

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.09.2016

PRONOUNCED ON: 05.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.30512 of 2015 & M.P. No.1 of 2015

T.S. Sivakumar ... Petitioner

vs.

1 State represented by
the Inspector of Police
Perundurai Police Station
Erode District
(Cr.No.201 of 2015)

2 K.P. Jayaramakrishnan
Sub-Registrar
Perundurai
Erode District

3 Dr. T.S. Chellakumarasamy
Respondents

(R3 impleaded vide order dated
08.09.2016 in Crl. M.P. No. 1390
of 2016)

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the records and quash the proceedings in Cr.
No.201 of 2015 on the file of the Inspector of Police,
Perundurai Police Station, Perundurai, Erode District.

For petitioner

For R1

For R3

Mr. L. Baskaran

Mr. C. Emalias

Addl. Public Prosecutor

Mr. M. Guruprasad

ORDER

This Criminal Original Petition has been filed seeking to
call for the records and quash the proceedings in Cr. No.201 of

2015 on the file of the Inspector of Police, Perundurai Police Station, Perundurai, Erode District.

2 On the complaint lodged by one Jayaramakrishnan, Sub Registrar, Perundurai (the second respondent herein), the first respondent police registered a case in Crime No.201 of 2015 on 06.03.2015 against Sivakumar for offences under Section 465, 467, 468 and 420 IPC, challenging which Sivakumar has filed the present petition to quash the FIR.

3 When the matter was taken up for hearing, the learned Additional Public Prosecutor submitted that the investigation in Crime No.201 of 2015 has been completed and charge sheet has been filed against Sivakumar and his wife Parimala before the Judicial Magistrate, Perundurai for offences under Sections 120-B, 465, 467, 468 and 420 IPC and he also produced a copy of the charge sheet.

4 Normally, during the pendency of a petition challenging FIR, if charge sheet is filed, this Court would close the petition with liberty to the accused to challenge the charge sheet in accordance with law. When this was suggested to the learned counsel for the petitioner/accused, he placed reliance upon the judgment of the Supreme Court in *Joseph Salvaraj A. vs. State of Gujarat and others* [(2011) 7 SCC 59] and submitted that even if charge sheet is filed, if the FIR is found to be untenable, it can be quashed. Therefore, this Court had to perforce look into the FIR and the consequent charge sheet and give a finding.

5 To appreciate the FIR, it may be necessary to briefly narrate the factual matrix as under:

5.1 Dr. T.S. Chellakumarasamy (the third respondent) and T.S.Sivakumar, the petitioner herein, are blood brothers. Their father late T.S. Subramaniam owned 0.63 cents of land in Survey No.505 in Karumandichellipalayam Village, which he gave to T.S.Sivakumar (A1) by way of a settlement deed dated 07.05.2014 registered as Document No.1138 of 2004 before the Sub-Registrar's Office, Perundurai.

5.2 The allegation of Dr. T.S. Chellakumarasamy is that T.S.Sivakumar made alteration in the schedule of the original settlement deed by including Re-survey No.500 along with Survey No.505 so as to usurp his property. In other words, in the original settlement deed that was with T.S. Sivakumar, he has made corrections in the schedule by including Re-survey No.500, on the strength of which, he settled the property in favour of

his wife (A2) by a settlement deed dated 06.09.2013 registered as Document No.4200 of 2013 before the Sub-Registrar's Office at Perundurai.

6 Mr. Baskaran, learned counsel for the petitioner/accused submitted that on the complaint given by Dr. T.S. Chellakumarasamy, who is the brother of the petitioner/accused, the Inspector of Police, District Crime Branch conducted an enquiry and closed the complaint on T.S. Sivakumar on 11.11.2014 on the ground that the suit in O.S. No.143 of 2014 is pending between the parties and that apart, there is no change in the extent of property that was conveyed by their father late T.S.Subramaniam in favour of T.S. Sivakumar.

7 However, Dr. T.S. Chellakumarasamy took up the matter to the Registration officials complaining to them that T.S. Sivakumar has manipulated the schedule in the original document and prayed for an enquiry. Accordingly, the Registrar conducted an enquiry and called for T.S.Sivakumar to produce the original Settlement deed. But, Sivakumar did not produce it as the cat will be let out of the bag, if he produces it. On the contrary, T.S. Sivakumar submitted a photocopy of the manipulated settlement deed to the authorities, which, Dr. T.S. Chellakumarasamy obtained through legal process and produced it before the Registrar during enquiry. On the strength of the documents produced, the Registrar came to the *prima facie* conclusion that the original settlement deed dated 07.05.2014 that was registered by T.S.Subramaniam in favour of T.S.Sivakumar had only Survey No.505, whereas, the manipulated Settlement Deed includes Re-survey No.500 as well. Therefore, on the complaint of the Registrar, a regular FIR was registered by the police in Crime No.201 of 2015, as stated above and now, charge sheet has been filed.

8 The learned counsel for Sivakumar contended that Sivakumar has not manipulated the extent of the property in the schedule and therefore, there is no *mens rea*.

9 In the considered opinion of this Court, that cannot be a good reason to quash the prosecution, inasmuch as there are *prima facie* allegations to show that T.S.Sivakumar has included Re-survey No.500 in the original Settlement Deed on the strength of which, he has settled the property in favour of his wife (A2) in which document also, the schedule contains both Re-Survey No.500 and Survey No.505. In the teeth of such manipulation, this is not a fit case to quash the prosecution.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected CrI.M.P. is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The Inspector of Police
Perundurai Police Station
Erode District

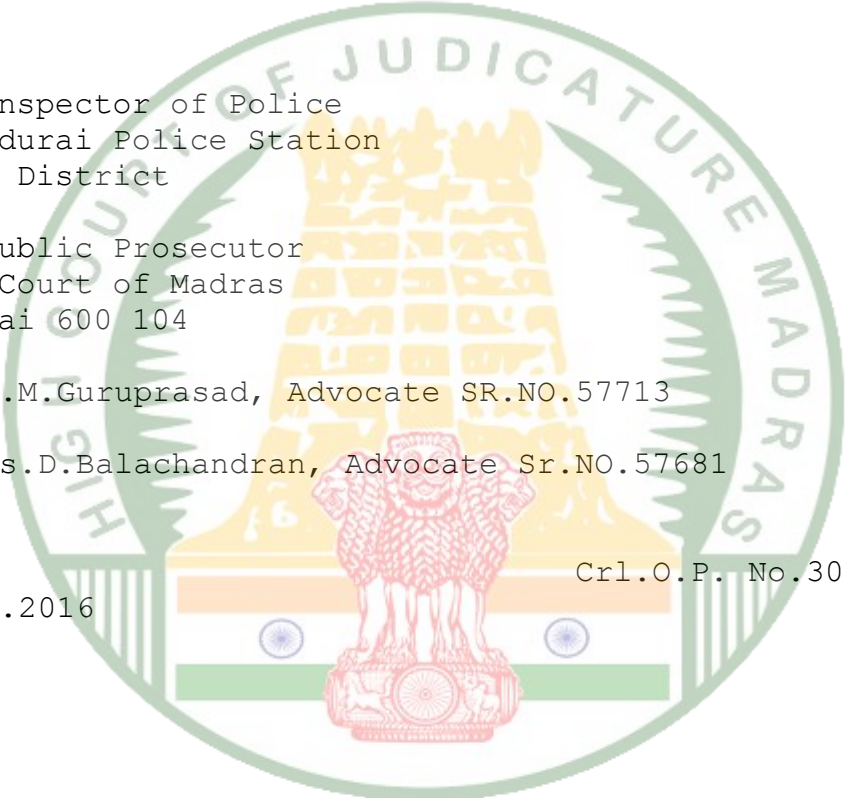
2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.M.Guruprasad, Advocate SR.NO.57713

+1cc to M/s.D.Balachandran, Advocate Sr.NO.57681

SDR 22.10.2016

CrI.O.P. No.30512 of 2015



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