



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the First day of October Two Thousand and Fifteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) Nos.17751, 17885 and 17964 of 2015

WEB COPY

1 MOHAMMED ALI JINNA
2 LIYAKATH ALI
3 KAJA MYDEEN
4 NIYAZ AHAMED
5 MUSTAK AHAMED
6 SABEER AHAMED @ SABEER RAHMAN
7 MANZOOR HUSSAIN @ MANZOOR ELAHI
8 MOHAMMED ISMAIL

..PETITIONERS/ACCUSED 1 TO 3 AND 5 TO 9
IN CRL OP(MD)NO.17751 OF 2015

D.J.JOHNSON

..PETITIONER /ACCUSED NO.10
IN CRL OP(MD)NO.17885 OF 2015

GUNASEELAN

..PETITIONER/ACCUSED NO.11
IN CRL OP(MD)NO.17964 OF 2015

Vs.

STATE REP.BY
THE INSPECTOR OF POLICE
KODAIKANAL POLICE STATION,
DINDIGUL DISTRICT.
(CRIME NO. 401 OF 2015)

... RESPONDENT/COMPLAINANT
IN ALL THE PETITIONS

ARUN RAVI

..PETITIONER/INTERVENOR
IN ALL THE PETITIONS

For Petitioners
in CRL OP(MD)No.17751 of 2015

: M/S D.VENKATESH, Advocate

For Petitioner
in CRL OP(MD)Nos.17885 and 17964 of 2015

: MR.M.SUBASH BABU, Advocate

For Respondent
in All the Petitions

: MRS.S.PRABHA,
Govt. Advocate (Crl. Side)

For Intervenor
in All the Petitions

: MR.A.THIRUVADIKUMAR,
Advocate

PETITIONS FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.
ORDER : The Court Made the following order :-

The petitioners in Crl.O.P(MD)No.17751 of 2015, who are arrayed as A1 to A3 and A5 to A9, the petitioner in Crl.O.P(MD)No.17885 of 2015, who is arrayed as A10 and the petitioner in Cr.O.P(MD)No.17964 of 2015, who is



arrayed as A11 apprehend arrest at the hands of the respondent police for the alleged offences punishable under sections 147, 406, 417, 420, 427 and 109 of IPC, in Crime No.401 of 2015 and hence, seek anticipatory bail respectively.

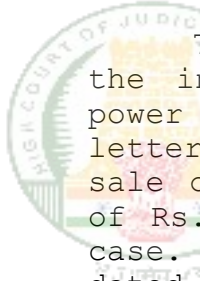
2.The case of the prosecution is that A1 to A3 are the owners of the lands comprised in survey Nos.769/1D and 769/1C of Vadakouchi Village in Kodaikanal and they executed a power of attorney in favour of A4 on 25.08.2008 with regard to sale of 1000 silver oak trees, which were standing in their lands and on the basis of the power of attorney, A4 had entered into an agreement with the de-facto complainant on the same day for the sale of 500 trees for the value of Rs.21,75,000/- and the de-facto complainant also paid Rs.1,75,000/- towards advance for the sale of remaining 500 trees. However, A1 to A3 without getting permit in favour of the de-facto complainant, sold the trees through one Anbalagan and thereby, they have cheated the de-facto complainant.

3.Heard the learned counsel for the petitioners, the learned counsel for intervenor and the learned Government Advocate (Criminal side) appearing for the State.

4.The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have been falsely roped in this case; that A1 to A3 have executed a power of attorney in favour of A4 on 25.08.2008, but the power of attorney was not acted upon and they received Rs.12,00,000/- from A4 for the sale of 250 trees; that A4, who was elected as Union Chairman of Kodaikanal had obtained a power of attorney by coercion and on 08.05.2010, A1 to A3 had agreed to sell 1000 trees for Rs.39,00,000/- and received Rs.12,00,000/- as advance for cutting of 250 trees with 30 inches; that since A4 had cut down 320 trees instead of 250 trees and also caused damage to coffee crops, A1 to A3 had issued a legal notice, dated 22.09.2010 claiming compensation of Rs.15,00,000/-. It is further submitted that A4 had received the registered letter on 22.09.2010 and acknowledged the receipt of the same, but he has not chosen to send any reply so far. The Accused 1 to 3 gave a letter, dated 05.07.2010 to the District Forest Officer, Kodaikanal for cancellation of permit given in favour of one Anbalagan from cutting the remaining 350 trees.

5.The learned counsel further submitted that A4 had set up the de-facto complainant to issue notice, dated 23.06.2012 stating that A1 to A3 have received Rs.23,50,000/- based on the power of attorney, dated 25.08.2008, for which A1 to A3 sent a detailed reply on 26.06.2012 and thereafter, the de-facto complainant instituted a suit in O.S.No.230 of 2013 against the accused before the District Munsif Court, Kodaikanal for bare injunction restraining them from cutting 1000 silver oak trees and also filed an application for interim injunction, which was dismissed by the trial court on 30.03.2015.

6.It is further submitted that the de-facto complainant has preferred a complaint before the District Crime Branch, Dindigul, in the month of March 2015 and A1 to A3 were appeared for enquiry and on 06.04.2015, the present complaint was given to the respondent police with the same allegations and based on the direction given by this court in CrI.O.P(MD)No.13540 of 2015, the case is registered. It is further submitted that A1 to A3 are brothers, while A5 and A6 are sons of A1, A7 is the son of A2, A8 is the son of A3, A9 is the son of A3 and A10 and A11 are purchasers of the trees and they were unnecessarily roped in this case with an ulterior motive.



7. Per contra, Mr. A. Thiruvadi Kumar, learned counsel appearing for the intervenor submitted that indisputably, A1 to A3 have executed a power of attorney in favour of A4 and they also admit the varthamana letter, dated 25.08.2008 and receipt of Rs.12,00,000/- from A4 for the sale of the trees. However, they have deliberately disputed the receipt of Rs.23,50,000/- from the de-facto complainant for the purpose of this case. The agreement entered into between the de-facto complainant and A4, dated 25.08.2008 would establish that the de-facto complainant has paid Rs.23,50,000/- to the accused and there is no iota of evidence to prove that A1 to A3 have transferred the permit for cutting trees in favour of the de-facto complainant and on the other hand, they have sold the trees through one Anbalagan, who is nothing to do with the de-facto complainant. It is further submitted that A1 to A4 are close relatives and the agreement said to have been entered into between them, dated 08.05.2010 is a concocted document, as the stamp paper was purchased only on 09.06.2010.

8. Both the learned counsel for the accused and the de-facto complainant have produced the typed set of papers containing the agreement entered into between the parties, exchange of legal notices and reply as well as the proceedings pending before the competent civil court.

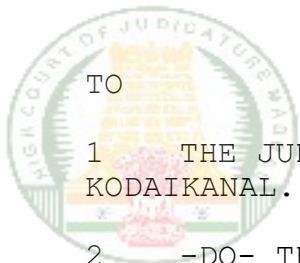
9. It is to be noted that the de-facto complainant is said to have paid Rs.23,50,000/- on 25.08.2008, but till he issues notice dated, 23.06.2012 for nearly 4 years he kept quiet. Though, the learned counsel for the intervenor would contend that the de-facto complainant has been taking active steps to get permit since 25.08.2008, till he files the present complaint in the year 2015, he has not produced any document to establish his contention. It is contended by the learned counsel for the intervenor that the de-facto complainant has paid the entire amount of Rs.23,50,000/- by cash, but there is no proof for such payment, except the agreement entered into by the de-facto complainant with A4. Further, the de-facto complainant filed the civil suit on 10.09.2013, however chose to give criminal complaint only on 01.09.2015.

10. Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

11. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate, Kodaikanal and on each of them executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall appear before the respondent police daily at 10.00 a.m until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C. scrupulously.

12. The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
01/10/2015



TO

1 THE JUDICIAL MAGISTRATE,
KODAIKANAL.

2 -DO- THRO' THE CHIEF JUDICIAL MAGISTRATE
DINDIGUL.

3 THE INSPECTOR OF POLICE, KODAIKANAL POLICE STATION,
DINDIGUL DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR.D.VENKATESH, Advocate Sr.No.58419
+2CC TO MR.M.SUBASH BABU, Advocate Sr.Nos.58422 and 58423
+1CC TO MR.A.THIRUVADIKUMAR, Advocate Sr.No.58382

akm/05.10.2015 /2p-9c/

ORDER IN
CRL OP (MD) Nos.17751, 17885 and 17964 of 2015
Date :01/10/2015