

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.25276 of 2011

and

MP.No.1 of 2011

A.Sankar

...Petitioner

Vs.

1. The State rep. by its
Sub-Inspector of Police,
District Crime Branch,
Salem.

...1st Respondent/
Complainant

2. Saroja

...2nd Respondent/
defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records pertaining to the FIR No.4 of 2008 dated 14.03.2008 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.P.Vijendran
For R1 : Mr.C. Emalias
Addl. Public Prosecutor
For R2 : Mr.Nalliyappan

O R D E R

This criminal original petition has been filed to call for the records pertaining to the FIR No.4 of 2008 dated 14.03.2008 on the file of the 1st respondent and quash the same.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

3. On the complaint lodged by one Vellaiyan, the first respondent police registered a case in Crime No.4 of 2008 for offences under Sections 468, 420 and 511 IPC against Sankar, Palanisamy, Manickam, Gurunathan, K.N.A.Khan and Saravanan, challenging which Sankar is before this Court.

4. It is the case of Vellaiyan, that he is the owner of the property measuring 2.16 acres in Kottamettupatti Village, Omalur Taluk and Palanisamy (A2) had created an un-registered power of attorney and on the strength of the said power of attorney, he executed a sale deed in favour of Sankar (A1). Hence the FIR.

5. After the registration of the FIR, Vellaiyan died on 05.06.2010. Thereafter, the police filed the closure report on 13.09.2010 before the Judicial Magistrate, Omalur closing the case as "further action dropped", pursuant to the death of Vellaiyan. Aggrieved by the closure report, his widow Sarjoa filed Crl.OP.No.19307 of 2011 before this Court, in which, this Court passed the following order on 18.08.2011:

"This Court considered the submissions and perused the copy of the closure report filed by the Superintendent of Police, District Crime Branch. One of the main reasons for closure of the case is that the petitioner's husband i.e. Defacto Complainant expired on 05.06.2010 and therefore the writing in the document could not be verified with that of the specimen writing of the defacto complainant, and further the civil suits are pending.

This Court is not satisfied with the closure report. It is open to the Investigating Officer to collect the admitted writings of the petitioner's husband and send them for comparison to get the opinion of the handwriting expert. A reading of F.I.R discloses cognizable offence of cheating and using forged documents and hence, proper investigation is required in this matter. Therefore the respondent police is directed to reopen the case registered in Crime No.4 of 2008 and to conduct further investigation and file final report."

6. Pursuant to the order dated 18.08.2011, the police have taken up the investigation of the case and at this juncture, Sankar is before this Court for quashing the FIR.

7. Learned counsel appearing for Sankar submitted that Sankar is an innocent purchaser and that he has nothing to do with the alleged offences. He also submitted that pursuant to the death of Vellaiyan, there cannot be prosecution against the accused given the facts and circumstances of the case. He also relied upon Section 256 Cr.P.C in support of this contention.

8. Per contra, learned counsel appearing for the de-facto complainant refuted the said contentions.

9. This Court gave its anxious consideration to the rival submissions.

10. It is the case of Vellaiyan, that he had not executed any power of attorney in favour of Palanisamy. That apart, the said power of attorney itself is not a registered document. On the strength of the un-registered power of attorney, the property of Vellaiyan has been conveyed to Sankar.

P.N.PRAKASH, J.

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11. A case under Section 256 Cr.P.C, falls within Chapter XX of the Code of Criminal Procedure, relating to trial of summons cases by Magistrate. The said provision will come only when the case is under enquiry or trial before the Magistrate in summons cases. In this case, the allegations are under Sections 468, 420 and 511 IPC which are not summons case, but warrant case. That apart, the case is only at the investigation stage and not in enquiry or trial. The death of the de-facto complainant cannot efface the offences, if otherwise, the offences has been committed.

12. Under such circumstances, when a learned Judge of this Court has given a finding that there are prima facie materials for the police to proceed with the investigation, this Court cannot judicially review the said order.

13. In the result, this petition is dismissed as being devoid of merits with a direction to the first respondent police to conduct a thorough investigation.

14. The Deputy Superintendent of Police is directed to monitor the investigation and if it is found, that the petitioner is an innocent person, it is needless to state that further action should be dropped against him, otherwise, a regular charge sheet should be filed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Superintendent
District Crime Branch Salem

2. The Sub-Inspector of Police,
District Crime Branch, Salem.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.Nalliyappa Advocate sr68324

Crl.O.P.No.25276 of 2016

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