

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : Crl.OP.17911/2011 - 09.07.2015
Crl.OP.5350/2014 - 14.07.2015

DELIVERED ON : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.17911 of 2011 and 5350 of 2014
M.P.No.1 of 2012 in Crl.O.P.No.17911 of 2011 &
M.P.No.1 of 2014 in Crl.O.P.No.5350 of 2014

1.PR.Palaniappan
2.PR.Veerappan
3.RM.Visalakshi
4.RM.Periakaruppan
5.RM.Meyyammai
6.PR.Alagappan
7.PR.Narayanan
8.PR.Periakaruppan ...Petitioners in Crl.OP.17911/2011

T.R.Rethineshwaran ...Petitioner in Crl.OP.5350/2014

Vs

1.State
rep. by the Inspector of Police
CBCID, Head quarters
Guindy, Chennai 600 032.

2.T.R.Rethineshwaran ...Respondents in Crl.OP.17911/2011

[R2 impleaded as per order of
this Court dt 27.06.2012 in
M.P.No.2 of 2011 in Crl.O.P.
No.17911 of 2011]

1.State rep by
The Deputy Superintendent of Police
Crime Branch CID, Hqrs
i/c Police Research Centre
Chennai 600 032.

2.R.Jayaram
The Inspector of Police
Crime Branch CID
Sivagangai District.

3.P.R.Veerappan

...Respondents in CrI.OP.5350/2014

[R3 impleaded as per order of
this Court dt.30.04.2014 in
M.P.No.3 of 2014 in CrI.O.P.
5350 of 2014]

Prayer:- Criminal Original Petition No.17911 of 2011 filed
under Section 482 Cr.P.C. to call for the records connected with
the complaint in FIR No.1 of 2011 [Cr.No.1 of 2011] on the file of
the respondent State, CBCID, Head Quarters, Guindy, Chennai and
quash the same.

Prayer:- Criminal Original Petition No.5350 of 2014 filed
under Section 482 Cr.P.C. to call for the records in C.C.No.1683 of
2013 on the file of the learned XI Metropolitan Magistrate,
Saidapet, Chennai and quash the same as against the petitioner.

IN CRL.O.P.17911 OF 2011:

For Petitioners : Mr.P.L.Narayanan
For R1 : Mr.C.Emalias,
Addl.Public Prosecutor

For R2 : Mr.N.R.Elango, Senior Counsel
for M/s Nathan & Associates

For intervenor : Mr.M.Purushothaman

IN CRL.O.P.NO.5350 OF 2014:

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.R.Vivekanandan

For R1 : Mr.C.Emalias,
Addl.Public Prosecutor

For R3 : Mr.P.L.Narayanan

C O M M O N O R D E R

The facts in both the cases are so intertwined that it becomes imperative for this Court to detail the entire sequence of events by amalgamating the facts obtaining in both the cases.

2. One VR.Periyakaruppan and his wife PR.Meyyammai Achi purchased around 16 grounds and 1600 sq.ft of land from one K.M.Lakshmanan in the following manner:

(i) By sale deed dated 08.12.1960, VR.Periyakaruppan purchased 10 grounds and 1600 sq.ft and (ii) by sale deed dated 20.02.1961 Meyyammai Achi purchased six grounds, thus totalling 16 grounds 1600 sq.ft., hereinafter would be referred to as "the property".

[a] Periyakaruppan and his wife Meyyammai wanted to construct a cinema theatre in the land and they sought permission, which was refused by the Madras Metropolitan Development Authority on 23.05.1977, as the land was found to be located in primary residential use zone. Aggrieved by the orders passed by the Madras Metropolitan Development Authority, they filed an appeal before the Government of Tamil Nadu, which was rejected in G.O.Rt.No.253 dated 02.08.1978. It appears that the said lands were brought within the net of Tamil Nadu Urban Land (Ceiling and Regulation), Act, challenging which Periyakaruppan filed W.P.No.5401 of 1982 before this Court, which of course came to be disposed of by this Court only in the year 1989. Six grounds held by Meyyammai were declared as excess land within the meaning of Tamil Nadu Urban Land (Ceiling and Regulation), Act by Gazette Notification dated 26.01.1994. In the meantime, Periyakaruppan died on 10.04.1986 and his wife Meyyammai died on 08.07.1995 leaving behind PR.Palaniappan and others [petitioners/accused in Crl.OP.No.17911 of 2011] as legal heirs and heirs-in interest to the property.

[b] Everything was going on fine until suddenly one T.R.Rethineswaran [accused/petitioner in Crl.O.P.No.5350 of 2014] came into the picture armed with a Power of Attorney dated 06.09.2001 [registered on 13.09.2001] said to have been given by one C.T.C.Nachiyappa Chettiar claiming that he is the true owner of 10 grounds and 1600 sq.ft land that was purchased by the deceased VR Periyakaruppan on 08.12.1960. T.R.Rethineswaran, attempted to trespass into the lands, which necessitated PR.Palaniappan to file C.S.No.710 of 2002 before this Court for an injunction restraining Nachiyappa Chettiar and Rethineswaran from interfering with the peaceful possession and enjoyment of the property. Interim injunction was granted by this Court, despite which Rethineswaran proceeded with creating encumbrance on the property and started brazenly interfering with the possession of the property flouting the order of injunction by this Court.

3. On 25.08.2003, one Velayappa Chettiar claiming to be the owner of the same property, lodged a police complaint before the Central Crime Branch, based on which a case in Cr.No.768 of 2003 was registered under Sections 467, 466, 471, 420 r/w 511 IPC against P.K.Veerappan and some others, who are the accused/petitioners in Crl.O.P.No.17911 of 2011. The allegation in the FIR is that, the properties were never purchased by Periyakaruppan and Meyyammai Achi under the two sale deeds dated 08.12.1960 and 20.02.1961 from Lakshmanan and instead, those two documents were fabricated and they were inserted into the books of the Sub Registrar's Office subsequently in order to usurp the land.

4. Rethineswaran also lodged a complaint on the same allegation before the CB CID, based on which a case in Cr.No.1 of 2011 was registered on 27.06.2011 under Sections 465, 468, 471 and 420 IPC against P.R.Palaniappan and others, challenging which this quash petition [Crl.O.P.No.17911 of 2011] has been filed. The allegation of Rethineswaran in Cr.No.1 of 2011 is that, the properties were never indeed purchased by Periyakaruppan and Meyyammai in the year 1960 and 1961 and that the documents were fabricated and inserted into the records of the Sub Registrar's Office.

5. On the complaint of Velayappa Chettiar, Investigation in Cr.No.768 of 2003 was conducted by the police and after recording the statements of various witnesses, including the Tahsildar and others, the police closed it as "mistake of fact" on the finding that the allegations are not true and that the properties were purchased by Periyakaruppan and Meyyammai in the year 1960 and 1961. The copy of the closure notice was served on the said VelayappaChettiar/defacto complainant.

6. As Rethineswaran was flouting the interim orders passed by this Court with impunity, Palaniappan and group filed Contempt Petitions in Cont.Petn.Nos.166 and 173 of 2003 before this Court. Notices in the contempt petitions were served on the alleged contemnors, namely Nachiappa Chettiar/D1 and Rethineswaran/D2. A person claiming himself to be Nachiappa Chettiar appeared before this Court on 22.04.2003 and his identity was strongly contested by the learned counsel appearing for Palaniappan and group. Hon'ble Mr.Justice R.Balasubramanian, before whom the said person appeared passed the following order in Cont.P.No.173 of 2003 on 22.04.2003:

"R-2 had appeared in court and his presence had been dispensed with. Mr.Abudukumar Rajarathinam had undertaken to file vakalath for R-1. It may be noticed here that service on R-1 is yet to be completed. But, however, Mr.Abudukumar Rajarathinam, learned counsel had stated that, even

before service of summons, his client/R-1 would appear in Court. A person calling himself as C.T.C.Nachiappa Chettiar, (R1) is present in court. Mr.P.L.Narayanan, learned counsel appearing for the petitioners would state that the person calling himself as C.T.C.Nachiappa Chettiar and appearing in Court today is not C.T.C.Nachiappa Chettiar who is arrayed as R1 and the learned counsel wanted this Court to verify the identity of the person appearing in Court. through the court Officer, the said person, calling himself as C.T.C.Nachiappa Chettiar and present in Court, had been examined. He would state on such examination that his father's name is CT.Chockalingam Chettiar and that he is a resident of No.9, P.M.Street, Kottaiyur, Sivaganga. To a question put to him as to how he responds to the description of R1 shown to be a resident of 27, Vasuvil Street, Kottaiyur, he would state that he gave the correct address to the typist when the power of attorney to be given by him in favour of R2 was being typed; however, the typist had wrongly typed the address of the person, who gives the power as 27, Vasuvil Street. The said person appearing in Court calling himself as CT.C.Nachiappa Chettiar would affirm before this Court that he and the first respondent are one and the same.

Thereafter, the said Nachiappa Chettiar never appeared before the Court and therefore, Non-bailable warrant was issued on 04.08.2003 for securing his presence. The police were not able to secure him.

7. The learned Judge by order dated 13.08.2003 directed the Superintendent of Police, Sivaganga District, to constitute a Special Police Team to apprehend Nachiappa Chettiar and produce him before this Court. In para 3 of the order, the learned Judge has stated as follows:

"3. Learned senior counsel appearing for R1 expresses difficulty in getting R1 before Court stating that his whereabouts are not known. R2 is represented by a learned member of the bar and he is also present. He would also state that he saw R1 last only on 21.07.2003 and thereafter, his whereabouts are not known. R2 is the power of attorney of R1. Therefore, prima facie, it is seen that both R1 and R2 have joined together in trying to keep R1 away from Court. Having no other option at this stage to secure the presence of R1, I am inclined to pass the following order:-

"The Superintendent of Police, Sivaganga District, is directed to constitute a special police team under the leadership of a police officer not less than the rank of Deputy Superintendent of Police to secure the presence of a person called CT.C.Nachiappa Chettiar, stated to be residing at No.27, Vasuvil Street, Kottaiyur 630 106 or wherever he is found the last known address being 122/3, Devi Illam, Sammandar Street, Azhagappa Nagar, Madurai 625 003 before Court on 29th August 2003."

8. The Superintendent of Police, Sivaganga District was not able to deliver results. The learned Judge by order dated 29.08.2003 directed the D.I.G. of Police, CB CID to constitute a Special Team to nab the said Nachiappa Chettiar. The Superintendent of Police, CB CID conducted enquiry and gave report to this Court dated 10.11.2010 in W.P.No.47616 of 2006, wherein it is stated that one Sivaramachandran was made to impersonate Nachiappa Chettiar and that the said Sivaramachandran had not only given the Power of Attorney dated 06.09.2001 [registered on 13.09.2001] to Rethineswaran as if he is Nachiappa Chettiar, the owner of the property, but also had appeared before this Court in the Contempt Petitions styling himself as Nachiappa Chettiar. The said Sivaramachandran died on 06.07.2005, but his children continued to create records like ration card entires, Voter I.D. etc., in the name of NachiappaChettiar @ Sivaramachandran. It may be relevant to recapitulate that the name in the Power of Attorney dated 06.09.2001 is only C.T.Nachiappa Chettiar which slowly started metamorphosing as C.T.Nachiappa Chettiar @ Sivaramachandran.

9. During the enquiry in Contempt Petition Nos.166 and 173 of 2003, Rethineswaran examined on oath and he admitted that he knew Velayappa Chettiar, the complainant in Cr.No.768 of 2003. Thus, beyond cavil of any doubt it has been established that Rethineswaran and Velayappa Chettiar are comrade in arms.

10. Now coming to Crl.O.P.No.5350 of 2014 filed by Rethineswaran, the prayer in the petition is for quashing the Final Report in C.C.No.1683 of 2013 pending on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. The history of this prosecution is traceable to the orders of this Court in W.P.No.47616 of 2006 dated 30.08.2010 directing the CB CID to register a case against the imposters and the conspirators who appeared before the Court as Nachiappa Chettiar. The CB CID registered a case in Cr.No.2 of 2010 under Sections 205, 419, 465, 468, 471 and 109 IPC against Rethineswaran and others. The crux of

the allegations in Cr.No.2 of 2010 is that Rethineswaran, Sivaramachandran and others had conspired to create false documents for usurping the property of Palaniappan group in a very ingenious manner. During the course of investigation, Rethineswaran was arrested and he spilled the beans. Massive documents collected by the CB CID show that, Rethineswaran and Sivaramachandran had noticed certain discrepancies in the sale deeds dated 08.12.1960 and 20.02.1961 by which Periyakaruppan and Meyyammai purchased the property and taking advantage of that, they created documents as if the property belongs to one Nachiappa Chettiar. Sivaramachandran personated as Nachiappa chettiar, who himself is a non existent person, and registered a Power of Attorney on 13.09.2001 in favour of Rethineswaran for freely dealing with the property, armed with which they tried to take over the property. Initially, Palaniappan and group did not know about this impersonation business and therefore, in C.S.No.710 of 2002 they showed Nachiappa Chettiar as first defendant and Rethineswaran as second defendant. Only during the contempt proceedings when Sivaramachandran appeared as Nachiappa Chettiar, they got wind of this huge conspiracy and alerted the learned Judge resulting in several orders being passed by this Court directing the police to apprehend Sivaramachandran, the impersonator, who ultimately died on 06.07.2005. Since there was impersonation before this Court, the FIR was directed to be registered by this Court in W.P.No.47616 of 2006, which has now resulted in the Final Report in C.C.No.1683 of 2013 against Rethineswaran [A1], M.U.Liyakath Ali Ambalam [A2], Sivaramachandran [deceased], M.Annamalai [deceased], and K.V.L.Krishnan Chettiar [deceased] for offences under Sections 205, 419, 465, 468, 471 and 109 IPC.

11. Mr.N.R.Elango, learned Senior Counsel appearing for Rethineswaran opposed the quash petition, CrI.O.P.No.17911 of 2011, filed by Palaniappan and others for quashing the FIR in Cr.No.1 of 2011 lodged by Rethineswaran on the ground that, the two sale deeds dated 08.12.1960 and 20.02.1961 by which Periyakaruppan and his wife Meyyammai had purchased the property were bogus documents. In support of his contention he submitted that, in the Schedule to the deeds, the properties are being shown to be in Block No.2, whereas, the concept of assigning block numbers to a property evolved almost a decade later. That apart, he submitted that the Sub Registrar himself has personally identified the executants, which is illegal.

12. The respondent police have filed a Status Report in CrI.O.P.No.17911 of 2011 and have stated as follows in paragraphs 9 and 10:

"9. It is submitted that on comparison made with the documents produced by the petitioner and the document of SRO, T.Nagar revealed that the subject matter of the documents are one and the same. Further according to the petitioner's

Tr.Veerappan and Tr.Palniyappan the sons of deceased Periyakaruppan Chettiyar of Karaikudi, the purchaser of questioned property, they are aware that the subject property was described in the document as Block No.2. They contended that in the year 1960 the vendor Tr.K.M.Lakshmanan of the subject property who bought a larger extent of lands at Saligramam Village and for the purpose of selling the property, the lands were converted by him into Plots and Blocks. further their parents, as a purchaser of the property, at first booked this land for purchase from Mr.K.M.Lakshmanan and therefore the vendor prepared the draft sale deeds first for their parents in respect of the lands. Though the sale deeds were executed and registered later, the contents of the sale deeds on the stamp paper were prepared much earlier, when the lands were booked by their parents. The petitioners contended that Mr.K.M.Lakshmanan, the vendor of the property had formed three blocks of the land in the layout and described the subject land/plots as remained in block 2. they further added that by conveniently locating plots the vendor at that time has given block numbers, which does not in any manner deal with the block numbers that later came to be referred to when the Metric system was introduced by the Revenue authority. Further after the Metric system came into existence, the subject lands purchased by their parents were referred by the Government as per the Metric system as it is in Survey No.158 Saligramam Village, in Block No.6, Now Tr.Lakshmanan is not available for enquiry, since he died.

10. It is submitted that during the course of investigation one Tr.S.Raghavan, Assistant Director, District Survey Office, Chennai has been contacted and ascertained that the settlement work for the village of Saligramam, Chennai was started in the year 1961 and completed in the year 1980. For that the Assistant Director furnished a Gazette notification copy and explained that after completion of settlement work the land in S.No.158 of Saligramam comes under Block No.6 of that village. The concerned Thasildhar of Egmore Nungambakkam Taluk one Tr.Umakanthan, also corroborated the version of the Assistant Director of Chennai. Further the present Sub Registrar of T.nagar, Tr.P.Damodaran, was examined and for confirming the registration and furnished a copy of Thumb impression Register related to the

subject Document No.4177/1960 and 547/1961 of SRO, T.Nagar for the year 1960 and 1961."

13. This Court carefully considered the rival submissions. There is no reason for this Court to disbelieve the explanation of Palaniappan group that, Block No.2 was assigned in the lay out by Lakshmanan, the original vendor himself for the purpose of easy identification. The concept of giving block numbers was informally available in olden days , which idea was captured by the Revenue authorities subsequently and they started using the system of giving block numbers to approved layouts. Therefore, this contention of Mr.N.R.Elango, learned Senior Counsel does not cut ice.

14. As regards his other contention that the Sub Registrar himself has identified the executants, there is nothing wrong in that, because in 1950's and 1960's there was no scramble for lands. The wealthy and prominent were personally known to Government officials and in those circumstances the then Sub Registrar must have identified the executants. CB CID report clearly states that ".....on comparison made with the documents produced by the petitioner and the document of S.R.O. T.Nagar, revealed that the subject matter of the documents are one and the same."

15. To a pointed question posed to Mr.N.R.Elango, learned Senior Counsel, as to what would have been the age of Palaniappan in 1960, he had no satisfactory answer. Admittedly, from the case records it is evident that, PR.Palaniappan [A1] and PR.Veerappan [A2] were around 37 years in 2002 and naturally, they would not have been born in 1960. As regards PR.Alagappan [A7], PR.Narayanan [A8] and PR.Periakaruppan [A9], they would have been juveniles, aged around 5 to 10 in 1960 and 1961. When this was confronted to Mr.N.R.Elango, he submitted that the entire fabrication was done only subsequently some times in the year 2000 and was inserted into the registration records pertaining to the year 1960 with the connivance of the Officials. In the considered opinion of this Court, this is too large a pill to swallow especially coming from the mouth of Rethineswaran who himself has enough dirt behind his back, inasmuch as the allegation against him is that, he had conspired with one Sivaramachandran to impersonate a non existent person and even appeared before this Court in contempt proceedings for hoodwinking the Judge. Normally the character and locus standi of the complainant is immaterial in a criminal prosecution. Here the case is totally different. It is obvious that Rethineswaran in order to cover up his misdeeds has launched a false prosecution against Palaniappan and others on flimsy allegations so that, their entire time will be wasted for defending themselves and in that process Rethineswaran can breathe fresh air. There are overwhelming materials of unimpeachable credibility set out in para

2(a) above to show that the property was purchased by the parents of Palaniappan in 1960 and 1961 from one Lakshmanan. The CB CID's Status Report is also to the effect that the allegations in the FIR in Cr.No.1 of 2011 made against Palaniappan group by Rethineswaran is false.

16. In the result, this Court finds that the impugned FIR in Cr.No.1 of 2011 is a clear abuse of process of law and is hereby quashed. Accordingly, CrI.O.P.No.17911 of 2011 is allowed. Consequently, connected miscellaneous petition is closed.

17. Coming to the Final Report in C.C.No.1683 of 2013 in which Rethineswaran is an accused, Mr.N.R.Elango, learned Senior Counsel submitted that, the Court cannot take cognizance of an offence under Section 205 IPC on a Final Report filed by the police and that the procedure under Section 195 Cr.P.C. has to be followed. Mr.N.R.Elango, learned Senior Counsel elaborated his arguments by contending that, when once Section 205 IPC cannot be taken cognizance on police report, the cognizance taken of other offences would also stand vitiated.

18. In support of this contention, he relied upon the judgment of the Supreme court in Basir-ul-Huq and others v. The State of West Bengal [AIR 1953 SC 293]. On a careful reading of the said judgment, in fact it does not support Mr.N.R.Elango's contention. For better appreciation, the contention raised in that case and answered by the Apex Court is extracted:

"It was, however, argued that if on the same facts an offence of which no cognizance can be taken under the provisions of S.195 is disclosed and the same facts disclose another offence as well which is outside the purview of the section and prosecution for that other offence is taken cognizance of without the requirements of S.195 having been fulfilled, then the provisions of that section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible for the prosecution to ignore the provisions of this section by describing the offence as being punishable under some other section of the Penal Code.

10. In our judgment, the contention raised by the learned counsel for the appellants is without any substance so far as the present case is concerned. The charge for the offence under S.297, Penal Code, could in no circumstance, as pointed out by the High Court, be described as falling within the purview of S.195, Criminal P.C. The act of trespass was alleged to have been

committed subsequent to the making of the false report and all the ingredients of the offence that have been held to have been established on the evidence concern the conduct of the appellants during the post report period. In these circumstances, no serious contention could be raised that the provisions of S.195 would stand defeated by the Magistrate having taken cognizance of the offence under that section."

19. It is true that a Court cannot take cognizance of an offence under Section 205 IPC on a Final Report filed by the police and resort to Section 195(1)(b)(i) is sine qua non. Therefore, the cognizance of the Magistrate for the offence under Section 205 IPC in C.C.No.1683 of 2013 is alone set aside and no charge can be framed by the Magistrate for this offence. At the same time, the accused cannot be permitted to go scot-free for having organized an impersonator to appear before this Court in contempt proceedings. Therefore, this Court directs the Registrar General of this Court to give a fresh complaint against Rethineswaran and Sivaramachandran [deceased] for the offence under Section 205 IPC to the jurisdictional Court in the George Town Court complex. The evidence collected by the Police and which is available in C.C.No.1683 of 2013 can be used in the prosecution under Section 205 IPC, because Section 195 Cr.P.C. only qualifies the cognizance process and would have no effect on Police investigation. This issue has been settled by the Supreme Court in M.Narayandas v. State of Karnataka [AIR 2004 SC 555], wherein it is held that police investigation to collect materials can go on even in a case covered by Section 195 Cr.P.C.

20. The further contention of Mr.N.R.Elango, that cognizance for other offences under Sections 419, 465, 468, 471 and 109 IPC is vitiated because Section 205 IPC was included in the Final Report, deserves to be stated only to be rejected. Facts relating to the offences under Sections 419, 465, 468, 471 and 109 IPC are, making ready an impersonator outside the Court and fabricating documents supporting his identity and registering a Power of Attorney as if a non existent Nachiappa Chettiar is giving to Rethineswaran, knowing full well that the executant of the Power of Attorney is not Nachiappa Chettiar, but Sivaramachandran, who is a stranger to the property etc. will fall outside the purview of Section 195 Cr.P.C.

21. In Iqbal Singh Marwah and another v. Meenakshi Marwah and another [(2005) 4 SCC 370], a Constitution Bench of the Supreme Court has settled the issue in no uncertain terms. If a fabrication takes place outside the Court and later if it is introduced into the Court also, the provisions of Section 195 need

not be followed.

In the result, when there are overwhelming materials against Rethineswaran, the prosecution in C.C.No.1683 of 2013 pending on the file of the XI Metropolitan Magistrate, Saidapet, Chennai cannot be quashed and accordingly, CrI.O.P.No.5350 of 2014 is dismissed with a direction to the learned Magistrate not to frame a charge under Section 205 IPC in C.C.No.1683 of 2013. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
CBCID, Head quarters
Guindy, Chennai 600 032.

2.The Deputy Superintendent of Police
Crime Branch CID, Hqrs
i/c Police Research Centre
Chennai 600 032.

3.The Inspector of Police
Crime Branch CID
Sivagangai District.

4.The Public Prosecutor
High Court, Madras.

5.XI Metropolitan Magistrate,
Saidapet, Chennai.

2 CCs to Mr.M.Purushothaman, Advocate SR.No. 38866

1 CC to M/s Nathan & Associates, Advocate SR.No. 38635

1 CC to Mr.P.L. Narayanan, Advocate SR.No. 38642

CrI.O.P.Nos.17911 of 2011
and 5350 of 2014

JSV (CO)PSI (07.08.2015)