

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.6358 of 2010

1.T.Dhinakaran (minor)
(Son of Thilak Kumar @ Pandian
Rep. by next friend and Grandmother
Mrs.Vijaya, Kiliyanour, Vanur Taluk)

2.Thilak Kumar @ Pandian

... Petitioners

vs.

1.V.Ranganathan

2.Muthukumar

3.Kamalakarunakaran

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in unnumbered Criminal Appeal No..... of 2008 dated 30.12.2008, on the file of the learned Principal Sessions Judge, Villupuram, confirming the order passed in unnumbered I.A.No..... of 2008, dated 03.11.2008, on the file of the learned Additional Sub Judge, Tindivanam and direct the learned Additional Sub Judge to hold enquiry in the petition filed by the petitioners

under Section 340 Cr.P.C.

For Petitioners : Mr.R.Natarajan

For Respondents : Mr.G.Ravikumar

JUDGMENT

The Petitioners herein are Plaintiffs in an original suit in O.S.No.26 of 2005, on the file of the learned Additional Subordinate Judge, Tindivanam. They have approached this Court to set aside the order passed in an unnumbered Criminal Appeal No..... of 2008 dated 30.12.2008 on the file of the learned Principal Sessions Judge, Villupuram confirming the order passed in an unnumbered I.A.No.... of 2008 dated 03.11.2008 on the file of the learned Additional Subordinate Judge, Tindivanam and pray for the direction of this Court to the learned Additional Subordinate Judge, Tindivanam to hold an enquiry in the petition filed by the Petitioners under section 340 of Cr.P.C.

2.The brief facts behind the institution of the instant petition is that the Petitioner is the Plaintiff as stated above, the 1st and 2nd Respondent herein is the 1st and 2nd Defendants respectively before the learned 1st Additional Subordinate Judge, Tindivanam in O.S.No.26 of 2005. The 3rd Respondent herein is the 2nd witness in the aforesaid original suit on behalf of the Defendants. Admittedly the suit in O.S.No.26 of 2005 was

filed for the relief of declaration and for permanent injunction as against the 1st and 2nd Respondents herein and also as against the Electricity Department.

3.The learned counsel for the Petitioners would submit that the 1st and 2nd Respondents herein are father and son. The 1st Respondent created a sale deed which is sham and nominal without disclosing the correct facts in respect of the suit properties. On 16.06.2003, the 2nd Petitioner executed a General Power of Attorney in favour of the 1st Respondent with respect to the suit property consisted of 8 shops and a building. The reason for the execution of the aforesaid power of attorney was that the 2nd Petitioner decided to go abroad, but later he dropped the plan to go to abroad. In the meanwhile, as the conduct of 1st Respondent towards the 2nd Petitioner was unsatisfactory and doubtful, the 2nd Petitioner cancelled the aforesaid power of attorney on 10.05.2004 with prior information. Moreover, the revocation of the power of attorney was also published in a newspaper in order to sensitize the public aware about the cancellation of the power of attorney. Apart from that in respect of the cancellation of the power of attorney, a legal notice was also issued to the 1st Respondent. In the meanwhile by a sale deed dated 09.06.2004 a title of the property was transferred by the 1st Respondent in favour of 2nd

Respondent by using the deed of power of attorney dated 16.06.2003.

4.It is the further contention of the learned counsel for the petitioners that during the course of enquiry, the 1st Respondent produced a sale deed dated 09.06.2004, and wherein sale consideration was mentioned, but the very same copy of the sale deed available with the concerned Registrar Office did not find any sale consideration. Thus, the Respondents have given false evidence which warranted legal action for perjury. So, the Petitioners had taken out a petition under section 340 of Cr.P.C. before the concerned Court for the initiation of legal action against the Defendants in O.S.No.26 of 2005, but the said petition was returned with a query about its maintainability. However, when it was represented it was once again returned by the order dated 03.11.2008.

5.Feeing aggrieved over the order passed on 03.11.2008 by the learned Subordinate Judge, Tindivanam, the Petitioners filed an appeal under Section 341 of Cr.P.C., before the Principal Sessions Judge, Villupuram. However, by the order dated 30.12.2008 without numbering the appeal, the lower appellate Court dismissed the same. It is submitted by the learned counsel for the petitioners, as no revision would lie as against the order passed in the Criminal Appeal, the petitioners have filed the instant application under section 482 of Cr.P.C., to set aside the order

passed by the lower appellate Court and the trial Court. The learned counsel for the Petitioners would contend that the trying of the unnumbered I.A.No..... of 2008 as well as the unnumbered Criminal Appeal No..... of 2008 itself are against law and the manner by which the interim application as well as unnumbered Criminal Appeal dealt with are absolutely an absurdity and against law. Hence both the orders passed by the respective Courts are liable to be set aside.

6. On the other hand, the learned counsel for the Respondents would submit that the course adopted by the Petitioners, before the learned trial Court and before the learned Lower Appellate Court are unknown to law. Hence those orders are legally valid and do not warrant any interference. Moreover, the counsel for the Respondents would further add that no application under Section 340 of Cr.P.C. can be filed by the Petitioners during the pendency of the trial proceedings. Therefore, he prays for the dismissal of the instant petition.

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7. I heard Mr.R.Natarajan, learned counsel appearing for the petitioners and Mr.G.Ravikumar, learned counsel appearing for the respondents and the materials available on records are perused.

the respondents are the 1st and 2nd Defendants before the trial Court. It is also an admitted fact that before the learned trial Court a petition was taken out by the Plaintiffs under Section 340 of Cr.P.C on 11.09.2008 in the form of interim application. On the very same day, the said petition was returned by the concerned Court with an endorsement as to "*how this petition is maintainable*". The learned counsel for the petitioners would seriously contend that thereafter the said petition was represented by saying that since the Respondents/ Defendants forged a document, filed, marked as exhibit and also let in false evidence by way of affidavit as DW-1 along with another witness DW-2, thus they committed offence as contemplated under Section 195 of Cr.P.C., and therefore the filing of the petition under Section 340 of Cr.P.C., is maintainable. However, by the order dated 03.11.2008 the learned trial Judge passed the following order:

"the subject matter of the suit is pending. Hence at the pre-matured stage this petition is not entertainable and moreover the Petitioners have every right to prefer the petition under section 340 of Cr.P.C., before the Judicial Magistrate Court hence this petition is returned".

9. Subsequently, it is seen from the records that the appeal filed by the Petitioners before the learned Lower Appellant Court was also not numbered and the same was dismissed on 03.12.2008 by confirming the

order passed by the trial Court. So, it is the fact that the application under section 340 of Cr.P.C as well as the appeal filed before the learned Lower Appellant Court are not numbered, but they have been dealt with. As for as the order passed by the trial Court is concerned, it is in cryptic nature. On the other hand, the perusal of the order passed in the unnumbered Criminal Appeal would show that it is a detailed order considering all these facts and circumstances. This Court is firm that both the Courts below have not properly dealt with the issue involved in the instant case as well as the procedure adopted and applied in the petition filed under section 340 of Cr.P.C,. As far as the judicial proceedings are concerned, it should be conducted by the parties concerned based on facts, oral and documentary evidence. At the same time, the parties concerned are bound to abide by all the legal norms. So, the parties are excepted to be genuine without any falsehood, at the same time, when any one of the party has approached the Court concerned with falsehood either in producing document or oral evidence, a duty is casting upon the Court also to take note of the same.

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10.Further, when a petition is filed with certain averments alleging the production of documents with falsehood, it is for the Court concerned to ascertain the same by testifying its veracity. So, at this juncture in the considered opinion of this Court, the cryptic order passed by the learned

Trial Court dated 03.11.2008 is not in accordance of law and is the same is liable to be set-aside. Taking note of the fact, this Court perused the order passed by the Lower Appellant Court, dated 30.12.2008, it is a detailed order but the same was passed without numbered the Criminal Appeal. In the considered opinion of this Court that though the order passed by the learned Lower Appellant Court dated 30.12.2008 is with detailed discussion, for the simple reason it can be set-aside as no detailed order could be passed without numbered the appeal. It is for the Courts concerned to assign serial number as per the category of the lis, without this exercise, no final order could be passed in any judicial proceedings. This Court and the Hon'ble Supreme Court on several occasions have categorically held that no judicial order should be passed in cryptic manner when a petition is disposed of. Apart from that though detailed order is passed, the learned Lower Appellant Court has miserably failed to number the criminal appeal is erroneous in law and the same is liable to be set-aside.

11. Apart from that now let this Court take up the issue involved in the filing of petition under Section 340 of Cr.P.C., because in the considered opinion of this Court both the Courts below have not properly dealt with this issue in the manner known to law. Hence, for the useful reference, section 340 of Cr.P.C., is reproduced here under:

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest 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 of 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 or by such officer of the Court as the Court may authorize in writing in this behalf.

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

The scrutiny of the particular provision would show "any Court is of opinion," so when any application is filed under Section 340 of Cr.P.C., the Court has to record its opinion that it is expedient in the interest of justice to hold an enquiry. So, the opinion of the Court is very much essential. At the same time, the Court cannot mechanically draw the opinion as to whether the petition filed under Section 340 of the Code of Criminal Procedure is entertainable or not. Each case has its own facts and circumstances. Hence, the Court concerned has the duty to apply its mind and come to the conclusion the said application is entertainable. So, no cryptic and order cannot be passed while disposing of an application filed under section 340 of Code of Criminal Procedure.

12. However, when an application is filed under section 340 of Code of Criminal Procedure, the Court concerned has to adopt the procedures as contemplated under Section 195 of Cr.P.C.,. As far as 195 Cr.P.C., is concerned, it is for the prosecution for contempt of lawful authority of public servants for offences against public justice and for the offences relating to documents given in evidence. Here, Section 195 of Cr.P.C., would make a specific bar in respect of taking cognizing of certain offences as stated except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. So, these are the procedures contemplated in respect of the offence relating to documents given in evidence.

13. At this juncture, it is useful to refer the judgment relied on by the learned counsel for the Petitioners in 2015 to MWN Civil (1) in the case of *N.Natarajan v. The Executive Officer, Chitlapakkam Town Panchayat*, wherein it is held:

“In the instant case, as I have already concluded, creation of Exs.A2 & 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, 1998 SCC (Cri) 660 has held in Paragraphs 10, 11 & 12 as follows:

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 has 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". So the offences envisaged in Section 195(1) (b) of the Code must involve acts which have affected the administration of justice.

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".*

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 a criterion affecting administration of justice merely because that document later reached the Court records."*

In the case on hand, since, as I have already pointed out, the offence of forgery of Exs.A2 & 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 thoroughly 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.

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.

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.

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 case 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”.

(i) C.W.1, the Tahsildar, Tambaram shall forthwith forward a complaint to the Commissioner of Police, Chennai City in respect of the forgery of Exs.A2 & A3.

(ii) On receipt of the said complaint, the Commissioner of Police shall ensure that F.I.R is registered by the jurisdictional police and thereafter the Commissioner of Police shall entrust the case to the CB-CID for investigation.

Moreover this Court has referred the judgment of the Hon’ble Supreme Court reported in 1983 (4) Section 240 Gopalakrishnan Menon and another v. D.Raja Reddy and another and 1976 (3) Section 736 in Smt.Nagawwa v. Veeranna Sivalingappa Konjalgi and others. It is held:

“in the case at hand, the prosecution is on the basis of a private complaint and in the absence of complaint in the civil Court, where the alleged fraudulent produced would not be sustainable and such proposition is no longer less integra”. Further another judgment of the Hon’ble Supreme Court reported in 2005 (4) 370 in Iqbal Singh Marwah and another v. Meenakshi Marwanh and another

In this connection the 41st report of the Law Commission comes to hold as “In view of language used in Section 340

Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "Court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just as piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b) (ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discouraged."

14. So, under the above discussions, it is very clear that the Court in which certain forged documents produced or given in evidence or false evidence is adduced, the said Court is the competent authority to direct the officer concerned of the said Court to initiate legal action as contemplated under section 340 of the Code. The said Court cannot simply direct the parties concerned to approach the concerned Judicial Magistrate for the registration of the case and for legal action. The reason behind this task is that no person is authorized to touch or play with the true spirit of administration of justice that is "*Fiat Justitia Rotae Column*".

15. At the same time, the Court is entitled to direct the party concerned who alleges the production of forged documents or given in evidence to furnish relevant materials in support of the allegations made in the application filed under Section 340 of Cr.P.C.,

16. Further, there is another confusion in existence in categorize the application filed under Section 340 of Cr.P.C., especially when such an application is filed before the Civil Court, whether it should be numbered as Interim Application of Criminal Miscellaneous Petition. For which, it is useful to refer the judgment of the *Hon'ble High Court of Judicature at Bombay, Nagpur Bench: Nagpur in a Criminal Application No.1115 of 2007 in the matter of Kenneth Desa Son of Late John Desa and another*

versus Non-Applicant Goapl, Son of Leeladhar Narang dated 11.07.2007,

Where in it is held that:

6."Whenever an application under section 340 of the Code of Criminal Procedure is filed, the Civil Court has to register the same as Miscellaneous Judicial Case that is a case where a Judicial Enquiry is contemplated. The learned Civil Judge should have therefore, directed the application to be registered as Miscellaneous Judicial Case and try the same thereafter.

The learned civil Judge should have, in fact, upon consideration of the application, decided whether it was necessary to hold the enquiry and if found necessary should have held an enquiry. Merely because civil suit was pending, that did not prevent and could prevent the Civil Judge from entering into an enquiry. I would therefore, set-aside both the orders and direct the civil judge to register Ex.52 as Miscellaneous Judicial Case and then proceed to decide the application according to the provisions contained in Section 340 of the Code of Criminal Procedure. Pendency of this application shall not be and cannot be constraint on the Civil Judge in deciding the civil suit on merits. The civil judge may proceed to decide the suit and may also proceed to decide the application under section 340 of Code of Criminal Procedure separately. The application under section 482 of the Code of Criminal Procedure is thus disposed of in the above terms".

petitioners has filed additional typed set of papers and the same would show that the aforesaid civil suit is decreed in favour of the petitioners herein on 15.07.2009. Subsequently, an Appeal suit was also filed in A.S.No.102 of 2009 before the concerned appellate Court along with cross objections and all of them have been disposed of by allowing the appeal and by dismissing the cross objections.

18.Considering the facts and circumstances of the instant case, this Court has no hesitation to hold that when an application under section 340 of the Code of Criminal Procedure is filed, the Civil Court has to register the same as "Miscellaneous Judicial Case" that is a case where a Judicial Enquiry is contemplated. The learned Civil Judge that is the learned Subordinate Judge, Tindivanam should have therefore, directed the application to be registered as Miscellaneous Judicial Case and try the same thereafter in the manner and procedure as contemplated under section 340 and 195 of the Code of Criminal Procedure. Further, this Court also holds that the learned Subordinate Judge, Tindivanam might have proceeded to decide the suit and may also proceed to decide the application under section 340 of Code of Criminal Procedure separately. But in the considered opinion of this Court both the orders passed in an unnumbered Criminal Appeal No..... of 2008 dated 30.12.2008 on the file of the learned Principal Sessions Judge, Villupuram in confirming the order

passed in an unnumbered I.A.No.... of 2008 dated 03.11.2008 on the file of the learned Additional Subordinate Judge, Tindivanam are here by set-aside, accordingly set-aside.

19. At the same time as already stated that both the Original Suit as well as Appeal suit are disposed of by the competent Courts concerned, it is not possible for this Court to remand back the Appeal Suit to the learned trial Court as this Court has no jurisdiction and the Appeal Suit has also been disposed of much earlier. On the other hand, it is for this Court to decide and settle the ambiguities in respect of the procedures adopted in dealing with the petitions filed under section 340 of Code of Criminal Procedure in the Civil Courts, by giving the following directions;

- (i)** When an application is filed under section 340 of the Code of Criminal Procedure, it is for the Court concerned to entertain and decide the issues involved in the said application without any interference into the proceedings of the Original suit or other category of the lis as the case may be;
- (ii)** The Court concerned can very well simultaneously proceed with the petition and the main case and decide them accordingly;
- (iii)** Those petitions are to be numbered as "Miscellaneous Judicial Case" and may be tried as per law;
- (iv)** In case if the disposal or the findings of the petition filed under

Section 340 of the Code of Criminal Procedure is having any bearing upon the main case, then the concerned Court has to act as per law;

20. However, in the present case, though the Original Suit as well as the Appeal Suit are tried and disposed of in the considered opinion of this Court, the trial Court, that is the Additional Subordinate Judge, Tinidivanam is very well competent to receive the particular document connected with the Original Suit in O.S.No.26 of 2005 either from the record of the concerned Court or from the party concerned any shall proceed with further as per the direction given above, by affording all opportunities to the parties involved in the said case. With the above directions this petition stands disposed of.

05.10.2017

Note: The Registry is directed to place a copy of this Order before the Hon'ble Chief Justice for a direction to circulate this Order to all the Magistrates in Tamil Nadu and Puduherry.

vs

Speaking order
Index : Yes

To

1. The Additional Subordinate Judge, Tinidivanam

2. The Principal Sessions Judge, Villupuram.

M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.6358 of 2010**

05.10.2017

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