

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.R.C.Nos.540 and 659 of 2014
and M.P.No.1 of 2014

In Crl.R.C.No.540 of 2014:

State represented by
The Inspector of Police
CBI, ACB, Chennai ...Petitioner/Complainant

Vs.

Rettina Premier ...Respondent/2nd Accused

In Crl.R.C.No.659 of 2014:

S. Kuppusamy ...Petitioner/Accused No.1

Vs.

State represented by CBI/ACB
Chennai (RC No.10(A)/2010)
Through Public Prosecutor
Puducherry ...Respondent/Complainant

Prayer in Crl.RC.540/2014:-

Petition filed under Section 397 and 401 Cr.PC to exercise the powers u/s.397 of Cr.PC and other relevant provisions call for the records in this case under the order of learned Special Judge for CBI Cases Puducherry in CRL MP.No.193 of 2011 in CC.No.13 of 2010 (RC.No.(A)/10/ACB, Chennai to set aside the order of discharge against A-2 (Respondent).

Prayer in Crl.RC.659/2014:-

Petition filed under Section 397(1) r/w section 401 of Cr.PC to call for the entire records pertaining to the order passed in Cr.M.P.No.193/2011 in Spl.C.C.No.13/2010 dated.10.2.2014 on

the file of the Learned Special Judge at Puducherry and set aside the same.

For petitioners :: Mr. K. Srinivasan in
Crl.Rc.540/14 and Respondent
in Crl.RC.659/2014

For respondent :: Mr. R. Natarajan in
Crl.Rc.540/14 and for
Petitioner in Crl.RC.659/2014

COMMON ORDER

These criminal revision cases have been directed against the orders passed in Crl.M.P.Nos.193 of 2011 in Special Calendar Case No.13 of 2010 by the Special Judge, Puducherry.

2. The revision petitioner in Crl.R.C.No.659 of 2014 and the respondent in Crl.R.C.No.540 of 2014, as petitioners have filed Crl.M.P.No.193 of 2011 under Section 239 of the Code of Criminal Procedure, 1973 praying to discharge them from the proceedings of Special Calendar Case No.13 of 2010, wherein the present respondent in Crl.R.C.No.659 of 2014 and revision petitioner in Crl.R.C.No.540 of 2014 has been shown as sole respondent.

3. It is averred in the petition that during the relevant period, the first accused has served as Secretary in Puducherry Housing Board, Puducherry and as per authorisation given to him, he sold a plot in favour of his wife, who has been arrayed as the second accused. Since the first accused has acted well within his limit both the accused cannot be mulcted with liability. But the respondent has erroneously filed a final report and the same has been taken on file in Special Calendar Case No.13 of 2010. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4. The Court-below has allowed the petition filed in Crl.M.P.No.193 of 2011 in Spl.C.C.No.13 of 2010 in part so far as the second accused is concerned and dismissed the same, in respect of the first accused. Against the dismissal order, the first accused, as criminal revision petitioner has preferred Crl.R.C.No.659 of 2014 and against the order passed in favour of the second accused, the respondent, as criminal revision petitioner has preferred Crl.R.C.No.540 of 2014.

5. Since common questions of law and facts are involved in both the cases, common order is pronounced.

6. The learned counsel appearing for the revision petitioner in Crl.R.C.No.659 of 2014 and respondent in Crl.R.C.No.540 of 2014 has meticulously contended that as per Resolution passed by the Council, as a Secretary, the first accused is entitled to create any document and on that basis, he executed a sale deed in favour of the second accused and therefore, the first accused cannot be mulcted with liability. But the Court-below without considering the authorisation given in favour of the first accused has erroneously dismissed Crl.M.P.No.193 of 2011 and therefore, the order passed by the Court-below is liable to be set aside.

7. Likewise, the learned Special Public Prosecutor appearing for the revision petitioner in Crl.R.C.No.540 of 2014 has equally contended that the first accused is the husband of the second accused and by way of exceeding his official position, he executed a sale deed in respect of a plot. Under the said circumstances, investigation has been done and ultimately, a final report has been filed and the same has been taken on file in Spl.C.C.No.13 of 2010 and the Court-below has erroneously allowed the petition in respect of the second accused and therefore, the order passed by the Court-below in respect of the second accused is liable to be set aside.

8. On the basis of the divergent submissions made on either side, the Court has to look into as to whether the first accused has acted well within his limit ?

9. It is seen from the records that on 27-01-1978, Puducherry Housing Board, Puducherry has passed a Resolution, wherein in item No.6, it is stated thus:

"The Secretary, then informed the Board about the availability of four plots measuring 747 sq.m which is made available for sale by the Deputy Collector(Rev) under the Urban Land (Ceiling and Regulation)Act, 1976. For purposes of construction of houses or shops by the Board. As there is enough demand for MIG/HIG houses in urban areas, the Board decided to purchase these four plots for the construction of individual MIG houses for hire purchase or outright sale to the eligible applicants. The cost of these plots may be worked out in consultation with the Revenue Dept taking into account the present market value to the best advantage of the Board."

10. Even from a mere reading of item No.6, it is easily discernible that Puducherry Housing Board, Puducherry has authorised its Secretary to create any document in respect of land, belongs to the Housing Board.

11. The main defence taken on the side of the petitioners is that the first petitioner/first accused has acted only well within his limit. It is an admitted fact that the first accused has executed a sale deed in favour of the second accused. It is true that the second accused is the wife of the first accused. Since the first accused has acted only on the basis of the Resolution passed by the Puducherry Housing Board, Puducherry, simply because the second accused is his wife, the Court cannot come to a conclusion that both the accused have committed the offences mentioned in the final report. Under the said circumstances, Crl.R.C.No.654 of 2014 is liable to be allowed and Crl.R.C.No.540 of 2014 is liable to be dismissed.

12. In fine, Crl.R.C.No.654 of 2014 is allowed and the order of dismissal in respect of the first accused passed by the Court-below in Crl.M.P.No.193 of 2011 is set aside and the petition is allowed in toto. Crl.R.C.No.540 of 2014 is dismissed. The connected miscellaneous petition is closed.

Note: Registry is directed to return the Minutes of the Meeting to the learned Govt.Pleader, Puducherry Housing Board, Puducherry, after getting necessary acknowledgement.

sd/

सत्यमेव जयते
ASSISTANT REGISTRAR(CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

1. The Special Judge for CBI Cases, Puducherry.

2. The Inspector of Police
CBI, ACB, Chennai

3. The Secretary,
The Puducherry Housing Board, Puducherry,

4. The Senior Public prosecutor, Puducherry,
High Court Buildings, Chennai-104.

5. The Government Pleader,
Puducherry Housing Board, Puducherry,

+1 CC to MR. K. Srinivasan Advocate. SR.NO.59234

+2 CC to MR. R. Natarajan Advocate. SR.NO. 58947, 58948

Crl.R.C. Nos.540 and 659 of 2014
and M.P.No.1 of 2014

CO-MSM
JD 06/11/2015



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