

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.6.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Cr1.R.C.No.780 of 2014

1. Govindammal
2. Kamalam
3. Balamani
4. Narmada Devi
5. Vimal Kumar

....Petitioners/Petitioners

Versus

Vijayalakshmi

....Respondent/Respondent

PRAYER:

Criminal Revision Petition filed under Section 397 r/w 401 of the Criminal Procedure Code against the order dated 07.07.2014 passed by the Learned Judicial Magistrate No.II, Erode in C.M.P.No.2870 of 2014 in C.C.No.10 of 2012.

For Petitioners : Mr.A.K.Kumaraswamy

For Respondent : Mr.A.Anandhamurthy

ORDER

This revision petition has been filed challenging the dismissal of the discharge petition filed by the petitioners under Section 247 of Cr.P.C., in C.M.P.No.2870 of 2014 in C.C.No.10 of 2012 on the file of the learned Judicial Magistrate No.II, Erode.

2. The facts of the case are as follows:-

(a) The respondent herein, lodged a complaint with the police alleging commission of forgery and other offences. The gist of such complaint is that a suit in O.S.No.562 of 2004 was pending between the respondent and one Nataraja Gounder in respect of a house site measuring 3730 sq.ft., comprised in T.S.No.482/1A2 in Dharapuram Town that the said Nataraja Gounder died on 01.1.2008; that after his death his legal heirs applied for electricity connection to the said

property in the name of Nataraja Gounder forging his signature in the application and obtained electricity connection; that when the same was brought to the notice of the Electricity Board authorities, the service was disconnected and that by the said act, the legal heirs of deceased Nataraja Gounder had committed offences of forgery, cheating etc., Since the police closed the complaint as the dispute was civil in nature, the respondent herein preferred a private complaint before the learned Judicial Magistrate, Dharapuram. Thereafter, as per the direction of this Court, the learned Judicial Magistrate, Dharapuram, had taken cognizance of the same vide in C.C.No.1 of 2010. After examination of 7 witnesses, the case was transferred to the Judicial Magistrate No.II, Erode and renumbered as C.C.No.10 of 2012.

(b) Pending trial, the petitioners/accused filed petition under Section 245 of Cr.PC.in CrI.MP.No.1669 of 2012 and the same was allowed by the Court below discharging the petitioners accused by order dated 09.1.2013. Against which, the respondent/complainant preferred revision petition under Section 397 and 399 of Cr.P.C. in Criminal Revision Petition No.10 of 2013 before the District and Sessions Judge, Erode, and the same was allowed by setting aside the order 09.1.2013 on the ground that further evidence has to be let in and that the Magistrate has no right to conclude especially in the absence of cross examination of witnesses or examining the defence witnesses. Thereafter, after examination of P.W.1 to P.W.10 and after marking of documents, namely, Exs.P1 to P22, the petitioners have again preferred discharge petition in CMP.No.2870 of 2014 and the same was dismissed. Aggrieved over the same, the petitioners have preferred this Criminal Revision Case.

3. According to the revision petitioners, there is no iota of evidence to prove that who has forged the signature of Nataraja Gounder. Further according to the revision petitioners, from the complaint itself, it is clear that the said Nataraja Gounder died long ago and the legal representatives of the said Nataraja Gounder have fabricated the documents and forged his signature after his death and they obtained the electricity service connection for agricultural purpose from the Electricity Department and, therefore, the legal representatives of the said Nataraja Gounder alone are responsible for the act of forgery and the petitioners are in no way connected with the said act.

4. The learned counsel for the petitioners submitted that though 10 witnesses have been examined, none of them speak about the fact that who has forged or fabricated the signature. When the absence of such deposition, there is no need for the petitioners to

cross examine the witnesses or to face trial. Therefore, according to the learned counsel, the revision has to be allowed.

5. Per contra, the learned counsel for the respondent submitted that this is the second discharge petition filed by the petitioners and though 10 witnesses have been examined, they have not been cross examined so far and trial is not completed. According to the learned counsel, if the witnesses have not been cross examined, definitely, it means the evidence itself is not over. Hence, at this stage, the petition filed by the petitioners is not maintainable and, therefore, the trial Court has rightly rejected the petition.

6. It appears that the respondent /complainant, has already filed a civil suit in O.S.No.562 of 2004 against the said Nataraja Gounder before the learned District Munsif Court, Dharapuram for permanent injunction and the same was dismissed as not pressed in view of the fact that the very Nataraja Gounder died. Since it was a suit for injunction, she did not pursue further. Thereafter, by forging the signature of Nataraja Gounder, service connection has been obtained. Police complaint was given and since they did not take any action on the said complaint, private complaint was given. Only during the course of trial, that too, after examination of 6 witnesses, discharge petition was filed by the petitioners and the same was allowed. However, in the revision filed by the respondent herein, the said order was reversed. Thereafter, two more witnesses were examined and on completion of 10 witnesses on the side of the complainant/ respondent, the petitioners /accused have filed another petition for discharge. However, the trial Court dismissed the petition stating that the petition is not maintainable, as the witnesses have not been cross examined.

7. It is the main contention of the learned counsel for the revision petitioners that though 10 witnesses have been examined on the side of the complainant/respondent, none of them have pointed out that who had forged the signature or fabricated the signature of the Nataraja Gounder. According to the revision petitioners, the complaint itself is vague. In the complaint, it is stated that only the legal representatives have signed or fabricated the documents. Subsequently, suit for declaration has been filed and the same is pending. The respondent has not pinpointed that who has fabricated the documents or forged the signature.

8. Further, the witnesses have also not pinpointed that who has forged the signature or fabricated the signature. When that is the case, the petitioners need not face the trial. While dismissing the discharge petition, the Court has to satisfy as to whether any

evidence is available as against the accused. If there is no evidence at all, even in the chief examination, to pinpoint the accused, it is not necessary for the accused to face ordeal trial. As rightly pointed out by the learned counsel for the petitioners, no iota of evidence is available to pinpoint any particular person that who have forged the signature or fabricated the signature. Further, earlier discharge petition has been filed and the same was allowed by the trial Court clearly pointing out that there is a forgery and the application seeking electricity connection itself was submitted even after the death of the Nataraja Gounder and nothing on record to show that who has signed as Nataraja Gounder.

9. In this case, though 10 witnesses have been examined, none of them have spoken about the fact that who has forged the signature or who has fabricated the signature. If there is no evidence at all even in the chief examination to pinpoint the accused, there is no necessity for the accused to face trial. Admittedly, in this case, the evidence is completely vague as they have not stated anything about the present petitioners. Therefore, it is for the prosecution to prove the case as against the accused. As rightly pointed out by the learned counsel for the petitioners out of the 10 witnesses, there is no single evidence to pinpoint against the accused. When that is a case, definitely, the benefit of doubt should have been given to the petitioners. Therefore, the trial Court ought to have allowed the discharge petition filed by the petitioners. Merely because cross examination has not been done that would not mean to say that evidence is not over. The accused can always take a stand not to cross examine the witnesses especially, when the chief examination does not pinpoint the name of the accused.

10. The Hon`ble Supreme Court in catena of judgments has categorically stated that when there is no evidence to pinpoint who is the accused, the accused need not face ordeal trial. It is useful to refer the judgment of the Hon`ble Supreme Court in K.S.NARAYANAN AND OTHERS V. S.GOPINATHAN AND OTHERS (1982 CRL.L. J.1611), wherein the Hon`ble Supreme Court has observed as follows:-

"A complaint should contain allegations and necessary facts which prima facie disclose the commission of an offence. No doubt, the High Court ought not to exercise its inherent powers under Section 482 ordinarily by way of quashing the complaint but whereas the facts alleged in the complaint even if accepted to be correct at their face value do not make out an offence against the accused, it is the obvious duty of the High Court under Section 482 to quash the proceedings to save the accused

person from the agony of facing an unnecessary trial."

11. The above judgment is squarely applicable to the facts of the present case. In this case also, none of the witnesses deposed that the petitioners have signed or forged the documents. Therefore, the Court below ought to have allowed the petition filed by the petitioners.

12. The Civil Revision petition is allowed by setting aside the Order dated 07.7.2014 passed by the learned Judicial Magistrate No.II, Erode in C.M.P.No.2870 of 2014. Consequently, the discharge petition is allowed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ga

To

1. Judicial Magistrate No.II,
Erode.

2. -Do- Throught The Chief Judicial Magistrate,
Erode.

1 CC to Mr.A.K.Kumaraswamy, Advocate SR.No. 25735

1 CC to Mr.A.Anandhamurthy, Advocate SR.No. 25827

सत्यमेव जयते

Cr1.R.C.No.780 of 2014

VD (CO)

PSI (05.11.2014)

WEB COPY