

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-07-2015

CORAM

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 224 to 226 of 2015  
and M.P.Nos. 1 to 1 of 2015

1.Parasmal Jain

2.Deepak Raj

3.T.Bhagchand Bhurat

4.B.Jaikumar Bafna

... Petitioners in all  
Criminal Revision Cases

Vs.

M.Rajesh

... Respondent in all  
Criminal Revision Cases

Criminal Revision Cases filed under Section 397 read with 401 of Cr.P.C. against the orders dated 19.09.2014 passed in CrI.M.P.Nos. 13048, 13049 and 13050 of 2014 in C.A.No.135 of 2014 on the file of the learned VII Additional Sessions Judge, Chennai, dismissing the petitions filed under Section 391 Cr.P.C.

For Petitioners : Ms.Arthi Madhan  
in all Criminal Revision Cases for M/s.A.Saravanan &  
S.Natarajan

For Respondent : Mr.P.Krishnan  
in all Criminal Revision Cases

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COMMON ORDER

These Criminal Revision Cases are filed against the orders dated 19.09.2014 passed in CrI.M.P.Nos. 13048 to 13050 of 2014 in C.A.No.135 of 2014 on the file of the learned VII Additional Sessions Judge, Chennai, dismissing the petitions filed under Section 391 Cr.P.C.

2. The case of the respondent/complainant is that the first petitioner/first accused, who is the elder brother, in conspiracy

with other accused, with an intention to cheat the other co-heirs, has forged the signature of his mother and obtained legal heir certificate by omitting the name of four co-heirs and fabricated the document to usurp the shares of other co-heirs and to get wrongful gain from the joint family property. Therefore, the complainant filed a private complaint against all the accused for the offences under Sections 420, 465, 467, 474 and 120-B IPC before the II Metropolitan Magistrate, Egmore, Chennai, in C.C.No.4274 of 2013. After trial, the Trial Court found all the accused guilty for the aforesaid offences and sentenced to undergo rigorous imprisonment for three years each (for each count) and to pay a fine of Rs.1000/- each (for each count), in default to undergo two months simple imprisonment each (for each count). The sentences are ordered to run concurrently with each other. Aggrieved against the same, the petitioners have preferred CrI.A.No.135 of 2014. Pending appeal, the petitioners have filed CrI.M.P.Nos. 13048 to 13050 of 2014 under Section 391 Cr.P.C., before the Appellate Court. CrI.M.P.No.13048 of 2014 was filed under Section 391 of Cr.P.C., to permit the petitioners to let in additional evidence by sending the signature of Mrs.Badan Bai on the application submitted for getting a legal heir certificate of late Manakchand Jamad marked as Ex.P.10, dated 05.10.2010 to Government Forensic Science Laboratory at Chennai for obtaining handwriting expert opinion. CrI.M.P.No. 13049 of 2014 was filed under Section 391 of Cr.P.C., to permit the petitioners to examine the Revenue Inspector-IV, Fort-Tondairpet Taluk, Chennai, who conducted enquiry for cancellation of the legal heir certificate Ex.P.16 issued excluding three daughters of late Tmt.Badan Bai. CrI.M.P.No.13050 of 2014 was filed before the Appellate Court under Section 391 of Cr.P.C., to permit the petitioners to examine the Sub-Registrar, who registered partition deed and release deed dated 16.12.2010 registered as Document Nos.2624 and 2625 on the file of the Sub-Registrar Office, Periamet. The Appellate Court, by orders dated 19.09.2014, dismissed the said petitions. Aggrieved against the same, these Criminal Revision Cases are filed.

3.Ms.Arthi Madhan, learned counsel appearing for the petitioners would submit that even though, the petitioners cross-examined the complainant/P.W.1 and though, he was represented by Advocate, but, he was not effectively and properly represented by the Advocate. He would further add that the parties are relatives and that the signature of his mother Mrs.Badan Bai on the application submitted for getting the legal heir certificate of late Manakchand Jamad marked as Ex.P.10, dated 05.10.2010, alleged to have been misused and forged has not been sent to expert opinion and hence, seeking to permit the petitioners to let in additional evidence by sending the signature of Mrs.Badan Bai on the application submitted for getting a legal heir certificate of late Manakchand Jamad to Government Forensic Science Laboratory at Chennai for obtaining handwriting expert opinion CrI.M.P.No.13048 of 2014 was filed under Section 391 of Cr.P.C. He would further submit that the first petitioner in

collusion with other accused is alleged to have obtained a fraudulent legal heir certificate by forging signature of his mother and used it as genuine and prepared false partition deed and release deed by omitting three legal heirs of late Manakchand Jamad and hence, Crl.M.P.No. 13049 of 2014 was filed under Section 391 of Cr.P.C., to permit the petitioners to examine the Revenue Inspector-IV, Fort-Tondairpet Taluk, Chennai, who conducted enquiry for cancellation of the legal heir certificate Ex.P.16 issued excluding three daughters of late Mrs.Badan Bai. He would further submit that yet another allegation against the petitioners is that the complainant was made to believe that on 16.12.2010, partition deed and release deed were registered before the Sub-Registrar Office, Periamet, marked as Exs.P.5 and P.6 was to be a general power of attorney, and to prove their innocence, the examination of Sub-Registrar is necessary and hence, Crl.M.P.No.13050 of 2014 was filed before the Appellate Court under Section 391 of Cr.P.C. But, these petitions were dismissed by the Appellate Court, without considering the same in a proper perspective. He would rely on the judgment of the Kerala High Court reported in 2007(2) KLJ 673, K.R.Aravindakshan Nair vs. Essen Bhankers & another, for the proposition that even at the Appellate Stage to meet the ends of justice, the Appellate Court can allow the petition filed under Section 391 Cr.P.C.

4. Mr.P.Krishnan, learned counsel appearing for the respondent would contend that the petitioners were effectively represented by the Advocate in the Trial Court. He would further add that earlier knowing well that his mother's signature was forged, he has obtained the legal heir certificate and that on the basis of the complaint lodged by the other legal heirs before the Collector, the Collector conducted enquiry and found out that application of first petitioner had contained wrong information. Thereafter, the first petitioner admitted his offence, he apologised for his illegal activities. Then, a rectified legal heir certificate containing correct information was issued by the Collector. The signature as contemplated has been duly verified by the Presiding Officer, who has jurisdiction to do and therefore, the orders passed by the Appellate Court are fair and reasonable. These petitions were filed before the Appellate Court only to drag on the proceedings. He would further add that before this Court, on the representation made on either side that there is likelihood of settlement between the parties, the matter was referred to Mediation Centre for amicable settlement, but, it did not fructify and the matter was not settled between the parties. He would rely on the judgment of the Hon'ble Apex Court reported in AIR 2001 Supreme Court 2120, Rambhau and another vs. State of Maharastra, for the proposition that the exercise of power under Section 391 Cr.P.C. is not to fill up the lacuna, but, to subserve the ends of justice.

5. Heard both sides. By consent, all these Criminal Revision Cases are taken up for final disposal.

6. On a careful perusal of the orders passed by the Appellate Court as well as the affidavit filed by the petitioners in support of the petitions before the Appellate Court, one thing is clear that the petitioners have not carried out such an exercise during trial and they have come forward at a belated stage. Further more, though, according to the petitioners reasons were given in the petitions, but, it is seen that no reasons were stated in the affidavit as to why the petitioners have not taken steps when the case is pending before the Trial Court. In this case, the application for getting the legal heir certificate of late Manakchand Jamad marked as Ex.P.10 was marked and in this regard, cross-examination was done in detail. Further, on a perusal of the order of the Trial Court, it is seen that the Trial Court, in its orders has clearly pointed out that after the other co-heirs came to know of the illegal acts of the petitioners, they collected the relevant documents pertaining to the property and they preferred the complaint before the Collector and the Collector conducted enquiry about the legal heir certificate and he found out that the first petitioner's application had contained wrong information. Pursuant to which, the first petitioner admitted his offence, he apologised for his illegal activities. Then the rectified legal heir certificate containing correct information was issued by the Collector. To this, in the cross-examination, he had denied. Ex.P.29 is the rectified legal heir certificate, which gives details regarding the entries. Even the matter was referred to Mediation for settlement on the representation made on either side that there is likelihood of settlement between the parties, but, it did not fructify and the matter was not settled between the parties. In my considered opinion, at this stage, as rightly pointed out by the learned counsel for the respondent, these petitions were filed only to drag on the proceedings and it is a delaying tactics adopted by the petitioners, that too, after the appeal was filed.

7. Insofar as the judgment of Kerala High Court reported in 2007(2) KLJ 673, K.R.Aravindakshan Nair vs. Essen Bhankers & another (cited supra) relied on by the learned counsel for the petitioners is concerned, in the said judgment, Kerala High Court has clearly stated that it cannot be said that the signatures in Ex.P.4-cheque and Ex.P.10-voucher, resemble the admitted signatures of the accused and hence, it has sent the disputed signature in Ex.P.4-cheque and the disputed writings including the signature in Ex.P.10 voucher to the handwriting expert in the Forensic Science Laboratory, Thiruvananthapuram, for comparison with the admitted writings and signatures of the accused. The facts in that case is not applicable to the case in hand and it is distinguishable. In this case, the application for getting the legal heir certificate of late Manakchand Jamad marked as Ex.P.10 was marked and in this regard, cross-examination was done in detail. Further, Ex.P.29 rectified legal heir certificate was marked, which gives details regarding the entries. Therefore, at this stage, as rightly pointed out by the

learned counsel for the respondent, these petitions were filed only to drag on the proceedings and it is a delaying tactics adopted by the petitioners, that too, after the appeal was filed.

8. As rightly pointed out by the learned counsel for the respondent, the Supreme Court in the judgment reported in AIR 2001 Supreme Court 2120, Rambhau and another vs. State of Maharashtra has held that the exercise of power under Section 391 Cr.P.C., since the same avoids a de novo trial, it cannot be done to fill up the lacuna, but, it can be exercised only to subserve the ends of justice. Further, needless to state, Section 391 C.P.C., is akin to Order 41, Rule 27 of the C.P.C. Only in exceptional cases in order to meet the ends of justice, additional evidence can be permitted to be let in evidence in the Appellate Court. But, these petitions does not come under exceptional circumstance. Moreover, the petitioners have not taken steps when the case is pending before the Trial Court. However, the provisions of Section 391 Cr.P.C. to let in additional evidence cannot be pressed into service in order to fill up lacuna, when especially the application for getting the legal heir certificate of late Manakchand Jamad was marked as Ex.P.10 and in this regard, cross-examination of complainant/P.W.1 was done in detail and the rectified legal heir certificate was marked as Ex.P.29, therefore, at this stage, as rightly pointed out by the respondent, the petitions were filed before the Appellate Court only to drag on the proceedings and it is a delaying tactics adopted by the petitioners. Hence, I find no reason to interfere with the reasoned orders passed by the Appellate Court. Hence, these Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

paa

To

1.The VII Additional Sessions Judge,  
Chennai.

2.The Principal Sessions Judge,  
Chennai.

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Copy To

The Section Officer,  
Criminal Section,  
High Court, Madras.

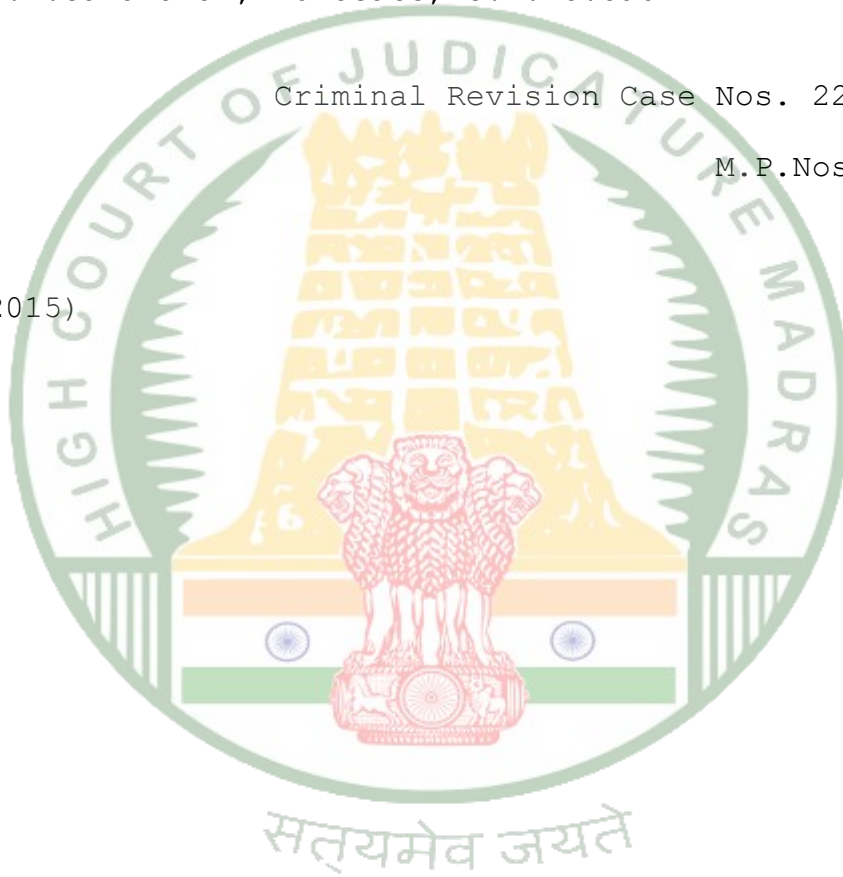
(For send back the records of the Trial Court  
to the Appellate Court forthwith)

+1cc to Mr.P.Krishnan, Advocate, S.R.No.39250

+1cc to Mr.A.Saravanan, Advocate, S.R.No.39572

Criminal Revision Case Nos. 224 to 226 of 2015  
and  
M.P.Nos. 1 to 1 of 2015

SCD(CO)  
CA(18/08/2015)



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