

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

(Orders Reserved on : 17.07.2017)

CORAM

THE HON'BLE Mr. JUSTICE RMT.TEEKAA RAMAN

Cr1.O.P.No.28911 of 2011

and

M.P.No.1 of 2011

1. Ganesan

2. Vivekanandan Petitioners/Accused 6 and 7

... Vs ...

Ambikapathi Udayar Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in respect of the complaint filed by the respondent herein in C.C.No.92 of 2011 on the file of the learned Judicial Magistrate, Omalur, and quash the same as far as the petitioners are concerned.

For Petitioners : Mr.R.Nalliyappan

For Respondent : Mr.C.Prabakaran

O R D E R

This criminal original petition is filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in C.C.No.92 of 2011 pending on the file of the learned Judicial Magistrate, Omalur.

2. Accused Nos.6 and 7 in C.C.No.92 of 2011 on the file of the learned Judicial Magistrate, Omalur, are the petitioners herein.

3. A thumb nail sketch of facts is that the complainant one Ambikapathi Udayar has given a private complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate, Omalur, against his son/A.1 and his brother's sons/A.2 to A.5 alleging that they have fabricated a Will and thereafter, entered into a Partition Deed and A.6 and A.7 have attested the said partition deed.

4. On perusal of the complaint filed before the learned Judicial Magistrate, Omalur, it is seen that the complainant/Ambikapathi Udayar, S/o.Ariyaputhira Udayar has specifically stated that accused Nos.1 and 2 to 5, who are none other than his son and his brother's son respectively, have executed a partition deed on the basis of the alleged Will said to have been executed by one Ariyaputhira Udayar (father of the complainant) and they have fabricated the partition deed dated 05.04.2007 while the said Ariyaputhira Udayar did not execute any Will during his life time and died intestate on 10.05.1997 and during the life time of the said Ariyaputhira Udayar, a partition was effected among his father and other sons including the complainant, who is one of the sons of Ariyaputhira Udayar on 09.12.1987 and in the said partition deed, "A" schedule property was allotted to the share of the complainant's father Ariyaputhira Udayar and A.1 to A.5 have created a forged document under the guise that a Will was said to have been executed by Ariyaputhira Udayar during his life time bequeathing the properties mentioned in the partition deed dated 09.02.1987 and has registered the same in the Sub-Registrar Office of Omalur and effected partition based on the alleged partition will deed, and therefore, A.1 to A.5 have committed an offence punishable under Sections 102-B, 420 and 468 of IPC. The said complaint was taken on file by the learned Judicial Magistrate, Omalur, in C.C.No.92 of 2011 and summons were issued to all the accused Nos.1 to 7. As against the issuance of summons in the private complaint, A.1 to A.5 have filed a Criminal Revision Petition in C.R.P.No.3 of 2012 under Section 397 of Cr.P.C., before the learned II Additional Sessions Judge, Salem, seeking to set aside the cognizance taken by the learned Judicial Magistrate, Omalur, on 12.10.2011. After contest, the learned II Additional Sessions Judge, Salem, by an order dated 13.06.2014, has allowed the said criminal revision petition and discharged the accused Nos.1 to 5 from the said case in C.C.No.92 of 2011.

5. The learned II Additional Sessions Judge, Salem, while allowing the above said criminal revision petition, has observed as follows:-

"(1) the complainant did not produce the alleged Will before this Court.

(2) only if the alleged Will is brought before this Court, the Court can ascertain whether the partition deed has been forged by these revision petitioners.

(3) the contention of the complainant is that this partition deed dated 5.4.2007 said to have been executed in respect of the property which comes by

the way of share of Ariyaputhira Udayar in the partition held between them in the year 1987, in which 'A' schedule property was allotted to the share of Ariyaputhira Udayar whereas the contention of the Revision petitioners are that the said Ariyaputhira Udayar has executed a Will not only with respect of the said 'A' schedule property in the partition deed dated 9.12.1987 and also in respect of the other properties.

(4) a perusal of the records of this case clearly shows that the case involves purely of civil nature and that the complainant has to file a civil suit before competent Court for his remedies and he cannot file a criminal complaint with respect of this case.

(5) the only option that is left to the complainant in this case is to file a civil suit to get his share of his father's property and not by means of criminal complaint.

(6) the complaint has been filed after a delay of 4 years and 1 month and the delay was properly explained.

6. While allowing the said criminal revision petition, the learned II Additional Sessions Judge, Salem, further held that the cognizance taken by the learned Judicial Magistrate, Omalur, in respect of Sections 120-B, 468 and 420 of IPC is erroneous, since there is absolutely no material to establish about an agreement or meeting of minds among the accused to commit the offence. The said order has become final as it remain unchallenged as against A.1 to A.5.

7. On consideration of entirety of the facts, this Court has seen that the only allegation against the present petitioners, who are A.6 and A.7 is that they have attested the partition deed dated 05.04.2007 entered between A.1 to A.5. It remains to be stated that as against A.1 to A.5, the cognizance taken by the learned Judicial Magistrate, Omalur, has been set aside and secondly, they have been discharged from the case and the present petitioners are only alleged to have attested the partition deed. Further, it remains to be stated that it is not the case of the complainant that A.6 and A.7 have projected as attestors of the alleged forged Will.

8. In this view of the matter, I do not see any material to proceed further against the present petitioners/A.6 and A.7, since they are alleged to have attested the partition deed

entered into between A.1 to A.5, who were already discharged from the above C.C.No.92 of 2011 and hence, I have no hesitation to allow this petition in respect of the present petitioners/A.6 and A.7 in the case in C.C.No.92 of 2011 and to quash the proceedings in respect of A.6 and A.7, as the matter is civil in nature besides, there is no material against them to connect the alleged offence of fabrication of Will.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.92 of 2011 pending on the file of the learned Judicial Magistrate, Omalur, against the petitioners/A.6 and A.7, is quashed and the petitioners/A.6 and A.7 are discharged from the case. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jrl

To

The Judicial Magistrate,
Omalur.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.51464

Cr1.O.P.No.28911 of 2011

KJ(CO)
CS/11/08/17

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