IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM :

THE HON'BLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.896 of 2016

N.Saraswathi .. Petitioner

vs.

The State
Rep by Inspector of Police,
Anti Land Grabbing Special Cell
Vellore.

2.Kanchana .. Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned Judicial Magistrate No.II, Vellore passed in CMP.No.3221 of 2013 in CC.No.28 of 2013 dated 23.05.2016.

For Petitioner : Mr.V.Prabhu
For Respondent : Mr.M.Mohammed Riyaz
GA (Crl.side) for R1.
Mr.R.John Sathyan for R2.

O R D E R

This revision arises against the order of learned Judicial Magistrate No.II, Vellore passed in CMP.No.3221 of 2013 in CC.No.28 of 2013 dated 23.05.2016.

2.The prosecution case is that one Karpaga Sundarambal member of the Katpadi Cooperative Township housing society was allotted vacant land bearing No.B1123 measuring to an extent of 4275sq.ft on 30.03.1948. Mutation of records have been effected in favour of her son V.K.Balasubramaniam on 22.04.1993, but sale deed in his favour had not been executed. One Balaji/A3 represented himself to be V.K.Balasubramaniam and on such impersonation obtained sale deed in his favour on 11.10.2010. A3/Balaji executed power of attorney in favour of A2/Suresh and sale of the property had been effected in favour of A4/Jaganathan, who inturn transferred the property to defacto complainant on 24.12.2010 under document No.11519 of 2010. On coming to know that A3/Balaji had impersonated the real owner, the second respondent/A1 had executed sale deed on 25.04.2011 in favour of real owner V.K.Balasubramanian and the earlier deed in favour of A3/Balaji was cancelled by way of cancellation deed dated 14.07.2011 in Document No.5702 of 2011.

3.Case was registered in Cr.No.14 of 2013 on 06.06.2013 and on completion of investigation by the District Crime Branch (Anti land grabbing special cell), Vellore charge sheet was filed against five persons alleging commission of offences under Section 120(b), 419, 420, 423, 465, 468, 471 and 506(ii) IPC. The second respondent filed discharge petition in CMP.No.3221 of 2013 in CC.No.28 of 2013 on the file of the Judicial Magistrate No.II, Vellore and by an order dated 23.05.2016, the learned Magistrate was pleased to discharge the second respondent/first accused. Against the said order, the petitioner/defacto complainant has preferred the present revision before this Court.

4.Heard both sides.

5.In allowing the petition for discharge the Court below had reasoned as follows :-

> "VI) On careful perusal of records submitted by the prosecution under Section 173 of CrPC it is found that in the statement under Section 161 of CrPC the witnesses has not stated anything about direct involvement of petitioner in the offence alleged. It is no where clearly alleged that the petitioner had colluded with the other accused knowingly about the impersonation. The petitioner was negligent and careless in discharging her duties and her responsibility is to ensure that whether the properties are being transferred to the Original owner. But allegedly, there is an act of impersonation being played by A3 Balaji and there is no allegation that the petitioner inspite of having knowledge about same had executed the sale deed in his favour. As rightly pointed out by the petitioner counsel, an act, must be associated with Mens rea to warrant criminal prosecution. Whereas in the instant case, there is no evidence in the records produced by the prosecution about the knowledge of impersonation being possessed by the petitioner.
>
> Further the petitioner who had no knowledge about the impersonation cannot be said to have colluded or conspired with the other accused. On through perusal of records, such as 161 statement there is no allegation that the petitioner had knowledge about the impersonation and that knowingly she had executed the sale deed.

It was also contended, that the petitioner had only limited role of signing and that all the registration process are being completed in Sub-Registrar, Katpadi itself. However, this act of the petitioner is mere failure of performing her duty.

In fact, disciplinary proceedings had been initiated against the petitioner for being negligent and careless in performing her official duty.

Further Section 176 of TN Co-operative societies act relied on by the counsel for petitioner to support his contention. The Section 176 of TN Co-operative Societies act reads as follows :-

"No suit, prosecution or other legal proceedings shall lie against the Government or any officer or servant of the Government or the Registrar or any person authorised by him for anything which is in good faith done or intended to be done under this Act, or any rule or by-law made thereunder".

Accordingly since there is no prima facie material to show knowledge or Malafide on the part of the petitioner about the impersonation or any other subsequent alleged act of the other accused persons, the above section comes as a rescue for the petitioners act.

Further, the petitioner is charged mainly under Section 120(b) alleging that she has committed the offence of conspiracy. But there is no prima facie material submitted by the prosecution as to how, when and where she had involved in the offence of conspiracy as they are the primary requirements to prove meeting of minds between the petitioner and the other accused persons. No witnesses under 161 statement has clearly stated about the alleged act of conspiracy.

Further there is no material to show prima facie that she had involved in offences. The alleged sale deed has been executed under the guise of impersonation and there is not even singly to presume that she had cheated or made any false represented there by including any person to deliver the property. Secondly, the section 419 cannot be invoked against her as she had not done cheating by personation.

Similarly, in respect of Section 423, 465, 471 and 506(ii) there is no materials found in the records submitted by the prosecution u/s.173 to show prima facie about the commission of alleged offences by the petitioner.

Another argument raised by the petitioner counsel is that in case of multiple accused careful consideration must be given before framing charge and he has also relied on Apex Court judgment.

Imtiaz Ahmed Vs. State of MP Reported in 1997 Crl.LJ 1844 held as follows :-

"Framing of common charges - incidence involving more than one accused person similar material against all accused persons not found in charge sheet. Offences not prima facie made out against accused persons individually. Framing of common charged against accused person improper".

"As the tendency of framing "common charges"in a trial involving more than one accused is on the increase, it is high time to check the above trend. An accused can be made to face trial or particular charge/charges only on the basis of material available in the charge sheet/complaint against the accused and not on the material available against his co-accused. It is always incumbent on the trial Court, while considering framing of charges against the accused person in a trial, involving more than one accused, to evaluate the material available against each and every accused, individually for ascertaining the culpability of each and every accused and then frame charge/charges against each and every accused accordingly".

The above said case is squarely applicable to this case. In the instant case also charges can only be based on the material available individually as against the petitioner for framing charges under alleged sections and thereby she is entitled for discharge".

6.Learned counsel for petitioner refers to the written complaint and also complainants Section 161(3) Cr.PC statement to submit that the Court below erred in finding that no prima facie case stood made out against the second respondent. He would also seek to impress on this Court, the need to call for the by-laws of the Society to ascertain the role of the Secretary submitting that doing so would help determination of whether she should be proceeded against. As it is admitted case that the second respondent/A1 was negligent in performance of her duty and as she had been proceeded against in departmental proceedings, this Court finds it is not necessary to peruse the by-laws.

7.As regards the allegations in the complaint and Section 161(3)Cr.PC statement against the petitioner, this Court finds that it consistently is informed that after coming to know of the wrong doings, the petitioner had approached the second respondent/A1, then Secretary of the Society who allegedly abused her informing that she could do what she liked. Statements of such nature are not indicative of any criminal intent. In the facts and circumstances of the present case, this Court is of the view that the Court below is right in taking the view that second respondent/A1 can at best be charged with negligence and no criminal intent can be attributed to her.

8.In the result, the criminal revision stands dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II, Vellore.

+1cc to Mr.R.John Sathyan, Advocate, S.R.No.72318
+1cc to Mr.V. Prabhu, Advocate, S.R.No.72367

LRS(CO)
EU 19.1.17

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