

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.6874 of 2013

and

M.P.Nos.1, 2 & 3 of 2013

1.Santha

W/o.V.G.Jeganathan

2.M.S.Thenayal

W/o.M.C.Narayanasamy

.. Petitioners/Accused

Vs.

Dr.N.Gunaseelan

S/o.M.C.Narayanasami

Rep through Power of Attorney

S.Annamalai

S/o.V.K.Subramaniam

.. Respondent/Defacto complainant

Prayer:

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records pertaining to the case in C.C.No.16/2013 on the file of the Judicial Magistrate Court No.1, Gobichettipalayam, Erode District and quash the same.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.I.C.Vasudevan

For Respondent : Mr.Hari Radhakrishnan

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O R D E R

The petitioner has come forward with the present Criminal Original Petition to quash the proceedings in private complaint preferred in C.C.No.16/2013 for the offences punishable under Sections 120(b), 468, 471 and 420 IPC.

2. The learned Senior Counsel appearing for the petitioner would submit that the property originally belong to one M.C.Narayanasami. His wife is M.S.Thenayal, who is the second

accused. They were having two children viz., Santha, who is the first accused and Dr.N.Gunaseelan, who is the defacto complainant. The said M.C.Narayanasami died on 14.10.2001. Thereafter, the accused 1 and 2, who are the petitioners herein had filed a suit in O.S.No.74/2004 claiming $\frac{1}{2}$ share in the suit property stating that the deceased M.C.Narayanasami had bequeathed $\frac{1}{2}$ share of the property in favour of them, as per the unregistered Will dated 02.10.2001. However, the suit was decreed as per the defence taken by the respondent in which it was stated that to prove the Will dated 02.10.2001, neither the original Will was produced nor the attester of the document has been examined. So, the Trial Court has decreed the suit as per Hindu Succession, considering the death of M.C.Narayanasami as intestate death.

3. While so, the respondent/defacto complainant has preferred a complaint stating that the Will dated 02.10.2001 has been fabricated and used as original to obtain share in the property. However, since action was dropped by the police, he preferred a private complaint. The learned Senior Counsel for the petitioners would further submit that merely because in paragraph 16 of the judgment it was specifically stated that the Will dated 02.10.2001 has not been produced and proved and hence, it is a forged and not a genuine one, the case has been registered. Further, since the document has not been filed before the Court, the Court has not sent the document for forensic department for comparison to ascertain whether it was a fabricated document or a genuine document. However, without considering the same, the Trial Court has taken cognizance of the offence and hence, the learned Senior Counsel appearing for the petitioners prayed for quashing the same.

4. Resisting the same, the learned counsel appearing for the respondent would submit that the non-filing of the original document is not a material fact to decide whether the petitioners had committed offence under Section 468 IPC. The petitioners have fabricated the Will and claimed title by filing a suit. Hence, the ingredients of Section 468 and 479 has been prima facie made out. The learned counsel would further submit that on filing of the private complaint, only after satisfying that the prima facie case has been made out, the learned Judicial Magistrate had taken cognizance of the offence and issued summons. In such circumstances, it will not be appropriate to quash the proceeding in C.C.No.16/2013 at this stage. Only during the course of the Trial, the original Will has to be called for from the accused and ascertained whether it is a fabricated document or a genuine one. Thus, the learned counsel appearing for the respondent prayed for dismissal of the petition.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. It is an admitted fact that the properties originally belong to one M.C.Narayanasami. His wife is M.S.Thenayal, who is the second accused. They were having two children viz., Santha, who is the first accused and Dr.N.Gunaseelan, who is the defacto complainant. The said M.C.Narayanasami died on 14.10.2001 and thereafter, the petitioners herein had filed a suit in O.S.No.74/2004 claiming $\frac{1}{2}$ share in the suit property stating that the deceased M.C.Narayanasami had bequeathed $\frac{1}{2}$ share of the property in favour of them as per the unregistered Will dated 02.10.2001. However, the respondent raised the plea that the Will dated 02.10.2001 is a forged one. Since the Original Will has not been produced before the Court and marked before the Court and also the attesor of the Will has not been examined before the Court, the Trial Court has held that the deceased M.C.Narayanasami had died intestate and passed a decree in accordance with the provisions of the Hindu Succession Act i.e., the defacto complainant is entitled to $\frac{2}{3}$ rd share, the 2nd petitioner/Mother is entitled to $\frac{1}{6}$ th share and the 1st petitioner/Daughter is entitled to $\frac{1}{6}$ th share in the suit property.

7. According to the learned counsel for the respondent, even though the respondent/defacto complainant preferred a complaint before the police, no case has been registered and hence, invoking Section 200 Cr.P.C, the respondent preferred a private complaint. After recording the sworn statement, the learned Judicial Magistrate had taken cognizance for the offence punishable under Sections 120(b), 468, 471 and 420 IPC and notice has been issued.

8. At this juncture, it would be appropriate to incorporate the relevant provisions of law.

468. Forgery for purpose of cheating Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

420. Cheating and dishonestly inducing delivery of property Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Admittedly, the original Will has not been filed before the Court and proved in accordance with law. In such circumstances, I am of the view that the ingredients of Section 471 IPC has not been prima facie made out.

9. Now the point to be decided is whether the ingredients of Section 468 IPC has been made out?

At this juncture, it would be appropriate to consider paragraph 12 of the judgment of the Trial Court, wherein it was held that except the examination of P.W.1, neither the document has been marked nor the attesor of the document has been examined before the Court to prove the Will. Likewise, in paragraph 16 of the judgment, while granting share in accordance with the Hindu Succession Act, it was specifically stated neither the Will has been produced nor the attesor of the Will has been examined and hence, the Will is not a genuine document and it is a forged one. Merely because the Trial Judge had made some observations while deciding the suit will not attract the provisions of Section 468 IPC. Unless the original document is sent to forensic department for expert opinion, it cannot be decided that the Will is a forged one and hence, the provisions of Section 468 IPC cannot be invoked.

10. Similarly, only if the document is marked before the Trial Court and used as a genuine document, the ingredients of Section 471 IPC will be attracted. However, in the instant case, nothing has happened and the Will dated 02.10.2001, alleged to have been forged has not seen the light of the day.

11. In view of the above stated facts and circumstances, I am of the view that it is a fit case to quash the entire proceedings in C.C.No.16/2013 on the file of the Judicial Magistrate Court No.1, Gobichettipalayam, Erode District. Further, while taking cognizance of the offence, the learned Trial Judge had decided the matter on preponderance of probabilities. However, in the criminal proceedings, the offence has to be decided beyond all reasonable doubt. Moreover, once the document is not placed before the Court, it is a mere waste of time to proceed with the matter further.

12. For all the aforesaid reasons, the Criminal Original Petition deserves to be allowed and accordingly, allowed. Consequently, connected miscellaneous petitions are closed.

gp

Sd/-
Asst.Registrar

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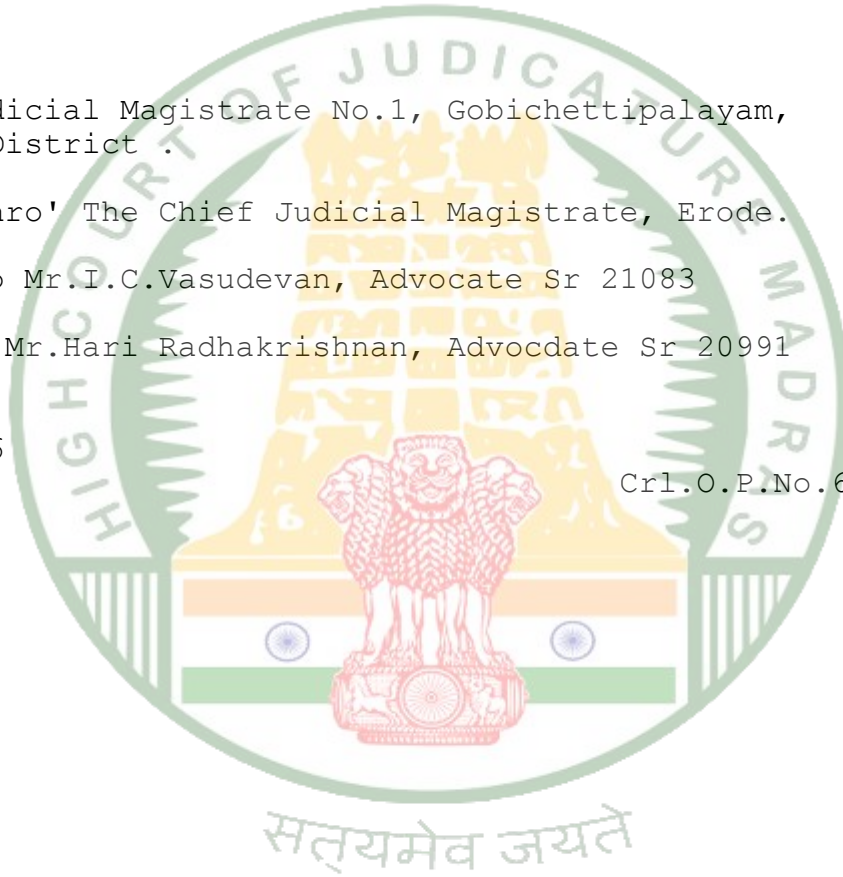
Sub Asst. Registrar

To

1. The Judicial Magistrate No.1, Gobichettipalayam,
Erode District .
2. -do- thro' The Chief Judicial Magistrate, Erode.
- + 4 ccs to Mr.I.C.Vasudevan, Advocate Sr 21083
- + 1 cc to Mr.Hari Radhakrishnan, Advocdate Sr 20991

KR/20/4/16

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