IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.02.2016

Pronounced on :29-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 4145 of 2016

R. Murugesan .. Petitioner

-Versus-

The Subordinate Judge
Namakkal .. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the proceeding D.No.998/2015 dated 17.12.2015 on the file of the learned Subordinate Judge, Namakkal and quash the same in so far as the finding recorded therein that the learned Subordinate Judge is not empowered to deal with the present complaint purportedly about the non-joinder of the necessary party in the suit and further direct the learned Subordinate Judge, Namakkal to conduct a preliminary enquiry under Section 340 of Criminal Procedure Code.

For Petitioner :Mr.D. Shivakumaran

ORDER

The petitioner has filed this writ petition to quash the order dated 17.12.2015 passed by the learned Subordinate Judge, Namakkal in so far as it relates to the finding recorded therein that the learned Subordinate Judge is not empowered to deal with the present complaint purportedly about the non-joinder of the necessary party in the suit and to further direct the learned Subordinate Judge, Namakkal to conduct preliminary enquiry under Sec.340 of Criminal Procedure Code.

2. The brief facts which are necessary and essential for disposal of this writ petition are as follows:-

(i) The petitioner was carrying on business of manufacturing cosmetics under due licence. During the course of such business, when the petitioner was looking for a place to set up a factory, one Mr. Hariharan offered to give his land measuring 3055 square feet in Survey No.136V/3A1 of Pothanur Village, Namakkal District. After deliberations, the monthly rent was fixed at Rs.300/- apart from payment of taxes, maintenance and other charges, which worked out to Rs.1,200/- per month. Thus, the petitioner has to pay Rs.1,500/- per month in the form of lease rent. The lease was for a period of five years. Upon taking possession, the petitioner had put up a superstructure with hollow blocks, obtained electricity service connection in his name and also sunk a bore well by incurring huge expenditure. When the business was flourishing, the said Hariharan and his family members expressed their intention to become a partner of the business run by the petitioner. Accordingly, on 19.11.2008, the said Hariharan, his mother, his sister and two others were inducted as partners in the business run by the petitioner. However, before the expiry of the lease period, the said Hariharan made attempts to dispossess the petitioner, which necessiated him to file the suit in O.S. No. 52 of 2014 before the learned District Munsif Court, Paramathi, Namakkal District for a bare injunction restraining the said Hariharan, who was cited as defendant in the suit, from in any manner dispossessing him without following the due process of law.

(ii) According to the petitioner, aggrieved by the filing of the suit, the said Hariharan along with his family members have created forged and fabricated sale agreements as if the lease hold property which is in possession of the petitioner was agreed to be sold in favour of one K. Senthil Kumar on 26.05.2012 for a sale consideration of Rs.4,50,000/-. On the basis of such false and fabricated agreement of sale, the said K. Senthil Kumar has filed a suit in O.S. No. 213 of 2014 for specific performance against Hariharan and his family members. According to the petitioner, the said suit in O.S. No. 213 of 2014 is a collusive suit to some how or the other to drive the petitioner out of the property in question. In the said suit in O.S. No. 213 of 2014, an exparte decree was passed on 26.08.2014 and to execute the same, R.E.P. No. 76 of 2014 was filed. Ultimately, a sale deed dated 30.04.2015 was executed in favour of the said K. Senthil Kumar. On the strength of the sale deed dated 30.04.2015, without any order for delivery of possession, the said Senthil Kumar, Hariharan and other rowdy elements dispossessed the petitioner from the lease hold property where the petitioner had stocked raw materials, finished goods, machines and other accessories worth Rs.15,00,000/-. After taking possession by illegal means, the said Senthil Kumar and others have also demolished the hollow block put up by the petitioner.

(iii) According to the petitioner, he came to know that the property which was leased out to him belonged to one M. Karthikeyan by virtue of a sale deed dated 14.02.1991 registered in his name vide document No.201 of 1991 on the file of Sub-Registrar, Paramathi and not in favour of Hariharan. It also came to light that the said M. Karthikeyan has executed a registered mortgage deed dated 13.12.1993 for obtaining a loan from Velur Urban Cooperative Bank and the mortgage is yet to be redeemed. The petitioner also came to know that the said Karthikeyan has obtained another loan from Karuppiah i.e., father of Hariharan in 1995 and executed only a registered power of attorney deed dated 23.08.1995 appointing the said Karuppiah as his power of attorney agent and has not executed any sale deed as falsely claimed by Hariharan. The said

Karuppaih died in the year 2007 and on his death, the power of attorney executed by the owner Karthikeyan in respect of the property in favour of Karuppiah ceased to be in force and consequently, Hariharan or his family members here no right to deal with the lease hold property in question. Suppressing the above details and by fabricating an agreement of sale, the petitioner was dispossessed by the said Hariharan and Senthil Kumar from the leasehold property. Therefore, according to the petitioner, the above said Hariharan, his family members and Senthil Kumar have committed a criminal offence punishable under Sections 191, 120-B, 193, 465, 471, 447 and 426 of IPC.

(iv) Highlighting the above facts, the petitioner has given a complaint dated 25.11.2015 to the Inspector of Police, CBCID Branch, Salem Road, Namakkal and prayed for initiating appropriate criminal action against the persons named in the complaint. The petitioner also filed the said complaint dated 25.11.2015 and other material documents before the learned Subordinate Judge, Namakkal praying to take appropriate action as contemplated under Section 340 and 195 (1) (b) of Criminal Procedure Code. On receipt of the complaint, a notice dated 02.12.2015 was sent to the petitioner calling upon him to appear for an enquiry on 09.12.2015. The petitioner also appeared before the learned Subordinate Judge, Namakkal on 09.12.2015. During the course of such enquiry, the petitioner has submitted that the offence committed by the accused has affected the proper administration of justice and therefore he pleaded for initiating appropriate proceedings. However, the learned Subordinate Judge has passed the order dated 17.12.2015 forwarding the complaint given by the petitioner to the Chairman of District Legal Services Authority, Namakkal for initiating appropriate proceedings. Challenging the same, the present writ petition is filed by the petitioner.

3. The learned counsel for the petitioner would vehemently contend that the learned Subordinate Judge failed to exercise his judicial discretion in a proper perspective. The learned Subordinate Judge also erroneously held that the complaint given by the petitioner relates to non joinder of necessary party in the suit, which is factually incorrect. The fact remains that the complaint given by the petitioner relates to playing fraud on the court thereby crippling the administration of justice. Further, the complaint relates to fabrication and forgery of documents to ingeniously dispossess the petitioner. The complaint further relates to unauthorised dispossession of the petitioner from the leasehold property and causing theft of materials worth Rs.15,00,000/-. When such a complaint was given, the learned Subordinate Judge ought to have conducted a preliminary enquiry as contemplated under Section 340 and 195 of the Code of Criminal Procedure instead of forwarding the complaint to the District Legal Services Authority for adjudication. According to the counsel for the petitioner, by the impugned order, the learned Subordinate Judge has exceeded his jurisdiction and travelled beyond the scope of the complaint.

4. The learned counsel for the petitioner relied on the decision of this Court in the case of (N. Natarajan vs. The Executive Officer, Chitlapakkam Town Panchayat, Kancheepuram District) reported in 2015 (2) CTC 681 to contend that when fraud has been played on the Court, registration of a criminal case is inevitable. The relevant portion of the order passed by this Court is extracted hereinbelow for ready reference;-

> 58. In the instant case, as I have already concluded, creation of Exs.A2 and A3 amounts to fraud which requires serious action at the hands of this Court. But the question is whether this Court should initiate proceedings under Section 340 of the Code of Criminal Procedure against the plaintiff. To make out a prima facie case under Section 195 of the Indian Penal Code, so as to initiate a proceeding under Section 340 of Cr.P.C. it should be shown that the appellant had fabricated false evidence or used the same in evidence knowing that it is a forged document. But from the materials available on record, in the instant case, I do not find a prima facie case satisfying any one of the ingredients of Section 195 of I.P.C. Therefore, it is not possible for this Court to initiate any proceedings under Section 340 of the Cr.P.C. But, for that matter, this Court cannot close its eyes and keep its arms tied without moving forward to see that the real culprits, who are responsible for the fabrication of these documents, are prosecuted and punished. At this juncture, it needs to be noted as to whether in a case of forgery, it is necessary that the proceedings should be initiated under Section 340 of the Cr.P.C. by the Court or whether the police could register a case. This issue was resolved by the Hon'ble Supreme Court in Sachida Nand Singh and another Vs. State of Bihar and another reported in 1998 SCC (Cri) 660 has held in paragraphs 10, 11 and 12 as follows:
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> > 10. The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It h as to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the Chapter appellates. So the offences

> envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.
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> 11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.
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> 12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as on affecting administration of justice merely because that document later reached the Court records."

59. In the case on hand, since, as I have already pointed out, the offence of forgery of Exs.A2 and A3 was committed outside the Court, even before they were produced before the Court, there can be no impediment for the police to register a case. When it was pointed out by this Court to the learned counsel on either side that this Court has power to issue a direction to the Thasildar, Tambaram to forward a complaint to the police in respect of the above offence of forgery, for registration of a criminal case so as to investigate the same throughly to find out the real culprits, the learned counsel for the appellant submitted that such power is not available for this Court in a civil proceedings. Of course, it is true that there is no express provision in the Civil Procedure Code specifically empowering a Civil Court to issue a direction either to a party or to a witness to make a complaint to the police. But at the same time, it needs to be noted that there is no prohibition, either express or implied, thereby prohibiting a Civil Court from issuing any direction to a party or a witness to forward a complaint to the police when a serious offence of forgery is alleged.

60. In my considered view, in such circumstances, the power of this Court could be found in Section 151 of the Code of Civil Procedure. Regarding the scope of power of this Court under Section 151 of the C.P.C., I am of the view that I need not delve more since a Constitution Bench of the Hon'ble Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal reported in AIR 1962 SC 527, has

held that the inherent jurisdiction of the Court to make order ex debito justitiae is undoubtedly affirmed by Section 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code. Thus, there is no prohibition for this Court to exercise its inherent jurisdiction to issue a direction to the Tahsildar, Tambaram (C.W.1) to forward a complaint to the police.

61. Above all, forgery is a fraud and so the power of the Court, to unearth the fraud and to bring to book the culprits shall find no barriers. If the inherent power of this Court under Section 151 could not be exercised to such a situation, the phrase "ends of justice" as enumerated in Section 151 will not serve its purpose. Therefore, I hold that to meet the ends of justice, it is absolutely necessary for this Court to issue a direction to the Tahsildar to make a complaint to the police.

62. In this regard, I may also state that, in general, whenever a criminal case is registered by the police alleging offence of forgery, the accused rushes to this Court under Section 482 of the Code of Criminal Procedure seeking to quash the F.I.R. alleging that the issue is before a Civil Court and that no decision has been arrived at by the Civil Court as to whether the document is a forged one or not. Many a times, it happens, the High Court holds that the dispute is civil in nature and quashes the F.I.R. Thus comes to an end the criminal case. Before the Civil Court when the matter finally comes up for consideration, it, generally, happens that the Court simply gives a finding that the document is a forged one and thereafter no further action is taken against the offender. Ultimately the offender thus, escapes, from the clutches of law and goes scot-free.

63. In my view, this is because of the reluctance of the Civil Courts to issue a direction to the police to register a case of forgery or in appropriate cases to initiate proceedings under Section 340 of the Code of Criminal Procedure. Therefore, it has become necessary for this Court to clarify that in appropriate cases, the Civil Court has got power to issue a direction to a party or to a witness to forward a complaint to the police. This measure alone shall send an appropriate message to the intending wrong doers so that the fraud and forgery could be curtailed.

5. Relying on the above decision, the learned counsel for the petitioner would contend that when it was complained by the petitioner that fraud was played on the Court by filing a collusive suit based on documents which were created and fabricated, the learned Subordinate Judge, Namakkal ought to have exercised the powers under Section 340 of Cr.P.C. by conducting a preliminary enquiry to arrive at a conclusion whether the complaint made by the petitioner regarding false and fabrication of documents are sustainable, whether the forged documents were made used for substantiating their plea in the Court and to consequently initiate action as contemplated under Section 340 of Cr.P.C. In the instant case, without resorting to such a procedure, the learned Subordinate Judge misdirected himself and forwarded the complaint to the Chairman of the District Legal Services Authority purportedly to find out as to whether non-joinder of the petitioner in the suit in O.S. No. 213 of 2014 would amount to playing fraud upon the Court. Further, in the impugned order, it was erroneously mentioned as though the learned Subordinate Judge is not empowered to deal with the present complaint. Therefore, the learned counsel for the petitioner prayed this Court to allow this writ petition as prayed for.

6. I heard the counsel for the petitioner and perused the order, which is impugned in this writ petition.

7. The petitioner was inducted as a lessee in the property said to have been owned by one Mr. Hariharan on payment of monthly lease rent for a period of five years. On 23.03.2009, the petitioner took possession of the lease hold lands where he has erected a superstructure, installed machineries and other accessories for running a factory to manufacture cosmetics. On 19.11.2009, on request, the petitioner inducted the said Mr. Hariharan, his mother and two sisters as partners in the factory business run by him. During the course of such business, it is alleged by the petitioner that the said Hariharan and his family members attempted to interfere with his possession and also to dispossess him from the suit property. With those allegations, the petitioner filed a suit in O.S. No. 52 of 2014 on 16.04.2014 before the learned District Munsif Court, Paramathi Velur for permanent injunction restraining Hariharan from dispossessing him from the suit property without following the due process of law. While so, according to the petitioner, as a counter-blast, at the instance of the said Hariharan, one Senthil Kumar has filed a suit in O.S. No. 213 of 2014 on 25.07.2014 for specifric performance of the agreement of sale dated 29.05.2012 allegedly executed by Hariharan and his family members in his favour. This suit, according to the petitioner, is a collusive suit and the plaintiff and defendants therein have found an ingenious method to indirectly dispossess the petitioner. According to the petitioner, the said suit was allowed to be decreed exparte on 28.08.2014 and to execute the exparte decree, R.E.P. No. 76 of 2014 was filed on 07.10.2014. In the Execution Proceedings, the Civil Court executed a sale deed dated 14.05.2015 in favour of Senthil Kumar thereby the said Senthil Kumar became the

owner of the leasehold property which is in possession of the petitioner. After execution of the sale deed dated 14.05.2015, the Execution Petition was closed on 16.06.2015. According to the petitioner, in the execution petition, there was no order passed for delivering vacant possession of the property to the Execution Petitioner, however, they have unauthorisedly and unlawfully thrown out the petitioner from the leasehold property where he had stocked raw material, finished products, machineries and other accessories worth Rs.15,00,000/-.

8. It is the contention of the petitioner that after he was dispossessed from the suit property, he caused enquiry and came to know that Hariharan, who allegedly agreed to sell the suit property in favour of Senthil Kumar is not the owner of the property in question, rather, it was owned by one Mr. Karthikeyan on the basis of a sale deed dated 14.02.1991 executed in his favour. The said Karthikeyan also mortgaged the property in question with Velur Town Cooperative Bank on 30.12.1993 and the mortgage is subsisting as on date. Therefore, highlighting the forgery committed by the said Hariharan and Senthil Kumar in colluding together to dispossess him on the basis of forged and fabricated documents, the petitioner has given a complaint dated 25.11.2015 to the learned Subordinate Judge, Namakkal specifically stating that fraud has been played on the Court to dispossess him from the property in question. According to the petitioner, the documents relied on by the plaintiff as well as defendants in the suit in O.S. No. 213 of 2014 are forged and fabricated and neither the defendant in the said suit are not the owners of the property. It is further submitted that since it was a collusive suit in which the petitioner was not impleaded, he later came to know about the title to the property in question in favour of one Mr. M. Karthikeyan. Therefore, in the complaint dated 25.11.2015, the petitioner requested the learned Subordinate Judge, Namakkal to cause appropriate enquiry on the basis of his complaint and to bring on record the real culprits who were instrumental in playing fraud on the Court. The learned Subordinate Judge, without analysing the complaint has simply passed the impugned order dated 17.12.2015 forwarding the complaint dated 25.11.2015 of the petitioner to the Chairman, District Legal Services Authority stating that the Court is not empowered to deal with the complaint due to non-joinder of necessary party. Therefore, the learned Subordinate Judge directed the Legal Services Authority to provide free legal assistance to the petitioner. In other words, it is the observation of the learned Subordinate Judge that the petitioner is not a party to the suit and therefore, he is not empowered to deal with such complaint. This order passed by the learned Subordinate Judge, Namakkal, in my view, is beyond the scope of the complaint dated 25.11.2015 of the petitioner and the direction issued to the District Legal Services Authority is not warranted.

9. Before analysing further the order passed by the learned Subordinate Judge, Namakkal, which is impugned in this writ petition, it is necessary to look into the provisions of

Section 195 and 340 of Cr.P.C. which reads as follows:-

"195 Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section," Court" has the same meaning as in section 195.

10. It is clear from the above provisions of the Code of Criminal Procedure that when it is complained that fraud was played on the Court purportedly on the strength of documents, which were either forged, fabricated or created for the purpose of judicial proceedings, then the Court can cause necessary preliminary enquiry in to such complaint. This is the pith and substance of Section 340 of Cr.P.C. Such investigation shall be caused in the interest of justice and to uphold the majesty of law. If on enquiry, as contemplated under Section 340 of Cr.P.C. the Court is satisfied that the offences mentioned in Section 195 are committed in relation to a proceeding in the Court, more particularly by producing forged or fabricated document during the course of evidence, then the conclusion of such preliminary enquiry shall be recorded in writing and the same shall be sent to the competent Magistrate Court to initiate Criminal prosecution against the persons who have indulged in such offences. Thus, the learned Subordinate Judge is empowered to deal with the complaint given by the petitioner and it is not as though there is no power to be exercised by him in this regard.

11. It is needless to mention that if the Court records a finding after subjective satisfaction that the offences enumerated under Section 195 of the Code of Criminal Procedure are made out in the complaint submitted before it, recourse shall be made to forward a report to the Magistrate to initiate Criminal Prosecution. On the other hand, if the Court has not satisfied itself as to the existence of a prima facie case to proceed further, it shall record reasons for not forwarding the complaint as contemplated under Section 340 (1) (c) of the Code

of Criminal Procedure. At any rate, as and when a complaint of the nature specified hereinabove has been received, the Court is bound to cause a preliminary enquiry. In the present case, it is not in dispute that the complaint given by the petitioner relates to the fraud committed in the proceedings in O.S. No. 213 of 2014 on the file of Subordinate Judge, Namakkal, Therefore, when such a complaint has been received, the learned Subordinate Judge, Namakkal ought to have caused proper enquiry to ascertain the correctness or otherwise of the complaint given by the petitioner and to arrive at a conclusion thereof. Instead, the learned Subordinate Judge referred the complaint given by the petitioner to the Chairman of District Legal Services Authority for adjudication. Such a course adopted by the learned Subordinate Judge is not warranted and thereby the learned Subordinate Judge, Namakkal failed to exercise his powers conferred under Section 340 of Code of Criminal Procedure.

12. It is the specific case of the complainant/petitioner herein that the suit in O.S. No. 213 of 2014 is a collusive suit between the plaintiff and defendants therein by producing forged and fabricated documents. The said suit was allowed to be decreed exparte and on the basis of the exparte decree obtained in O.S. No. 213 of 2014, the petitioner was thrown out of the property unlawfully. It is the specific allegation of the petitioner that by producing forged documents in the suit in O.S. No. 213 of 2014, an exparte decree was obtained and by virtue of the exparte decree obtained in the suit, he was fraudulently thrown out of the property. It is not as if some third party, who has nothing to do with the subject matter of the suit in O.S. No. 213 of 2014, has come to the Court with a complaint that by playing fraud on the Court, he was thrown out of the property. On the other hand, it is the specific complaint of the petitioner that by reason of the exparte decree, indirectly, he was thrown out of the property in question and the exparte decree passed in O.S. No. 213 of 2014 has a nexus to his complaint. Therefore, what is important is whether by producing forged document, administration of justice has been thwarted or not has to be gone into by the learned Subordinate Judge. When such being the allegation, the learned Subordinate Judge ought to have gone into the question as to whether the collusive suit has resulted in the petitioner being thrown out of the property or not. In such case, whether the petitioner herein is a party to the suit or not does not assume significance. In any event, the observations made by the learned Subordinate Judge in the impugned order as though he is not empowered to deal with such a complaint is contrary to the express provisions contained in Section 340 of Code of Criminal Procedure Code. Therefore, I am only inclined to set aside the order passed by the learned Subordinate Judge as being contrary to the provisions contained in Section 340 of Code of Criminal Procedure.

13. In the light of what is stated above, the impugned order passed by the learned Subordinate Judge, Namakkal in his proceeding D.No.998/2015 dated 17.12.2015 is set aside. The

writ petition is allowed. No costs. The learned Subordinate Judge, Namakkal is directed to take the complaint dated 25.11.2015 of the petitioner on his file, deal with the same in accordance with the procedures mentioned in Section 340 of Code of Criminal Procedure and to proceed further in accordance with law.

rsh

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Subordinate Judge, Namakkal.

+ 1 cc to Mr.D.Shivakumaran, Advocate Sr 13157

KR/16/3/16

WP No.4145 of 2016