



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRL.RC (MD) No.517 of 2015

N.Muthiah ... Petitioner/Petitioner/Accused No.3

-vs-

State, rep.by
Sub-Inspector of Police
DCB, Theni ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 and 401 Cr.P.C., to call for the records and set aside the order, dated 14.08.2015, passed in Cr.M.P.No.2290 of 2014 in C.C.No.328 of 2012 on file of the Judicial Magistrate, Theni.

For Petitioner: Mr.C.Muthusaravanan

For Respondent: Mrs.S.Prabha

Govt. Advocate (Crl.Side)

O R D E R

A3 in C.C.No.328 of 2012, aggrieved by the dismissal of his discharge petition in Cr.M.P.No.2290 of 2014, by the learned Judicial Magistrate, Theni, has directed this revision.

2. The *de facto* complainant Renga alleged that she owns 1.75 Cents of land, comprised in Survey No.576/1A, situate in Sivaram Nagar, in Theni Allinagaram. Ramamoorthi / A1, and his wife Vasantha / A2 have forged her signature and manufactured a power deed on 23.08.2001 (Doc.No.376 of 2001). A1, A2 and A3 have joined together, A1 sold her said property to A3 on 27.09.2006, by a registered sale deed (Doc.No.596 / 2016) based on the said forged power deed.

3. The District Crime Branch, Theni, registered a case in Crime No.21 of 2010, under Sections 468, 471, 420 I.P.C., against A1. The Investigation Officer recorded statement of witnesses, under Section 161 Cr.P.C., recovered documents and ultimately filed the Final Report before the Trial Court for offences under Sections 465, 468, 420 r/w 34 I.P.C., as against A1 to A3.

4. With regard to the revision petitioner / A3, it is alleged that he had purchased the property knowing fully well that the power deed is forged and he appears to have committed offences



under Sections 465, 468, 471 and 420 r/w 34 I.P.C. A3 filed discharge petition in Cr.M.P.No.2290 of 2014, before the learned Judicial Magistrate, Theni.

5. The learned Magistrate dismissed the discharge petition holding that the question of want of knowledge on the part of A3.

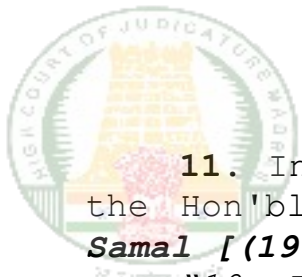
6. It is the contention of the learned counsel for the revision petitioner that the petitioner is not a party to the power deed stated to have been executed by A1 committing forgery in 2001. The petitioner purchased the property after 5 years for valuable consideration. He is a *bona fide* purchaser for value. Further, when he found that there are litigations, on 10.07.2014 he had cancelled the said sale deed also and relieved himself from the headache. Taking the materials as such, it would not warrant the offence as alleged as against him in the police Report.

7. On the other hand, the learned Government Advocate (Criminal Side) would submit that the *de facto* complainant, in her 161 Cr.P.C., statement has clearly stated that along with A1 and A2, the petitioner / A3 connived, conspired and committed forgery. A3 acted himself in concert with A1 and A2.

8. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.

9. A person can be prosecuted in a criminal case, based on incriminating materials disclosing commission of certain offences. If the materials taken as such, if unrebutted, would warrant a conviction, then there is a case for charge, otherwise there is a case for discharge. To put it simple, if there is *prima facie* case or there is a ground to proceed further, the accused can be proceeded with further, otherwise not.

10. Framing of charge in a criminal case is an important judicial function, because it is a basis to proceed further. Actually, the words employed in Section 239 Cr.P.C., is "is there any ground to proceed further". Such a ground shall be based based on the materials produced. It is mainly allegations in the complaint (F.I.R.) lodged by the *de facto* complainant, statement of witnesses recorded under Section 161 Cr.P.C., and the incriminating documents recovered and other connected materials. But, at this stage, the Court should not do a Trial Court's work. At this stage, the probative value of these materials should not be considered. The Court should take the materials as such, at their face value, presume them as true and see whether there is ground to proceed further.



11. In this connection, the following principles laid down by the Hon'ble Supreme Court in **Union of India vs. Prafulla Kumar Samal [(1973) 3 SCC 4]** are very useful to be noted.

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

12. A3 has been included in this case through the medium of Section 34 I.P.C. Section 34 I.P.C., pre-opposes the presence of common intention and sharing of the mens rea by one accused that of the other accused. So far as the offence under Section 34 I.P.C., is concerned the accused need not to commit equal overtact of other accused. The only requirement is he must share the common intention of the other accused. Even to bring a person under Section 34 I.P.C., there must be some incriminating materials. It should be concrete materials containing incriminating information so as to proceed further as against the accused.



13. After sale of some portion of the property, the *de facto* complainant is owning 1.75 Cents in a specific survey number. The earliest document is power deed stated to have been executed by the *de facto* complainant on 23.08.2001 in favour of A1. At that time, A3 was not in the picture. He is not a party to this document. He did not attest the document. No concrete material that A3 had also participated in the alleged forgery or manufacturing of power deed by A1 or with A2. No incriminating materials to that effect has been collected. A3 comes to the picture only on 27.09.2006. He purchased the said property from A1 by a regular registered sale deed, after paying valuable consideration. There is no material to support the statement of the *de facto* complainant given under Section 161 Cr.P.C., that A3 also joined with A1 and A2 in forging the power deed in 2001.

14. At the most, A3 could be a *bona fide* purchaser for value. Further, subsequently act, as A3 has been locked up in a civil litigation initiated by the *de facto* complainant and having suffered prolonged civil litigation, A3 has also cancelled the sale deed itself.

15. Thus, there is no ground to proceed as against the revision petitioner / A3 for the offence alleged as against him in the Final Report filed by the Investigation Officer. Thus, the impugned order passed by the learned Magistrate suffers from legality.

16. In view of the foregoing, ordered as under:

- (i) This revision is allowed.
- (ii) The impugned order, dated 14.08.2015, passed in Cr.M.P.No.2290 of 2014 in C.C.No.328 of 2012, by the learned Judicial Magistrate, Theni, is set aside.
- (iii) The revision petitioner / A3 is discharged from the criminal case in C.C.No.328 of 2012, pending on the file of the learned Judicial Magistrate, Theni.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To:

1.The Judicial Magistrate,
Theni.

2.The Chief Judicial Magistrate,
Theni.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Sub-Inspector of Police,
DCB, Theni.

+1cc to Mr.C.Muthu Saravanan, Advocate Sr.No.30276

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AA/SKS-RR/23.06.2016/5p-6c

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