

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-9-2015

Coram

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.12207 of 2009

M.P.No.1 of 2009

1. P.N. Rathinakumar
2. Natesan Pillai
3. Pattammal
4. R. Gomathi
5. Balakrishnan
6. K. Govindarajan ..Petitioners

Vs.

1. The State, rep.by
The Inspector of Police,
District Crime Branch,
Nagapattinam.
2. C. Senthilvel ..Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. with a prayer to call for the records of the charge sheet taken on file as C.C.No.344 of 2008 on the file of Judicial Magistrate No.I, Mayiladuthurai and quash the same.

For Petitioners : Mr.R.K.Chandramohen

For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor

For 2nd Respondent : Mr.K.Govi Ganesan

O R D E R

Based on a complaint lodged by C.Senthilvel/second respondent herein, the Judicial Magistrate No.I, Mayiladuthurai, ordered investigation and a case in Cr.No.18 of 2006 came to be registered for the offences under Sections 120(b), 420, 406, 466, 467, 471, 468 r/w 34 IPC against the petitioners herein. The first respondent/Police after completing investigation filed final report against the petitioners herein for the aforesaid offences,

challenging which the petitioners are before this Court.

2. The first respondent/Police filed a counter affidavit wherein it is stated as follows:

"6. It is submitted that, the investigation reveals that the complainant is the Secretary of the A.V.C.College Education Committee. A-1 is the member of the A.V.C.Education Committee. The A-2 is the father of A-1. A-3 is the mother of A-1. A-4 is the wife of A-1. The A-5 Balakrishnan and A-6 Govindarajan were being the tenants of A.V.C.Trust. A portion of the land in T.S.No.720 at Thiruvilandur, Thirumanjanaveethi, Mayiladuthurai called No.1 and later sub-divided into 1 and 1A was leased out to the A-5 Balakrishnan. A portion of the land in T.S.No.720 called No.2 adjacent to No.1 and 1A at Thennamarasalai was leased out to A-6 Govindarajan. The total extent of the item No.1 and 1A and No.2 is 2280 square feet and the A-5 and A-6 were in possession and enjoyment of it and paid rent to A.V.C.trust. The land referred above is classified as Natham bearing T.S.No.720 is belonging to the A.V.C. Trust and is situated at Thiruvilandur, Thirumanjanaveethi, Mayiladuthurai and its total extent is 10027 square feet. The said land was given for several persons on lease by AVC Trust. The condition on lease is that tenants should not let it into sub-lease.

The A-1 P.N.Rathinakumar belongs to Pallavarayanpettai family, which is one of the five families of Anbanathapuram Vagayara. He was having intention to get the properties at No.1 and 1A and No.2 in his favour. But he knows that if he is in possession of the Trust property he could not be appointed to the administration of A.V.C.Trust. So he hatched a conspiracy with other accused with the intention of appropriate the properties at No.1 and 1A and No.2 by preparing false documents and to cheat the Trust.

Pursuant to the conspiracy the A-5 and A-6 got the properties in their name for lease from the trust and they got the possession and surrendered it to A-1 later on, knowing that they should not sub let it to others. The A-3 executed settlement deed on 30.07.2002 knowing that she has no right over the properties, conveying the properties at No.1 & 1A and No.2 in T.S.No.720, which is said to be in the possession of A-5 and A-6 as per records of Trust, in favour of A-1. In the settlement deed A-3 states that she got the

properties from her husband A-2 by an unregistered settlement deed and she had raised a pacca RCC building measuring 2280 square feet.

After that A-1 got the possession of the properties of No.1 & 1A and 2 and transferred to his name from her mother and paid Municipal Tax. Thus, he got the possession of the Trust properties at No.1 & 1A and No.2 in T.S.No.720 by illegal mean and cheated the Trust. The false settlement deed was prepared for showing that the properties are not belonging to the Trust and it was belonging to their ancestors and no bar for him to take part in the administration of A.V.C.Trust. Thus, he got the possession and title of the Trust properties at No.1 and 1A and No.2 in T.S.No.720 measuring 2280 square feet in his favour by illegal means to avoid the disqualification for election to the administration of the Trust.

Hence all the accused are liable to be punishable under section 120(b), 406, 465, 468, 471 and 420 IPC."

3. The learned counsel appearing for the petitioners/accused submitted that A.V.C.Charitable Trust (hereinafter referred to as 'The Trust') filed a suit in O.S.No.87 of 2005 against the first accused for recovery of possession of the property in question, and the said suit was decreed in favour of the Trust. The first and second appeals filed by the first accused were dismissed, aggrieved by which the first accused filed SLP(C)No.38035-38036 of 2012, wherein the Hon'ble Supreme Court passed the following order on 22.2.2013:

"Issue Notice.

Mr.K.K.Mani, counsel appearing for respondent No.1, accepts notice. Let notice go to the other respondents.

Dasti service in addition.

Put up immediately on service of notice.

Till further orders, status quo, as obtaining today, shall be maintained in respect of the suit property."

4. The learned counsel appearing for the petitioners/accused contended that in view of pendency of the matter before the Supreme Court, the present prosecution should not proceed, inasmuch as, if the accused succeed before the Supreme Court, then the entire prosecution would become a wasteful exercise.

5. On a careful reading of the final report in this case, this Court is unable to countenance the argument advanced by the learned counsel for the petitioners/accused. There are totally six accused in this case and the suit is filed by the Trust only against the first accused. It is the specific case of the prosecution in the final report that all the accused have entered into a criminal conspiracy, by virtue of which a false document was created by the accused as if the Trust had given the land in question for lease to A5 and A6, and through A5 and A6, A1 acquired possession of the property and built a house therein. Thus, the dispute essentially in the criminal case is that the accused had conspired to create false document to usurp the property, and that is why the final report was filed under Sections 120(b), 420, 406, 466, 467, 471, 468 r/w 34 IPC.

6. Under sections 41, 42 and 43 of the Indian Evidence Act, the relevancy of judgment of one Court vis-a-vis proceedings of another Court have been set out. Even assuming for a moment that the Hon'ble Supreme Court allows the SLP, yet that order will not have any effect in the proceedings before the criminal Court, where the accused are charged for conspiring to create false document.

7. Under such circumstances, this Court finds that the accused had managed to prolong this case from the year 2009 onwards, though final report in this case was filed in the year 2008 itself.

8. At this juncture, the learned Additional Public Prosecutor submitted that the accused have not appeared before the Trial Court, on account of which NBW is pending against them since 22.7.2009. He further added that this Court had only granted stay of the trial and never dispensed with the appearance of the accused before the trial Court. The learned counsel appearing for the petitioners/accused submitted that the petitioners, who are all senior citizens, are willing to surrender before the Court and file appropriate application for recalling the NBW.

9. Considering the age of the petitioners/accused and in view of the submission of the learned counsel for the petitioners/accused, petitioners are directed to surrender themselves before the Judicial Magistrate No.I, Nagapattinam, within a period of two weeks from the date of receipt of copy of this order and make a petition for recalling the NBW. Each of the petitioner/accused are further directed to furnish bond under Section 88 of Cr.P.C. for a sum of Rs.25,000/- with two sureties to the satisfaction of the Judicial Magistrate No.I, Nagapattinam,

10. In the result, this petition is dismissed with the above directions. Connected miscellaneous petition is also dismissed. Since the prosecution is of the year 2009, the trial Court is directed to conduct trial expeditiously.

-Sd/-
Assistant Registrar(co)

//True copy//

Sub Assistant Registrar

To

1. The Inspector of Police, District Crime Branch,
Nagapattinam.
2. The Judicial Magistrate No.I, Nagapattinam
3. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.M.Santharaman,Advocate(sr.50673)

+1 cc to Mr.K.Ganesan,Advocate(sr.51098)

svi(co)
cp 25/09/2015

Cr1.O.P.No.12207 of 2009

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