

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.843 of 2016
in Crl.MP.No.6406 of 2016

P.Asirvatham

.. Petitioner

Vs.

1. State of
Rep by Inspector of Police,
Central Crime Branch,
Egmore, Chennai.
(Cr.No.747 / 1997)
2. T.Sathiah
(impleaded as per order of this Court
dated 27.07.2016 in Crl.MP.No.7692 of 2016
in Crl.RC.No.843 of 2016)

.. Respondents

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 27.05.2016 made in Crl.MP.No.2646 of 2015 in CC.No.10116 of 2014 passed by the Chief Metropolitan Magistrate, Allikulam, Chennai.

For Petitioner : Mr.N.MManokaran
for D.Ashok Kumar

For Respondent : Mrs.M.F.Shabana, GA (Crl.side) for R1.
Mr.K.Chairman Selvaraj for R2.

ORDER

This Criminal Revision is directed against the order passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai made in Crl.MP.No.2646 of 2015 in CC.No.10116 of 2014 dated 27.05.2016, dismissing the discharge petition filed by the petitioner/second accused.

2.It is admitted fact that the second accused is the revision petitioner herein. The defacto complainant is impleaded as second respondent in the revision petition. The learned counsel for the petitioner mainly contended that the police had filed final report against the second

accused/revision petitioner for the alleged offence punishable under Section 420 r/w.34 IPC in Cr.No.747 of 1997, on the complainant given by the second respondent/T.Sathaiah. The learned counsel further contended that there is no incriminating materials available to frame charges under Section 420 r/w.34 IPC. The first accused misused the power of attorney and agreement of sale to the second respondent/Sathaiah on 03.03.1995, there was a Memorandum of Understanding offered by the petitioner to the alternate property to settle the matter on 15.12.1998. The trial Court ought to have considered that original agreement dated 03.03.1995 and Memorandum of Understanding dated 15.12.1998, the defacto complainant agreed that he withdrawn the complaint made against the first accused with full satisfaction. In view of the same, there is no incriminating materials available against the petitioner/second accused, the counsel for the revision petitioner prays to set aside the order of the trial Court and to discharge the revision petitioner from the said case.

3.Heard the rival submissions made on both sides and perused the records.

4.It is admitted by both sides that the respondent/police filed report against one K.A.Thirumurugan and also against the revision petitioner/second accused. The first accused obtained power of attorney to sell 1.93 acres which is substance of the final report. The contents of Memorandum of Understanding is extract hereunder :-

"But both of them get into compromise and K.A.Thirumurugan agreed to register the lands to Thiru.T.Sathian, subsequently due to the various reason the same could not be completed. K.A.Thirumurugan has explained the situation to Thiru.Sathiah and offered an alternative property to compensate the same amount. Now both of them have agreed to settle the matter amicably by taking the other property.

Now K.A.Thirumurugan, has offered a property in S.No.55.1, Thiruvanniyur village, measuring an extent of 4.75 grounds. Thiru. T.Sathiah has agreed to take up the property along with the dues payable to Senmar property and investments and also the balance sale consideration to Mr.V.K.Subramanian and associates. For completing this transaction Thiru.Sathiah need six months time to complete the sale after obtaining necessary permission from the Income Tax Department. Thiru.Sathiah has agreed to withdraw the complaint against K.A.Thirumurugan with full satisfaction of adjustment of the payment in the new sale area. This

understanding has been reached by both of them with mutual consent."

5. On reading of the above complaint A1 being owner of the land and property in question was acquired by Tamil Nadu Housing Board during the year 1988 itself. A1 and A2 received Rs.17,00,000/- towards advance from the defacto complainant by suppressing the fact that the land was acquired by the Tamil Nadu Housing Board. When the fact came to the light, the land was already acquired by the Tamil Nadu Housing Board, A1 and A2 refused to return the advance amount received from defacto complainant. The second Memorandum of Understanding was also entered between A2 and the defacto complainant. It is clearly revealed that the Tamil Nadu Housing Board acquired the land belongs to A2 in the year 1988 itself. The acquisition of land by the Tamil Nadu Housing Board the revision petitioner/second accused given power of attorney in favour of the first accused for the same property reveals the criminal intention of the second accused. Subsequently, A1 executed sale agreement after receiving advance amount. It is admitted that the Memorandum of Understanding is not between the present petitioner and the second respondent/defacto complainant i.e. the Memorandum of Understanding is only within the first accused/K.A.Thirumurugan and the second respondent/defacto complainant.

6. On reading of the above facts there are serious of incriminating materials available to frame charges against the revision petitioner. The arguments of the learned counsel for the second respondent that materials are available to presume that the petitioner has committed the offence as stated in the final report has to be accepted. This Court finds there is no illegality or infirmity in the order passed by the trial Court and the same does not warrant any interference by this Court.

7. In the result, the criminal revision petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Metropolitan Magistrate,
Allikulam, Chennai.

2. The Public Prosecutor,
High Court, Madras.

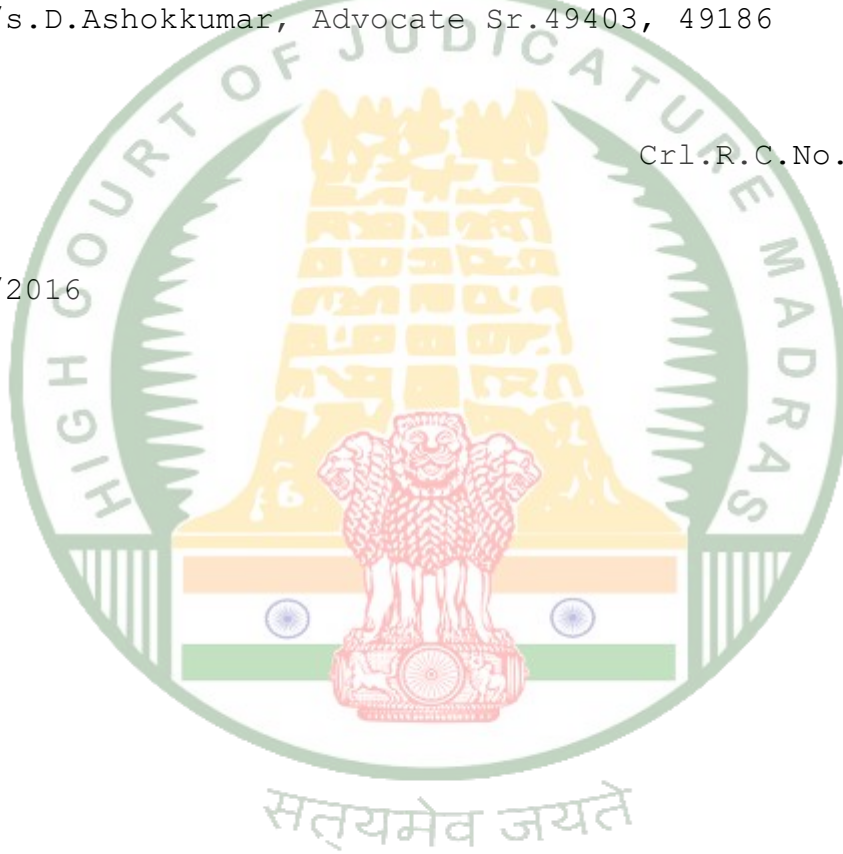
3. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

+2cc to M/S.K.Chairman Selvaraj, Advocate Sr.48975

+3cc to M/s.D.Ashokkumar, Advocate Sr.49403, 49186

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srg 28/09/2016



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