

Crl.MP.No.8094 of 2016
in Crl.RC.No.1126 of 2014
and MP.No.1 of 2014

G.CHOCKALINGAM, J.

This petition is filed by the petitioner/defacto complainant to vacate the interim stay granted by this Court in MP.No.1 of 2014 in Crl.RC.No.1126 of 2014 dated 30.10.2014.

2.This Court by an order dated 30.10.2014 made in MP.No.1 of 2014 in Crl.RC.No.1126 of 2014 passed the following order :-

"Interim Stay until further orders"

3.The respondent filed the criminal revision to call for the records on the file of the Judicial Magistrate No.II, Chengalpattu and to examine the same and set aside the direction passed therein vide order dated 11.10.2014 directing the revision petitioner to produce and return the sale deed bearing Document No.1285/2008 within three months from the date of the order to registry of the said Court. Further granted stay of operation of order dated 11.10.2014 in Crl.MP.No.3033 of 2014 directing the petitioner herein to produce and return the original sale deed dated 21.02.2008 bearing Document No.1285/2008 within three weeks from the date of the said order to registry of the said Court.

4.At the stage of admission of criminal revision, this Court granted interim stay on 30.10.2014. In the above circumstances, it is useful to refer the impugned order of the learned Judicial Magistrate No.II, Chengalpattu which reads as follows :-

"Further the petitioner in CMP.No.2662/2014 the 2nd respondent herein is hereby directed to produce the aforesaid documents before this Court within 3 weeks for verification from the date of order as per orders passed in this Court that the condition would made a undertaking by the 2nd respondent before this Court and the same is as and when required by this Court. On the careful consideration the facts and circumstances of this case and available records the 2nd respondent is direct to produce the documents within 3 weeks from the date of order failing which further orders will passed by this Court. This petition is ordered accordingly."

5.The learned counsel for the first respondent in this petition submitted that the order of the Judicial Magistrate to return the sale deed to the Court is illegal and improper and not valid in the eye of law. Hence, the criminal revision filed by the revision petitioner and obtained stay and there is no reason to vacate the stay already

granted by this Court. Hence, the petition is filed to vacate the stay has to be dismissed.

6.The learned counsel for the petitioner in the vacate stay petition mainly contended that the document alleged in the original sale deed dated 21.02.2008 bearing Document No.1285 of 2008 are fabricated and forged document. The report received from the forensic science department regarding forgery etc., the trial Court ought to have return the document to the person who produced the documents. The documents are forged, if comes to the knowledge of the Court and filing of the petitioner before the trial Court, the trial Court passed an appropriate order directing the revision petitioner to return the documents to the Court within specified time and there is no illegality or infirmity in the order of the trial Court. Further, the petitioner has every chance to misuse the original sale deed which was created forgedly. If the stay continues, the petitioner is having more chances to utilise the forged documents, hence, the stay granted by this Court has to be vacated and prays for allowing the vacate stay petition.

7.Heard the rival submissions made on both sides, this Court called for the entire records from the trial Court and perused the entire original records.

8. On perusal of the original records, the present revision petitioner filed petition in CrI.MP.No.2622 of 2014 for return of original sale deed dated 21.02.2008, stating that in Para 7 of the affidavit which reads as follows :-

"It is submitted that, in view of conclusion on the above case, the original sale deed dated 21.02.2008 as document No.1285/2008 which is subject matter in the above case to be delivered to petitioner and same may please be returned to the custody of the petitioner/A5 herein. The petitioner/A5 is undertaking to produce the document as when required by this Hon'ble Court."

9. On perusal of the affidavit, the trial Court passed the following order :-

"Records perused petition is allowed with undertaking".

10. Even though, the petition filed under Section 452 Cr.PC for return of documents, the trial Court returned the documents on undertaking given by the petitioner as stated in the affidavit. The revision petitioner undertakes to produce the documents as and when required by the Hon'ble Court. The Magistrate passed an order in CrI.MP.No.3033/2014 directing the revision petitioner to

produced the original sale deed dated 21.02.2008 in Document No.1285 of 2008 within three weeks from the date of order. The petitioner is bounden duty to produce the documents as and when required by the Judicial Magistrate No.II, Chengalpattu. As per the aforesaid order, if the petitioner fails to obey the undertaking given before the Court, he is liable for facing consequences in accordance with law.

11.It is clearly proved that the order of the Judicial Magistrate No.II, Chengalpattu in Crl.MP.No.2622 of 2014 dated 24.07.2014 has become final, against the said order, the revision petitioner has not filed any revision before this Court and the order has become final.

12.In the above petition, the petitioner has not given any notice to the defacto complainant, now the defacto complainant/K.Lakshmi filed an application before the trial Court in Crl.MP.No.3033 of 2014, directing the Court to get back the fabricated sale deed No.1285/2008 from the custody of the second respondent based on the undertaking given by him. On the application filed by the defacto complainant/Lakshmi and after hearing both sides arguments the trial Court passed the order

directing the revision petitioner to produce the document No.1285/2008 dated 21.02.2008 within three weeks from the date of order, failing which further orders will be issued.

13.The learned counsel for the respondent mainly contended that the Court already passed orders to return the document, hence, the Court has become functus officio, for redirecting the revision petitioner to surrender the document in this case. The trial Court clearly specified in the order returning the document only on the undertaking given by the revision petitioner to produce the documents as and when required by the Court. In view of the above said undertaking and the conditional order passed by the trial Court, the arguments of the petitioner that the Court has become functus officio and the order passed in the Crl.MP.No.2622 of 2014 dated 24.07.2014 is not valid cannot be accepted and the above said argument is liable to be rejected.

14.It is contended on the side of the vacate stay petitioner and produced additional typed set of papers, the petitioner has not executed the alleged document No.1285 of 2008 dated 21.02.2008 and produced the copy of the forensic report which reads as follows:-

"Reference : Case Criminal case in DCB Kancheepuram, Cr.No.25/08 u/s.120(b), 416, 420, 468, 471 and 474 IPC referred to by the Judicial Magistrate No.II, Chengalpattu in a letter in D.No.968/2009 dt.10.06.2009.

Finger Prints Questioned : The finger impression marked as Q1 found against the name K.Lakshmi on the reverse side of the second sheet of the sale deed document bearing No.1285 of 2008 dt.21.2.2008.

Finger Prints Admitted : The Specimen Finger impressions of K.Lakshmi on her finger print slip nil dated, whose left thumb impression is marked as S1.

Opinion : I carefully examined and compared the finger impressions concerned in this case and my opinion is as follows :-

.....

All the above five ridge characteristics are not found in their same relative positions in the specimen finger impression marked as 'S1'.

Hence, the disputed finger impression marked as

'Q1' is not identical with the specimen left thumb impression marked as 'S1' of K.Lakshmi."

15.Further, the handwriting expert has also given report which reads as follows :-

"The documents received along with your letter cited on 10.08.2009 through Grade I police constable No.1200, Tr.B.Harikeethi, under unbroken seals which corresponded with the samples sent were carefully examined by the undersigned experts in this department, and the result of examination is furnished below.

The person who wrote the red enclosed signatures stamps and marked A1 to A8, S1 to S5 and S11 to S28 did not write the red enclosed signatures similarly stamped and marked Q1 to Q15.

It is not possible to offer any reliable opinion on other points.

The reasoning sheet is enclosed.

The documents are returned herewith."

16.In view of the above finger print report and handwriting

expert opinion, it is clearly seen that the present defacto complainant/K.Lakshmi has not executed the sale deed dated 21.02.2008 in document No.1285 of 2008. The signature and the thumb impression found in the disputed sale deed is not that of the signature and thumb impression of defacto complainant/K.Lakshmi.

17.In the present case, after the order passed by the trial Court in Crl.MP.No.2662 of 2014, the document executed by K.Lakshmi prima facie using forged signature and thumb impression in the above said sale deed, which is in custody of the revision petitioner and the revision petitioner is using the above said sale deed. Even though, the document was not executed by K.Lakshmi, as per forensic science report. The above said document was returned to the revision petitioner without hearing K.Lakshmi/defacto complainant. In view of the above fact, the trial Court ordered to return the document, against which the present revision is filed.

18.During the course of argument, the revision petitioner is not ready to argue the main criminal revision. The learned counsel for the first respondent/vacate stay petitioner is ready to argue the main case alongwith the vacate stay petition. Hence, this Court is

constrained to pass orders in the vacate stay petition.

19. In view of the above said facts and circumstances, the documents in question i.e, sale deed the signature and thumb impression of Lakshmi/defacto complainant is fabricated in the original sale deed and the original sale deed is in the custody of the revision petitioner. The revision petitioner can use the document as if it is the originally executed by the said Lakshmi. In view of the same, the order passed by the trial Court directing the revision petitioner to return the document is confirmed. The stay granted by this Court in the MP.No.1 of 2014 in CrI.RC.No.1126 of 2014 dated 30.10.2014 is liable to be vacated and the same is hereby vacated.

20. In the result, the vacate stay petition stands allowed and the order made in MP.No.1 of 2014 in CrI.RC.No.1126 of 2014 dated 30.10.2014 is vacated. Registry is directed to list the main criminal revision for final hearing on 14.09.2016.

30.08.2016

Index : Yes/No
Internet : Yes/No
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