkatesh

COMMON ORDER

A. The Petitions:

These Criminal Original Petitions are filed by the petitioners who are arrayed as A1 and A4 in C.C.No.408 of 2019 pending on the file of the learned Judicial Magistrate No.II, Ramanathapuram with a prayer to quash the proceedings.



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B. The Factual Matrix:

2. The factual matrix on which the case arises is that on 16.06.2018, a case in Crime No.7 of 2018 was registered for the offences under Sections 465, 466, 468, 471 and 420 of IPC by the District Crime Branch, Ramanathapuram. The second respondent herein, the defacto complainant, Vasiath Rahma had lodged the said complaint. As per the complaint, the properties in S.No.29/24, part of Sivagnanapuram Village, Sakkarakottai Group of Ramanathapuram Taluk and the other properties were periodically acquired by herself and her husband by a registered sale deed and they are the absolute owners of the properties. When she and her husband were residing in Singapore along with their children, taking advantage of their absence, the accused had forged the power of attorney as if it was signed by the defacto complainant and her husband and as if the said forged power of attorney was notarized in Singapore and sent to India and adjudicated the said power of attorney. On the strength of the said power of attorney, further documents were created and properties were sold. After registering the case, the Deputy Superintendent of Police conducted an investigation and filed the final report which is now taken on file as C.C.No.408 of 2019. Challenging the same these petitions are filed.



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C. The Arguments:

3. Heard *Mr G.Prabhu Rajadurai*, learned counsel appearing on behalf of the first accused, *Mr J.Barathan*, learned counsel appearing on behalf of the fourth accused, *Mr A.Albert James*, learned Government Advocate (Crl. side) appearing on behalf of the first respondent in both petitions and *Mr R.Venkatesh*, learned counsel appearing for the intervenor.

3.1 The learned counsel appearing on behalf of the petitioners would submit that the defacto complainant and her husband had duly executed the deed of power of attorney. In the investigation, a strange procedure of sending a notice to the notary public in Singapore was adopted. The notary public has duly replied that he witnessed such an execution of documents by the defacto complainant and her husband and that he is maintaining a record to the effect that on the date the document was executed. After that, without considering the same, and without even verifying the fact whether the documents are forged or not, the charge sheet is filed. No investigation was done. The final report has no legs to stand. Even taking all the evidence that is annexed along with the final report at its face value, there is no proof that the signature of the defacto complainant and her husband was forged in the said power of attorney or



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that they were cheated based on the forged documents. Therefore, the charge sheet is liable to be quashed.

3.2 The learned counsels would also submit that the defacto complainant's husband who is L.W.2 in the charge sheet, was in India at least from 2011. He was also elected as the councillor of the Panchayat Union for the term 2011 to 2016. In the remaining part of the land which is not sold by them, they have also built a big *Kalyana Mandapam* (Marriage Hall) and they are in enjoyment of the property. The petitioners/accused persons after the purchase, have also put up huge buildings as early as in the year 2010 and are in possession and enjoyment. While so suddenly in the year 2018, the complaint was lodged. Except to threaten the petitioners/accused and to extract ransom in the name of compromise, there is no other purpose for the complaint. The entire case is an abuse of the process of law.

3.3 The learned counsels would also submit that neither in the complaint nor in the 161 statements any explanation is given by the defacto complainant or her husband as to how the original title deeds also came to the possession of the power of attorney as well as the subsequent



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purchasers. Even the civil suit filed by the defacto complainant has been dismissed. Therefore, they would pray that this Court has to interfere.

3.4 The learned Government Advocate (Crl. Side) would submit that upon complaint made, the case was registered, the statements are recorded and the defacto complainant and her husband assert that the power deeds are forged and not signed by them. A letter rogatory was sent to the Embassy to ascertain the procedure and since the power of attorney was not executed duly as per the procedure, the charge sheet is filled.

3.5 *Mr.R.Venkatesh*, the learned counsel appearing on behalf of the intervenor would submit that it is still the case of the defacto complainant and her husband that they never signed the power of attorney and their signatures are forged. When they have duly lodged the complaint, it is for the investigating officer to have verified the signatures. Even today, the same can be done and even the trial Court can also direct the same. Even during the course of the trial, in the interest of justice, further investigation can be ordered. When the final report is duly filed, on the plea of the petitioners that the case is false, it cannot be quashed. The defense has to be established only in the trial and this Court cannot



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consider the defense in an application under Section 482 of the Code of Criminal Procedure and quash the case. The learned counsel would also rely upon the Judgment of the Hon'ble Supreme Court of India in ***Ramveer Upadhyay & Anr -vs- State of Uttar Pradesh & Anr. [SLP (Criminal) No.2953 of 2022]***, more specifically, relying upon paragraph No.9 in support of his contention.

3.6 The learned counsel would submit that as far as the civil suit is concerned, the same was only returned for want of pecuniary jurisdiction and since there is a change of counsel, the same could not be immediately filed before the higher forum, the steps will be taken soon. He would further submit that the first accused is a Village Administrative Officer and therefore, since he was acquainted with the defacto complainant and her husband, the originals were handed over to him in trust for certain dealings regarding revenue records etc. Therefore, the same cannot be taken advantage of by the petitioners.

D. The Discussion & Findings:

4. I have considered the rival submissions made on either side and perused the material records of the case.



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4.1 The charge is laid for the offences under Sections 420, 468 and 471 of IPC. The crux of the allegation is that the said two powers of attorney dated 02.05.2022 are forged. Therefore, it goes without saying that unless the prosecution collects material and places on record to prove that the signatures found in the said power of attorney documents are forged and further it is proved that who forged the said signatures, the charges under Sections 468 and 471 of IPC cannot be maintained. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in *Sheila Sebastian Vs. R.Jawaharaj (2018) 7 SCC 581*.

4.2 It has also been further held that when the primary allegation of forgery itself is not proved the offence under Section 420 of IPC dependent on the proof of such forgery, will not also be made out. In this case, the basis on which the final report is filed is contained in the final report itself and it is essential to extract paragraph 13 to 15 of the final report, which reads as follows:

“13. மேற்படி புல எண்ணில் கண்ட 50 சென்ட் நிலம் வாதி மற்றும் அவரது கணவர் ஒலிமுகம்மது ஆகியோர்களின் அனுபவத்தில் இருக்கும் பொழுது மேற்படி



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சொத்திற்கு சம்மந்தமில்லாத இராமநாதபுரம் சேட் இப்றாகிம் நகரை சேர்ந்த பாலசுப்பிரமணியன் மகன் இராமையா என்பவர் மேற்படி சர்வே எண் 29/24-ல் கண்ட 50 சென்ட் நிலத்திற்கு, வாதியும் அவரது கணவர் ஒலிமுகம்மது என்பவரும் தனித்தனியாக சிங்கப்பூர் நாட்டின் நோட்டரி பப்ளிக் திரு.கிருஷ்ணன் சிவானந்தம், notary No.N 2001/0 343 Oct 2001 – 30 Sep 2002 என்ற பதிவு எண் உடையவர் முன்னிலையில் தனக்கு கடந்த 02.05.2002-ம் தேதி ரூ 20/- க்கு உரிய முத்திரைத்தாளில் (எண் 3485/நாள் : 01.04.2002 முதல் 3494/நாள் : 01.04.2002) பொது அதிகாரம் வழங்கியதாக தலா ஒரு பொது அதிகார பத்திரத்தை தயார் செய்து அதில் வசியத்து ரகமா மற்றும் அவரது கணவர் ஒலிமுகம்மது ஆகியோர்கள் கையொப்பம் போட்டது போல் போலியாக இரண்டு சட்ட முறைகளை பின்பற்றாத பொது அதிகார பத்திரத்தை தயார் செய்து அதன் அடிப்படையில் மேற்படி பொது அதிகாரத்தை இராமையா என்பவர் தனது பெயருக்கு இராமநாதபுரம் மாவட்ட பதிவாளர் அலுவலகத்தில் ந.க.எண். 31/அ1/2002 நாள்: 10.05.2002 மற்றும் ந.க.எண். 32/அ1/2002 நாள்: 10.05.2002 -ன் படி Adjudicate பதிவு செய்துள்ளார்.

14.அதற்கு பின்பு 1வது எதிரி இராமையா மேற்படி பொது அதிகார பத்திரத்தின் அடிப்படையில் கடந்த 2002-ம் ஆண்டு முதல் 2006ம் ஆண்டு வரை 2 முதல் 6 வரை உள்ள எதிரிகளுக்கு வெவ்வேறு தேதிகளில் வெவ்வேறு கிரைய ஆவணங்கள் வாயிலாக 50 சென்ட் நிலத்தை கிரையம் செய்துள்ளார்.

15.இது சம்பந்தமாக சிங்கப்பூர் நாட்டில் ஏற்படுத்திய



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பொது அதிகாரம் சம்மந்தமாக அதன் உண்மை தன்மை அறிய சென்னையில் உள்ள சிங்கப்பூர் தூதரக அலுவலகத்திற்கு (consulate General of Republic of Singapore) கடந்த 16.04.2018ம் தேதி இராமநாதபுரம் மாவட்ட காவல் கண்காணிப்பாளர் அவர்கள் மூலம் கடிதம் அனுப்பியதில் தூதரக நிர்வாக அதிகாரி திரு.பூன்சிந்துவீ அவர்கள் சிங்கப்பூர் நாட்டில் நோட்டரி பப்ளிக் முன்னிலையில் சொத்து சம்மந்தமாக ஏற்படுத்தி கொடுக்கும் பொது அதிகார பத்திரத்தை உறுதி செய்யும் விதத்தில் பொது அதிகாரம் எழுதி வாங்குபவர் கீழ்க்கண்ட விதிமுறைகளை பின்பற்ற வேண்டும் என்று பதிலறிக்கை 18.06.2018ம் தேதி வழங்கி உள்ளார்கள்.

i) The document should be notarised by a Notary Public in Singapore.

ii) After that certified by the Singapore Academy of Law and

iii) Thereafter, legalized by the Ministry of Foreign Affairs Singapore.

Depending on the requirements and usage of document, the person may proceed to the Indian High Commission in Singapore or any othe Singapore Mission in India for further endorsement.

எனவே இவ்வழக்கின் 1வது எதிரி இராமையா, சென்னையில் உள்ள சிங்கப்பூர் தூதரக அலுவலக கடிதத்தில் சொல்லப்பட்டுள்ள விதிமுறைகள் ஏதும் பின்பற்றாமல் இராமநாதபுரம் மாவட்ட பதிவாளர் அலுவலகத்தில் போலியான ஆவணங்களை உண்மையான ஆவணமாக பயன்படுத்தி மேற்படி பொது அதிகார பத்திரத்தை



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யுனதரனடையவந மட்டும் செய்து மற்ற எதிரிகளுக்கு மேற்படி
50 சென்ட் நிலத்தை சட்டத்திற்கு புறம்பாக போலியான
ஆவணங்கள் மூலம் அபகரித்துள்ளது விசாரணையில் உண்மை
என தெரிய வருகிறது.□

4.3 Thus, it can be seen that the very charge is laid on the assumption that there is a particular procedure in the State of Singapore and that procedure is not fully followed by the accused persons while adjudicating the power of attorney and registering the document. The Court also takes judicial notice of the procedure our country is concerned concerning the jurisdiction of Singapore is that the documents can be attested either before the Notary Public appointed in the said jurisdiction or before the Indian Embassy in that State. Therefore, the power of attorney is notarized and the same is sent by post/courier to India, upon verifying the said postal cover and the date on which the document came into India, the concerned Sub Registrar has adjudicated the same.

4.4 After verifying the original postal/courier cover and adjudicating as per the process, the primary and straight method by which the allegation of the defacto complainant and her husband can be proved is to get specimen signatures from the defacto complainant and her husband



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and verify the specimen signatures with the signature found in the power of attorney document. If it is found to be forged, then specimen signatures/handwritings from the accused or such other persons on whom there is suspicion has to be obtained and then compare the impugned document and thus establish the forgery. No investigation whatsoever has been done in this regard and as extracted above, the charge sheet is filed on the erroneous assumption that the procedure is not followed. Even taking the averments in the final report at face value, that the procedure as maintained in the Singapore Embassy is not followed during attestation of the document, the same would not render the document itself as a 'false document'.

4.5 When the original power of attorney document is very much available in India and when the same is admittedly in the hands of accused No.4, without even attempting to seize the document, the investigation is done and the charge sheet is filed. Secondly, a strange procedure of sending letters to the Embassy and getting the reply thereof is resorted to without taking recourse as to the procedure mandated under the Code of Criminal Procedure. This apart, it can further be seen that the original title deeds have already come to the custody of the purchasers. No explanation



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whatsoever is there in the FIR, nothing is also said about the same in the 161 statements. Only now the counsel had attempted to make an explanation.

4.6 The second factor is that the defacto complainant's husband is very much present in India. The said fact cannot be controverted. An unimpeachable document of his election as the Panchayat Union Councillor is produced before this court. The said fact is not denied by the learned counsel appearing on behalf of the defacto complainant. When the defacto complainant and her husband notice the developments in their property being made by third parties in the form of huge commercial buildings over a long period and keeping silent, it goes without saying that the present complaint is nothing but an abuse of process of law.

4.7 The second factor is that they had also filed a suit for declaration of title and for recovery of possession. They have undervalued their property paid only fewer Court fees and tried to number the suit. When the Court rejected the same and returned the plaint to be presented before the appropriate forum in the year 2020. Now we are in the year 2024, and still, no steps have been taken by them. Further, the sale deeds



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are all executed pursuant to the power of attorney which was adjudicated in the year 2002. The sale deeds are presented and registered during the years 2006 to 2009. Further alienations and developments in the properties have been taking place. The complaint is very belatedly filed in the year 2017. All these facts point out to the inescapable conclusion that the entire invocation of the criminal jurisdiction by the defacto complainant and her husband is nothing but an attempt to renegotiate or to get an additional consideration from the original alienees by creating a cloud over their title and as such is an abuse of process of law.

4.8 In view thereof, finding that even by taking all the materials which are produced by the prosecution along with the final report at face value, I find that none of the offences are made out and I have no other alternative than to quash the proceedings. The order of quashing these proceedings will not preclude the defacto complainant from representing the suit and independently establishing that the power deeds are forged.

E. The Result:

5. Accordingly, these Criminal Original Petitions are allowed and the proceedings in C.C.No.408 of 2019 on the file of the learned Judicial Magistrate No.II, Ramanathapuram, shall stand quashed.



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Consequently, connected miscellaneous petitions are closed.

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23.08.2024

NCC : Yes
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To

- 1.The Deputy Superintendent of Police,
Anti-Land Grabbing Special Wing,
Ramanathapuram.
- 2.The Inspector of Police,
District Crime Branch,
Ramanathapuram Police Station,
Ramanathapuram.
- 3.The Judicial Magistrate No.II, Ramanathapuram.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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