

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04/01/16
DELIVERED ON : 12/01/16

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.R.C.No.1181 of 2015

and

M.P.No.1 of 2015

S.Selvi
W/o.S.Selvam

...Petitioner/Petitioner/Accused 2

vs.

1.State by

The Inspector of Police,
Office of the Commissioner of Police,
Central Crime Branch,
Team - III, Veppery, Chennai.
Crime No.484 of 2012

2.V.Nedumaran

S/o.Venkatachalam ...Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C.
against the order of learned Judicial Magistrate I,
Poonamallee, passed in Crl.M.P.No.4734 of 2015 in C.C.o.229 of
2013 on 05.11.2015.

For Petitioner : Mr.P.Kumaresan

For Respondents : Mr.S.Shanmugavelayutham,
Public Prosecutor [R1]
Mr.K.S.Dinakaran, senior counsel
for Mr.Vimal B.Crimson [R2]

O R D E R

This revision is preferred against the order of learned
Judicial Magistrate I, Poonamallee, passed in Crl.M.P.No.4734
of 2015 in C.C.No.229 of 2013 on 05.11.2015.

2. Second respondent/de facto complainant preferred a
complaint informing that the petitioner's son-in-law/A1 entered
into a sale agreement on 05.07.2007 towards sale of property in
Survey No.171/2A, Thalambur Village, Chengelpet Taluk,

Kancheepuram District, measuring an extent of 2.94 acres, for a total sale consideration of Rs.5,14,50,000/-. Initially, the de facto complainant/second respondent has issued a cheque dated 05.07.2007 in a sum of Rs.2,00,00,000/- to first accused towards advance and subsequently, a further sum of Rs.1,50,00,000/- had been paid. When the de facto complainant approached the accused to pay the balance consideration and get the sale deed registered, the accused refused to do the needful. Towards repayment, the first accused issued three cheques, which when presented for payment were dishonoured. Aggrieved thereby, the de facto complainant visited the house of the accused on 20.09.2011 and demanded return of money. However, they instead of returning the money, beat and had the de facto complainant pushed out of the house through their henchmen. Upon the complaint of the de facto complainant, a case was registered in Crime No.484 of 2012 on the file of the first respondent for offences u/s.406, 420 and 506(i) IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.406, 420 and 506(i) r/w 34 IPC, the case was taken on file in C.C.No.229 of 2013 on the file of learned Judicial Magistrate I, Poonamallee. Petitioner/A2 filed C.M.P.No.4734 of 2015 seeking discharge. Under the impugned order, the Court below dismissed such petition on the reasoning that the petition was filed at the stage of questioning/framing of charges and hence, the same was a pre-mature one. The Court below has further held that the allegations levelled against the petitioner can be tested only during a full-fledged trial. Hence, this revision.

3. Heard learned counsel for petitioner, learned Public Prosecutor for first respondent and learned senior counsel for second respondent.

4. Learned counsel for petitioner submitted that the petitioner is the second accused while the first accused is her son-in-law. The complaint allegation is that the first accused entered into an agreement for sale with the de facto complainant/second respondent on 05.07.2007. In pursuance of such unregistered agreement, the de facto complainant/second respondent parted with monies. Thereafter, after four years, the first accused issued three cheques dated 05.08.2011 and 01.09.2011 towards repayment. Such cheques were dishonoured. It is alleged that de facto complainant/second respondent went to the house of both accused on 20.09.2011 and both accused as also their henchmen divested him of the bag containing original documents, issued threats and drove him out. De facto complainant/second respondent preferred a complaint with the Commissioner of Police on 21.09.2011 and an enquiry was ordered thereupon. De facto complainant/second respondent moved CrI.O.P.No.17945 of 2012 seeking a direction u/s.482 Cr.P.C. towards registration of a case. A case was registered on 18.09.2012 in Crime No.484 of 2012 on the file of first

respondent for offences u/s.406, 420 and 506(i) IPC. Of thirteen witnesses examined four witnesses spoke of the occurrence involving both accused on 20.09.2011. Till such date, no role in the transactions stand assigned to this petitioner. Alleging the occurrence of 20.09.2011, the petitioner stands falsely implicated in the charge sheet. Petitioner had neither been called for enquiry nor was her arrest sought pending investigation. Petitioner, on receipt of documents u/s.207 Cr.P.C., had sought discharge in C.M.P.No.4734 of 2015. The Court below wrongly had dismissed such petition informing that the petition for discharge was pre-mature, charges had not been framed and hence, could not be entertained.

5. Learned counsel for petitioner submitted that the first accused had asked his tailor one Anbu, LW-3, a long time acquaintance, to fix a buyer for the property. The said Anbu had met one Baskar, who led to de facto complainant/ second respondent and with whom a meeting was arranged at a coffee day shop at Adyar. The agreement between first accused and de facto complainant/second respondent was entered into at the office of de facto complainant/second respondent. LWS.1 and 2 were attesting witnesses. Learned counsel contends that the attempt to rope in this petitioner was an abuse of process. Towards substantiating such contention, learned counsel took this Court through the complaint of 21.09.2011 wherein the time of occurrence of 20.09.2011 and in which the petitioner for the first time stands implicated was informed as 11.30 a.m. Learned counsel pointed out that in the first 161(3) Cr.P.C. statement of LW-1, no time of occurrence had been mentioned whereas in the second such statement, time of occurrence had been mentioned as 05.30 p.m. Therein, the involvement of henchmen has not been spoken of. Learned counsel further submitted that after registration of the case on 18.09.2012, a letter had been addressed on 03.10.2012 to the investigating officer levelling allegations against the first accused and his henchmen. No mention has been made in such letter of the petitioner's involvement. LW-4, the driver of de facto complainant/second respondent had, in his statement, informed of having taken a drive for one hour from 10.00 a.m. on 20.09.2011. He is ignorant of anything thereafter. LW-7 is the person who had purchased property from first accused under a sale deed dated 23.01.2009. His 161(3) Cr.P.C. statement informs that the original documents to the property were held by him. This renders the prosecution story of this petitioner/first accused as also henchmen snatching away the bag of documents held by LW-1 on 20.09.2011, a mockery. Learned counsel would conclude by submitting that the petitioner was not so much as available at Chennai on the occurrence day, she having gone to Calcutta.

6. Learned senior counsel for de facto complainant/second respondent submitted that as the accused party were high and

mighty persons (petitioner aged 60 being the daughter of the Chief Minister of Tamil Nadu at the relevant time), the de facto complainant/second respondent had been made to run from pillar to post. He, hence, had moved a petition u/s.482 Cr.P.C. The communication dated 03.10.2012 was addressed by de facto complainant/second respondent to the investigating officer in response to a query of the investigating officer. The same partook the nature of his statement u/s.162 Cr.P.C. As such, such statement cannot be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time which such statement was made. At best, it could be used only at the trial to contradict a witness and in the manner informed in Section 145 of the Indian Evidence Act. The first accused had acted on the Power of Attorney executed by this petitioner in entering upon the agreement for sale in 2007 and thereafter, had effected sale to another, LW-7, in the year 2009. In the instant case there is some implication against the petitioner and it is not for this Court to weigh the effect thereof on golden scales. The question of whether de facto complainant/second respondent went to the house of the accused in the morning or evening of 20.09.2011 would be a matter for evidence and therefore, the prosecution must be given a chance to prove its case.

7. Learned Public Prosecutor submitted that the first accused had acted in his capacity as the Power of Attorney of second accused. The payments made under the agreement stood endorsed thereupon by first accused. Therefore, the petitioner had knowledge about the existence of the agreement. Thereafter, the property had been sold. As she was the principal, it should be presumed that she knew there about. Petitioner had purchased a portion of the property held by one Venkatesan. Such person as also this petitioner had constituted the first accused their power agent. The agreement for sale was in respect of the entire extent, viz., that detained by the said Venkatesan as also that purchased by this petitioner. A sum of Rs.3.5 crores had been paid and the cheques towards repayment issued by first accused had bounced. The petition seeking discharge stands dismissed not merely on the ground that it was premature but also on merits. Therefore, there is a prima facie case also against this petitioner.

8. This Court has considered the rival submissions. It first would inform the following factual aspects:

The agreement for sale between second respondent/de facto complainant and first accused is dated 05.07.2007. Therein, the petitioner/second accused is represented by her Power of Attorney, the first accused. The extent covered by the agreement is that belonging both to the original owner Venkatesan as also the portion purchased by the petitioner. The Power of Attorney by the original owner Venkatesan in favour of the first accused is dated 16.07.2007 i.e., of a date

subsequent to the agreement for sale. Similarly, the Power of Attorney executed by this petitioner in favour of the first accused is dated 10.11.2008.

9. A reading of the charge sheet informs transactions between the first accused and de facto complainant/second respondent. Thereafter, a separate charge for offences u/s.406 and 420 IPC had been levelled against the first accused. After having done so, the alleged occurrence of 20.09.2011 is spoken of therein and there regards the petitioner and first accused have been informed to have committed offences u/s.506(i) r/w 34 IPC. Therefore, the allegations levelled in the charge sheet are distinct and dealt with distinctly. While so, a petition for discharge has been moved by this petitioner seeking discharge also for the offences of which she is not accused. Upon dismissal, the same error stands carried over in preferring this revision before this Court. The Magistrate clearly is in error in informing that the petition for discharge was premature. The offences alleged are u/s.406, 420 and 506(i) r/w 34 IPC triable by a Magistrate and pursuant to a police report, the case would have to be tried in keeping with Chapter XIX-A of the Criminal Procedure Code [Sections 238 to 243]. Section 238 Cr.P.C. requires compliance with section 207 Cr.P.C. and section 239 Cr.P.C. informs when the accused shall be discharged. It is only after crossing the stage of section 239 Cr.P.C. that the question of framing charges u/s.240 Cr.P.C. would arise. Therefore, the petition seeking discharge rightly stands preferred. This Court finds that the submissions of learned Public Prosecutor flow from the counter filed by first respondent and regrettably, this Court is required to presume the guilt of this petitioner/second accused as she is the principal of the first accused, her son-in-law. Concept of vicarious liability generally is foreign to criminal law. As explained in *Iridium India Telecom Ltd vs Motorola Incorporated and others* [2011 (1) SCC 74], the same may be extended to corporations/juristic persons by attributing mens rea to them on application of the alter-ego principle. The same cannot be extended to individuals except where a statute permits. Learned Public Prosecutor also is erroneous in informing that the merits of the case stand discussed by the Court below. A reading of the order makes clear that such statement is made on what is really the record of the prosecution submissions before the Court below as distinct from the discussion on merits. On merits, this Court finds no discussion whatsoever and as stated supra, the finding of discharge petition being premature is ill-founded in law.

10. This Court readily would accept the submission of learned senior counsel for de facto complainant/second respondent that the communication dated 03.10.2012 addressed by him to the investigating officer when the case was under investigation, is hit by Section 162 Cr.P.C. However, when the

time of occurrence of 20.09.2011 is informed to be 11.30 a.m. in the complaint and 05.30 p.m. in the complainant's 161(3) Cr.P.C. statement and when the discrepancy is as distinct as chalk and cheese, as different as day and night, this Court would not ignore the same. When this Court considers the same along with the 161(3) Cr.P.C. statement of LW-7, the subsequent purchaser, that the original documents which according to de facto complainant/second respondent were snatched away, were held by him, the false implication of this petitioner is apparent. As the submissions of learned senior counsel for de facto complainant/second respondent would suggest, the reasons are not hard to find.

This Criminal Revision shall stand allowed. The order of learned Judicial Magistrate I, Poonamallee, passed in CrI.M.P.No.4734 of 2015 in C.C.No.229 of 2013 on 05.11.2015 shall stand set aside. Petitioner shall stand discharged in the case. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar (CCC)

/TRUE COPY/

Sub-Assistant Registrar

gm

To

- 1.The Judicial Magistrate I,
Poonamallee.
- 2.Do thro The Chief Judicial Magistrate,
Tiruvallur.
- 3.The Inspector of Police,
Office of the Commissioner of Police,
Central Crime Branch,
Team - III, Veppery, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

+1 CC to MR.Vimal B.Crimson Advocate. SR.NO.2101
+2 CC to MR.P.Kumaresan Advocate. SR.NO. 2179
+1 CC to Govt.Pleader. SR.NO. 2526

Pre-delivery order in
CRL.R.C.No.1181 of 2015

CO-UG

JD 21/01/2016