

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.753 of 2015

C.Elangovan

... Petitioner

Vs.

State through_
The Inspector of Police,
SPE:CBI:ACB:Chennai,
in FIR.No.20/A/2008/CBI/ACB/Chennai.

... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the chargesheet in Spl.C.C.No.1 of 2010 on the file of the learned Principal District Sessions Judge, Puducherry and to quash the charges framed against the petitioner/accused No.3.

For Petitioner : Mr.M.Subash Babu

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI

ORDER

This petition has been filed by the petitioner praying to quash the chargesheet filed against him in C.C.No.1 of 2010 pending on the file of the learned Principal District Sessions Judge, Puducherry. The petitioner herein has been arrayed as A3 in the said case.

2.The brief fact of the case of the prosecution are as follows-

2-1.The 1st accused V.Gurubatham, while working as Deputy Tahsildar at the office of the Deputy Collector (Revenue) and Branch Survey Office, Karaikal, Directorate of Survey and Land Records, Puducherry, Deputy Collector (Revenue), North, Puducherry, as Sub-Registrar, Registration Department, Puducherry and Additional charge as Sub-Registrar, Villianur, during the period from 01.01.2002 to 29.04.2008, acquired disproportionate assets to his known sources of income, in his name and in the names of his family members, to

the tune of Rs.50,43,193/- for which he cannot satisfactorily account for. It is stated that during the search held on 10.04.2008, a huge amount was seized from the residence of the 1st accused Gurubatham.

2-2.It is the allegation of the prosecution that the 1st accused Gurubatham, Coumoudame, the petitioner herein, Harish (Juvenile), Chandrasekaran and N.Maragatham entered into criminal conspiracy, during the period between 10.04.2008 and 29.04.2008 at Puducherry and other places, for fabrication of false records for the purpose of using the same as genuine in the Court of law, for using the same as explanation for the huge amount seized from the residence of the 1st accused Gurubatham during the search held on 10.04.2008 and for return of the amount. In pursuance of the said conspiracy, the accused G.Goumoudame and Harish had created an agreement with ante-date as 07.04.2008 with false averments as if one N.Maragatham paid an amount of Rs.25 lakhs against advance consideration for purchase of house property of V.Gurubatham and obtained the signatures of V.Gurubatham as executant in favour of the said N.Maragatham, during which the 1st accused-Gurubatham was in judicial custody in connection with the case registered for disproportionate case in RC.No.18(A)/08; further, they obtained the signatures of N.Maragatham as purchaser and one D.Chandrasekar, as a witness for the said agreement, knowing fully well that no consideration was passed under the said agreement and the agreement is an ante-dated one, for facilitating the 1st accused-Gurubatham to explain the sources of income so as to escape from the clutches of law. The petitioner herein, who is a Notary Public/Advocate, attested the said ante-dated agreement as if he attested on 07.04.2008, knowing fully well that the said agreement was not entered into between the parties in his presence and he further fabricated the Notarial Register in support of his attestation. Hence, the case was registered under Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act and Section 120(B) r/w 467, 468, 471 and 193 IPC against the accused persons, including the petitioner herein, who has been arrayed as 3rd accused. After completion of investigation, chargesheet has been filed by the respondent and the same has been taken on file as Spl.C.C.No.1 of 2010 by the learned Principal District Sessions Judge, Puducherry. Now, the petitioner has filed the present petition seeking to quash the chargesheet as against him.

3.The learned counsel for the petitioner submitted that the petitioner herein is a Notary Public and he has been arrayed as A3 in this case. The allegation against the petitioner herein is that the petitioner, being a Notary Public, attested the ante-dated agreement as if he attested on 07.04.2008, knowing fully well that the said agreement was not entered between the respective parties in his presence and he

further fabricated the Notary Register in support of his attestation. It is the contention of the learned counsel for the petitioner that the allegation with regard to the attestation of the petitioner would fall within the purview of the official duty of the petitioner, as a Notary Public, under the Notaries Act. When that being so, there is a bar under Section 13 of the Notaries Act, to take cognizance against the Notary, unless the complaint in writing is made by an officer authorised by the Central Government or State Government by general or special order in this behalf. In the present case, since there is no specific order to that effect as required under Section 13 of the Notaries Act, the complaint is liable to be quashed. In this regard, the learned counsel for the petitioner has also relied upon the judgments delivered by this Court in Crl.O.P.No.25534 of 2007, dated 04.03.2010, (K.Ramakrishnan Vs. Rajesh Kataria) and Crl.R.C.(MD).No.206 of 2014, dated 16.09.2014 (V.Ramakrishnan Vs. State through its Inspector of Police, CBI/ACB/Chennai).

4. But, the learned Special Public Prosecutor for CBI, by filing a detailed counter, submitted that the petitioner herein colluded and conspired with the other accused and committed the offence. The act of the petitioner cannot be said to be in exercise or performance of his functions under the Notaries Act. Therefore, there cannot be any bar to take cognizance of the offence as against the petitioner herein. Thus, the learned Special Public Prosecutor sought for dismissal of the present petition.

5. Keeping in mind the submissions made on either side, I have carefully gone through the materials available on record.

6. In an identical situation, in Crl.O.P.No.25534 of 2007 (K.Ramakrishnan Vs. Rajesh Kataria), vide order dated 04.03.2010, a learned Single Judge of this Court, by relying upon the decision reported in CDJ 2003 BHC 214 (Chandmal Motilal Bora Vs. State of Maharashtra), has quashed the criminal proceedings therein. The relevant portions of the said order read as follows

"6. The learned counsel for the petitioners places reliance on the decision Chandmal Motilal Bora v. State of Maharashtra CDJ 2003 BHC 214, wherein it has been observed as follows:

"10. Therefore, if any allegation is made against a Notary which touches the official performance as a notary, the Criminal Court is forbidden from taking cognizance unless the complaint in writing is made by an officer authorised by the Central Government or State Government by

general or special order in this behalf. Therefore, whenever an official act of Notary comes in picture, it becomes the duty of the criminal Court to see, whether, the allegation is directly concerned with his official duty or the performance which he has to do as indicated in Section 8 of Notaries Act. The Court which has been requested to take cognizance of the complaint has to apply its judicial mind and to see whether the act which is the subject-matter of the complaint is the official act of a Notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need of sanction, because, the said act is not connected with his official performance, like an allegation showing that notary committed the murder or Notary assaulted a person for the purposes of causing simple hurt, grievous hurt etc. If the allegations show that by an act which is not in accordance with the provisions of NOTARIES ACT, the notary has been alleged to have committed an offence, there is no need of having a sanction to the complaint in writing of an officer as contemplated by provisions of Section 13 of NOTARIES ACT. But if act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognizance of the allegations against the Notary.

11.If such protection is not granted to the Notary, he would be involved, implicated and roped in, in number of offences, because number of documents are being notarised before him in his notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offence of commercial transactions. He would be involved in number of offences concerned with the

disposing of property, transfer of the property, sale of the property, exchange of property. He would be also coming in picture as an accused in number of offences connected with number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons who happen to be persons of his acquaintance. Such person may be advocates, clerks of the advocates, or some persons who are connected with him by his profession as Notary or by his profession generally as a lawyer. If such protection is not granted to a notary, it would be very difficult for him to work as a notary and members of public at large would be facing number of difficulties at every step and with this object Section 13 has been enacted by the Legislature with a foresight."

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11. I find myself in total agreement with the observations contained in decision Chandmal Motilal Bora v. State of Maharashtra CDJ 2003 BHC 214 which had been extracted herein above. The case relied upon by the learned counsel for the respondent was one wherein a notary had taken shifting stands and given different statements in writing as to whether he had or had not endorsed the disputed will under challenge therein. It was in such circumstances that the Court had found that protection under Section 13 of the Notaries Act, 1952 would not be available to acts which fall outside the purview of the duty of such a functionary. Such decision does not have any relevance in the facts and circumstances of this case. The typed set of papers contain both the allegedly fabricated document dated 28.09.2000 and the Memorandum of Understanding between the respondent/complainant and the 1st accused and his company dated 29.09.2000. This Court is constrained to observe that even to the naked eye the difference in the signature of the

respondent/complainant in both documents is readily discernible.

12.This Court would endorse and follow the decision referred to and relied upon by the Honourable Bombay High Court in Chandmal Motilal Bora v. State of Maharashtra CDJ 2003 BHC 214.

13.In the matter of Madhavrao Jiwaji Rao Scindia and another vs. Sambhajirao Chandrojirao Angre and others, reported in A.I.R. 1988 S.C. 709, Supreme Court has held that:

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie established the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purposes is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration, the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

14.For the above reasons, the Criminal Original Petition shall stand allowed. The proceedings in C.C.No.10106 of 2007 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai shall stand quashed in so far as this petitioner is concerned. Consequently, the connected miscellaneous petition is closed."

In another judgment, in CrI.R.C.(MD).No.206 of 2014, dated 16.09.2014 (V.Ramakrishnan Vs. State through its Inspector of Police, CBI/ACB/Chennai), this Court held as follows

"11. However, a very vital contention, which goes to the root of the case, has been raised on behalf of the revision petitioner/10th accused. The said

contention is that based on Section 13 of the Notaries Act, no Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under the Act except upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

12. Section 13 of the Notaries Act, 1952 reads as follows:-

13. Cognizance of offence:- (1)
No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the First Class try an offence punishable under this Act.

13. Relying on the said provision, learned counsel for the revision petitioner/10th accused has submitted that the act of attesting affidavits was done in discharge of his functions of the notary under the Notaries Act and that it cannot be disputed at least that the act of attesting affidavits was done in purported exercise of his functions under the Notaries Act.

14. Section 13 provides a bar for taking cognizance of any offence allegedly committed by such acts in exercise or purported exercise of his functions under the Notaries Act without getting the complaint in writing made by an officer authorised by the Central Government or State Government. It cannot be contended that the revision petitioner/10th accused did not act in exercise of his functions as notary public.

15. In support of his contention, learned counsel for the revision petitioner/10th accused relied on the judgment of this Court in M.C. Chandran Vs. State, Special Police Establishment reported in 2009(5) CTC 209 in which a learned single Judge of this Court

made an observation that the advocates giving opinion on the genuineness or otherwise of the documents cannot be roped in the criminal cases for criminal conspiracy, cheating, committing forgery and connected aggravated offences and that if advocates are to be implicated in such criminal cases and in such fashion, the legal profession itself will be in peril. The said observation was made by the learned single Judge of this Court while discharging the petitioners therein and quashing the proceedings against them holding advocates could not be construed as technical experts to give opinion regarding the genuineness of documents.

16. The facts of the said case are different from the facts on hand. In the said case, the petitioners therein, who were advocates, gave legal opinion regarding the title of the loan applicants. Of course, in those cases, the petitioners therein, who were advocates, did not give any certificate identifying the loan applicants. On the other hand, based on the documents produced by them, they had given legal opinion regarding their title to the properties which were sought to be given as security for the loan to be obtained from the bank. The vital observation made by the learned single Judge in the said case is that the advocates, who were called upon to give legal opinion could not be expected to go to the Sub Registrar Office to verify the records when the documents produced by them for legal opinion, on their face itself did not indicate that the documents could not be genuine. On that ground, one accused was discharged and regarding the other accused, the criminal proceedings were quashed.

17. In the case on hand, it is the case of the prosecution that the revision petitioner/10th accused did not verify any documents regarding the identity of the deponents but simply relied on the identification made by an advocate, who was a debarred notary public, and attested the affidavits without verifying the identity of the deponents with reference to the documents of identity. Therefore, the said judgment shall not support the contention of the petitioner in this case.

18. In this regard, learned counsel for the petitioner has drawn the attention of this Court to a judgment of the Karnataka High Court in V. Ranga Ramu Vs. State By Rajajinagar Police reported in 1999 (2) ALT Cri 82, wherein criminal proceedings initiated against an advocate/notary public without following the procedure contemplated under Section 13 of the Notaries Act, 1952 was held to be not maintainable. A similar view was taken by the Bombay High Court in Chandmal Motilal Bora Vs. The State of Maharashtra reported in 2004 (2) MhLj 41 wherein it was held that Section 13 of the Notaries Act, 1952 provides that no Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under the Act, save upon complaint in writing made by an officer authorised by the Central Government or State Government by general or special order in this behalf and discharged the accused therein holding that the case was not instituted upon complaint in writing by an Officer authorised by the Central Government or State Government as contemplated under Section 13 of the Notaries Act, 1952.

19. In the case on hand also, it is not the case of the prosecution that as against the revision petitioner/10th accused, the case was instituted on a complaint made by an officer authorised by Central Government or State Government. When there is a special enactment dealing with the official acts or purported official acts of the notary, the provision of the special enactment will prevail over the general law. It is an admitted fact that the case was not instituted on a complaint in writing made by an Officer authorised by the Central Government or the State Government and the condition stipulated in Section 13 of the Notaries Act, 1952 for prosecuting a notary public for his acts done in exercise of or purported exercise of his functions under the Act has not been complied with. Hence, the petitioner is entitled to be discharged. The lower Court committed a mistake in dismissing his petition for discharge.

20. For all the reasons stated above, this Court comes to the conclusion that the order of the Court below taking cognizance of the case against the revision petitioner/10th

accused is against law and the learned trial Court ought to have allowed the petition filed by him for discharge on the said ground that the case was not instituted on a complaint in accordance with Section 13 of the Notaries Act, 1952."

The above cited decisions would give a fitting answer to the issue involved in this petition. In my considered opinion, the act of attesting the affidavit/agreement was only done by the petitioner, as a Notary Public, in discharge of his official duty under the Notaries Act. The said act of the Notary cannot be said that he had done it strictly in his personal capacity. When that being so, absolutely necessary sanction is necessary to take cognizance as against the Notary, as required under Section 13 of the Notaries Act. Hence, in view of the dictum laid down in the above cited cases and considering the facts and circumstances of this case, the criminal original petition deserves to be allowed.

Accordingly, the impugned criminal proceedings are quashed in respect of the petitioner herein and the Criminal Original Petition is allowed. However, the respondent is at liberty to obtain necessary sanction and thereafter, to proceed against the petitioner, if so advised.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Principal District Sessions Judge,
Puducherry.
2. The Inspector of Police,
SPE:CBI:ACB:Chennai,
(FIR.No.20/A/2008/CBI/ACB/Chennai).
3. The Public Prosecutor,
Madras High Court,
Madras.

Cr1.O.P.No.753 of 2015

CTR(CO)
CA(26/09/2016)