

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.790 of 2015

and

M.P.No.1 of 2015

DavilBuch
S/o.Jitendra Buch ... Petitioner/A4

vs

1.K.Murugaiyan @ Ellappan
S/o.Kathavarayan

2.Kulasekaran
S/o.Sarangapani Gounder

3.Alagappan
S/o.Ramasamy Gounder

4.Thirugnanam
S/o.Alagappa Gounder

5.Devarasu
S/o.Arikrishna Gounder ... Respondents/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the order of learned Chief Judicial Magistrate, Puducherry, passed in Cr.M.P.No.1535 of 2014 in C.C.No.146 of 2003 on 09.04.2015.

For Petitioner : Mr.Krishna Srinivasa
for Mr.S.Ramasubramaniam
For Respondents: Mr.Bharatha Chakravarthy
[R1 to R4]
for Sai Bharath & Ilan

O R D E R

This revision arises against the order of learned Chief Judicial Magistrate, Puducherry, passed in Cr.M.P.No.1535 of 2014 in C.C.No.146 of 2003 on 09.04.2015.

2. Respondents, informing themselves to be the hereditary trustees of a temple, preferred a private complaint informing that the accused had sold temple property through fabrication of documents. The complaint was taken on file in C.C.No.146 of 2003 on the file of learned Chief Judicial Magistrate, Puducherry, for offences u/s.420, 423 r/w 34 IPC. Petitioner/A4 filed Cr.M.P.No.1535 of 2014 seeking discharge, which came to be dismissed under orders dated 09.04.2015. There against, petitioner has preferred the present revision.

3. Heard learned counsel for petitioner and learned counsel for respondents 1 to 4.

4. It is the submission of learned counsel for petitioner that this petitioner has represented the company by name Hindustan Lever Limited in purchase of property on its behalf. In the complaint, the respondents have informed that the property came to be sold to the company M/s.Hindustan India Lever Limited through fabrication of documents of title to property, the same having been done by accused 1 to 3. It is the further case of the respondents/complainant that this petitioner acted in collusion with the other three accused. Learned counsel submitted that none of the acts of fabrication of documents stand attributed to the petitioner. While one offence alleged is that of fabrication of document of title, the other is that of cheating. All that the complaint informs against this petitioner is that 'the 4th accused also is a party to the whole transaction and a beneficiary of the said act of fraudulent misrepresentation and cheating and therefore all the accused have committed the offence of making fraudulent misrepresentation, fabrication of the records and cheating'. Nowhere in the complaint is it stated that this petitioner induced anybody in the course of alleged wrong doing. In fact, a bare reading of the allegations in the complaint makes clear that the petitioner wrongly stands roped in as an accused.

5. Learned counsel for respondents 1 to 4, on the other hand, submitted that the complaint has alleged wrong doing against the petitioner. Court below in dismissing the petition seeking discharge has observed that after issuance of summons in the present case, all accused moved a revision before learned Principal Sessions Judge, Puducherry, seeking discharge and dismissal of the complaint informing that the complaint has been

filed without obtaining sanction from the Government and hence the same was not maintainable and the Court had no jurisdiction to take cognizance of the offence. The Court below has observed that the same reasons were stated in the present petition seeking discharge. Therefore, the petitioner was twice vexing the same cause and it would but be appropriate to require him to establish his innocence in the course of trial.

6. This Court has considered the rival submissions.

7. This Court has extracted the allegations made against the petitioner in the complaint. This Court, without any hesitation, would state that thereupon the petitioner/A4 cannot be required to undergo the rigour of trial for offences of fabrication of document, title, misrepresentation and the like. As rightly submitted by learned counsel for petitioner there is nothing to indicate that the petitioner is guilty of the offence of cheating. The prosecution of the petitioner without informing the particulars of the role played by him and merely on the assertion that he acted in collusion with others would be improper. The observations of the Court below in dismissing the petition seeking discharge hardly come in the way of this Court considering the present revision on merits. This Court, on merits, finds nothing to sustain the charge of false representation, fabrication of document or cheating committed by this petitioner.

For the aforesaid reasons, this Criminal Revision shall stand allowed. The order of learned Chief Judicial Magistrate, Puducherry, passed in Cr.M.P.No.1535 of 2014 in C.C.No.146 of 2003 on 09.04.2015, shall stand set aside. Petitioner shall stand discharged. However, it is made clear that, if, in the course of trial, there is reason to suspect the involvement of this petitioner in the wrong doing alleged, it will always be open to the Court below to proceed under Section 319 Cr.P.C. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Chief Judicial Magistrate,
Puducherry.

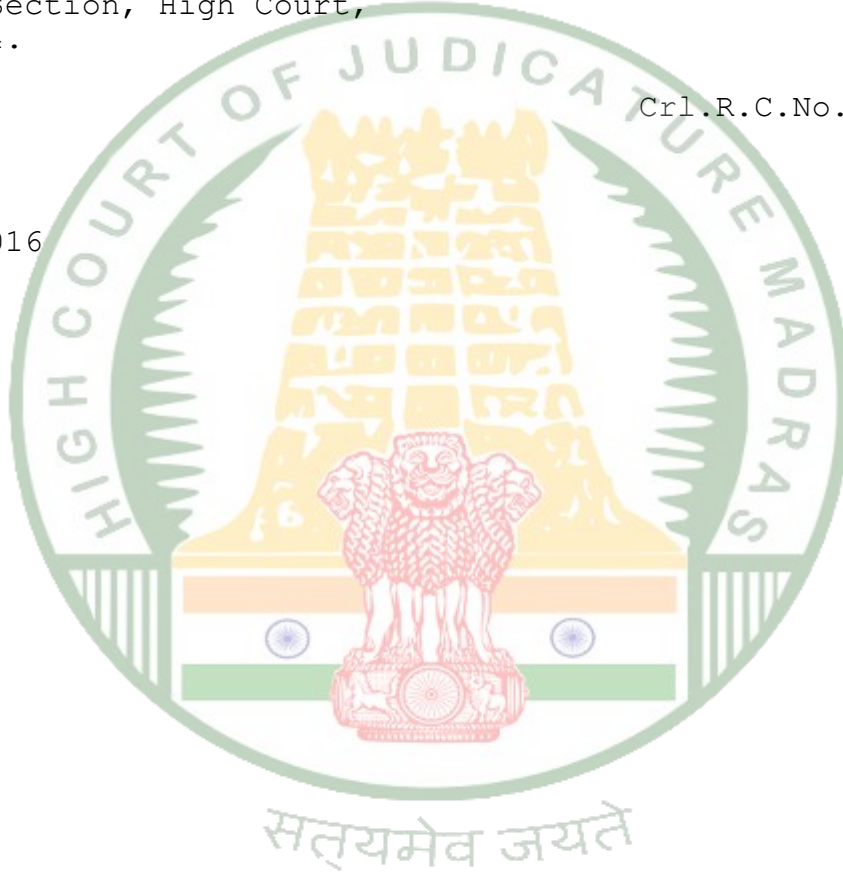
+1 cc to M/s.Ramasubramaniam Associates sr.6167/16
+1 cc to M/s.Sai,Bharath & Ilan, Advocate sr.6673

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The Section Officer,
Criminal Section, High Court,
Madras-104.

Cr1.R.C.No.790 of 2015

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