

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.09.2016

PRONOUNCED ON: 04.11.2016

CORAM:

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

Crl.O.P. No.32149 of 2013 & M.P. No.1 of 2013 & Crl.M.P. No.9141
of 2016

Dr. S. Senthilkumar

Petitioner

vs.

1 State represented by
Sub-Inspector of Police
Nallipalayam Police Station
Namakkal District
Namakkal
(Crime No.833 of 2012)

2 N. Krishnan

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the records relating to Crime No.833 of 2012
on the file of the first respondent police and quash the same.

For petitioner Mr. K. Doraisamy, Sr. Counsel
for M/s. Muthumani Doraisamy

For R1 Mr. C. Emalias
Addl. Public Prosecutor

For R2 Mr. C.D. Johnson

ORDER

This Criminal Original Petition has been filed seeking to
call for the records relating to Crime No.833 of 2012 on the
file of the first respondent police and quash the same.

2 Shorn of the minute details, the facts germane and
necessary for the disposal of this case are as under:

2.1 The property in question is a land in Kondichettipatty
Village belonging to K. Subramaniam and his sons Dr. Senthil

Kumar and Babu. N.Krishnan and N. Sekar who are blood brothers, are advocates practising in Namakkal District and they are cousins of Dr. Senthil Kumar and Babu. N.Krishnan, advocate and N. Sekar, advocate, filed a suit for specific performance in O.S. No.65 of 2012 before the Sub Court, Namakkal, against Subramaniam, Dr. Senthil Kumar and Babu, on the strength of a sale agreement dated 05.06.2011. It is the case of the defendants in O.S.No.65 of 2012 that the sale agreement dated 05.06.2011 is a forged document and that N. Krishnan and N. Sekar, being advocates, wanted to usurp the properties of their cousins, viz., Dr. Senthil Kumar and Babu and to get that desire fulfilled, they have filed the said suit for specific performance on the strength of the forged document. On 27.09.2012, K.Subramaniam died.

2.2 Dr. Senthil Kumar lodged a police complaint against N.Krishnan, advocate and N. Sekar, advocate, alleging that they have forged the sale agreement dated 05.06.2011 and on the said complaint, the District Crime Branch, Land Grabbing Cell registered an FIR in Crime No.39 of 2012 on 01.10.2012 for offences under Sections 120-B, 467, 471 and 420 IPC against N. Krishnan, advocate and N. Sekar and sent the FIR to the Court of Judicial Magistrate No.I, Namakkal.

2.3 On 26.11.2012, N.Krishnan, advocate, gave a written complaint to the Principal District Judge, Namakkal, alleging that when he had gone to the photocopy shop located within the District Court complex around 1.30 p.m., he saw Dr.Senthil Kumar, Selvaraj and Paramasivam taking photocopy of the records in Crime No.39 of 2012. It is alleged by N. Krishnan, advocate, that when he questioned them, they abused him in choicest epithets and took their car bearing Registration No.TN 28 AF 9191 and attempted to mow him down in the Court complex. In the complaint, it is also stated that this incident was witnessed by other advocates, viz., L. Raji, R. Gopikumar, C.Ganesan, S. Hemavathy, S.Thangarasu and others. The Principal District Judge, Namakkal, sent the complaint given by N. Krishnan, advocate, to Nallipalayam Police Station, based on which, a case in Crime No.833 of 2012 was registered on 27.11.2012 under Sections 294(b), 506 (II) and 380 IPC against Dr. Senthil Kumar, Selvaraj and Paramasivam and on the same day, around 6.00 p.m., the police arrested Dr. Senthil Kumar and produced him before the concerned jurisdictional Magistrate, who had him remanded to judicial custody.

2.4 Dr.Senthil Kumar was working as Assistant Professor in Tamil Nadu Veterinary and Animal Sciences University (TANUVAS) and on account of his arrest and remand, he was suspended from

service. Challenging the FIR in Cr. No.833 of 2012, Dr. Senthil Kumar has preferred the present quash petition.

3 As regards Crime No.39 of 2012 that has been registered against N.Krishnan, advocate and Sekar, advocate, on the complaint of Dr. Senthil Kumar, the police were deliberately dragging their feet on some pretext or the other. Therefore, Dr. Senthil Kumar filed Criminal Original Petition, in CrI.O.P. No.19956 of 2015, for transfer of investigation in Crime No.39 of 2012 from the file of the District Crime Branch, Anti Land Grabbing Special Cell, to the file of the CB-CID.

4 In Iqbal Singh Marwah vs. Meenakshi Marwah, [(2005) 4 SCC 370], a Constitution Bench of the Supreme Court held that if the document is forged outside the Court, but, if presented to the Court in a civil proceedings, the police can still conduct the investigation and file a final report notwithstanding Section 195 Cr.P.C. and that only if a document is tampered with, after it comes to the custody of the Court, can the procedure under Section 195 be resorted to. Therefore, relying upon the said judgment, this Court, on 13.08.2015, passed the following order in CrI.O.P. No.19956 of 2015:

"11. Therefore, this Court is of the view that this is a fit case to transfer investigation from the file of Deputy Superintendent of Police (Anti Land Grabbing Cell) to the CBCID. Extraordinary cases requires extraordinary remedies. After all, procedure is hand maid of justice and not its master.

12. Therefore, this Court directs the Sub Judge, Namakkal, who is seized of O.S. No.65/12 to hand over the original of the agreement dated 05.06.2011 to Mr. Rajendran, Deputy Superintendent of Police (Anti Land Grabbing Cell) after taking photocopies and certified the photocopies and keeping the same on the file of the Court within one week from the date of receipt of a copy of this order. Mr.Rajendran is directed to collect the same and hand over the entire case diaries along with the document to the Superintendent of Police, Namakkal District forthwith. The Superintendent of Police, Namakkal shall hand over the case diaries and documents to the investigating officer appointed by the CBCID. Until then the case diary and the documents shall be in the safe custody of the Superintendent of Police, Namakkal."

5 Pursuant to the aforesaid directions of this Court, as aforestated, the CB-CID took over the investigation, obtained the original sale agreement dated 05.06.2011 from the Sub Judge, Namakkal and sent the same to the Forensic Science Department for comparison with the admitted signatures of the executants. The report received from the Forensic Science Department shows that the executants' signatures have been forged. Now, charge sheet has been filed by the CB-CID on 20.08.2016 before the Chief Judicial Magistrate, Namakkal, for offences under Sections 120-B, 467, 471 and 420 and 511 IPC against N. Sekar, advocate, his brother N. Krishnan, advocate and 2 others.

6 Mr. K. Doraisamy, learned Senior Counsel appearing for Dr. Senthil Kumar submitted that a reading of the complaint of N. Krishnan, advocate, which forms the basis of registration of FIR in Crime No.833 of 2012 would show that it is false.

7 Mr. C.D. Johnson, learned counsel for N. Krishnan, advocate (de facto complainant in Crime No.833 of 2012) submitted that the Principal District Judge, Namakkal, had conducted enquiry and only thereafter, had referred the complaint to the police for registration of FIR and therefore, it is too premature to quash the FIR when investigation is still pending.

8 This Court gave its anxious consideration to the rival submissions.

9 It is the allegation of N. Krishnan, advocate that Dr. Senthil Kumar had taken the bundle relating to Crime No.39 of 2012 from and out of the Court of the Judicial Magistrate No.I, Namakkal, for taking photocopy in the photocopy shop located inside the Court complex and that when he was questioned, he abused N. Krishnan, advocate and attempted to mow him down in the Court campus by his car.

10 The narration of N. Krishnan, advocate, in his complaint reads like a fairy tale and defies credulity. In Namakkal, all the Courts are located in the Combined Court complex and there is a photocopy shop in the Court complex itself run by a private party.

11 This Court called for a report from the Court of the Principal District Judge, Namakkal, to find out if any enquiry was conducted by the then Principal District Judge, Namakkal, as contended by Mr.C.D.Johnson, learned counsel.

12 The present Principal District Judge, Namakkal has sent

a report dated 27.09.2016 and photocopies of the records available on the file of the Court, which states that the then Principal District Judge has made the following remarks on the complaint dated 26.11.2012 given by N.Krishnan, advocate.

"Xerox office within the Court complex. Mrs. K. Deivamani was enquired and admitted as she took xerox and one Selvaraj gave the bundle for xerox. Referred to Nallipalayam Police for necessary action and report."

13 Except the above remark by the then Principal District Judge, Namakkal, there is no other material to show that any statement has been obtained from K.Deivamani. Even if the aforesaid remark is accepted in toto, it only shows that one Selvaraj gave the bundle to K.Deivamani for taking photocopy. Beyond that, it does not show that the records relating to Cr. No.833 of 2012 have been lost so as to attract the provisions of Section 380, IPC.

14 Further, this Court called for a report from the Chief Judicial Magistrate, Namakkal, as to whether the records in Cr. No.39 of 2012 are available intact, in response to which, a report dated 24.10.2016 has been received stating that the entire records relating to the said Crime Number are available in the Court and they are intact.

15 The then Principal District Judge, Namakkal, failed to enquire on this vital aspect before referring the complaint to the police for investigation. The police also did not confirm from the Court of the Judicial Magistrate No.I, Namakkal, as to whether the records are available before effecting the arrest of Dr.S.Senthilkumar.

16 Taking photocopy of the records cannot attract the provisions of Section 380, IPC nor any other provisions under the IPC. The name of Dr.S.Senthilkumar, as a person who was responsible for taking photocopy, has not been disclosed by Deivamani. Further, the allegation of N. Krishnan, advocate that Dr.S.Senthilkumar tried to mow him down by his car in the Court campus is incredible on the face of it.

17 The allegation of N. Krishnan, advocate, that Dr. Senthil Kumar was stealing the records in Crime No.39 of 2012 defies logic because the said Crime Number has been registered on the complaint given by Dr.Senthil Kumar against N. Krishnan, advocate. Therefore, by stealing the records from the Judicial Magistrate's Court, it will be only N. Krishnan, advocate, who will stand benefitted and not Dr. Senthil Kumar.

18 Thus, it is clear that N. Krishnan, being an advocate, has engineered a false prosecution in Crime No.833 of 2012 against Dr. Senthil Kumar and others and had them arrested with the help of the police only to wreak vengeance for the FIR in Crime No.39 of 2012 that has been registered against him on the complaint of Dr. Senthil Kumar.

19 In the light of the aforesaid discussion, this Court is of the considered view that the facts of this case do satisfy clause nos. 1 and 7 of paragraph no.102 of the judgment of the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 Supp (1) SCC 335].

As a sequel, the FIR in Crime No.833 of 2012 on the file of the first respondent police is quashed and this Criminal Original Petition is allowed. Connected M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1 The Sub-Inspector of Police
Nallipalayam Police Station
Namakkal District
Namakkal

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.C.D. Johnson, Advocate, S.R.No.62966
+10cc to Mr.Muthumani Doraisamy, Advocate, S.R.No.63179

mv (CO)
md (09/11/2016)

CrI.O.P. No.32149 of 2013 and
MP.No.1/2013 & CrI.MP.No.9141/16