



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.704 of 2016

and

CRL MP(MD)No.9914 of 2016

Orders Reserved on 28.11.2016

1.Chithiravel

2.Shanthi

: Petitioners / Respondents /
Accused Nos.2 and 3.

Vs.

State Rep.by

The Inspector of Police,

Anti Land Grabbing Special Cell,

Thoothukudi,

Thoothukudi District.

: Respondent / Petitioner /
Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Cr.M.P.No.262 of 2015 on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases (FAC), Thoothukudi, Thoothukudi District and set aside the order dated 17.09.2016, as against the petitioners herein.

For Petitioners

:Mr.A.Thiruvadikumar

For Respondent

:Mr.C.Mayil Vahana Rajendran

Additional Public Prosecutor

O R D E R

This Revision has been filed praying to call for the records in Cr.M.P.No.262 of 2015 on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases (FAC), Thoothukudi, Thoothukudi District and set aside the order dated 17.09.2016, as against the petitioners herein.

2. The petitioners herein are A2 and A3 respectively in Cr.M.P.No.262 of 2015, on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases, Thoothukudi. The petitioners have preferred the present Revision to set aside



the order, dated 17.09.2016, in and by which, the learned trial Judge dismissed their objection petition filed against the requisition from the Sub-Inspector of Police, Anti Land Grabbing Special Cell, Thoothukudi in Crime No.45 of 2013, for getting the sample signatures and thumb impression of A1 to A5.

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3. On issuing Notice by the learned Judicial Magistrate, A4 and A5 were present before the Court below and their sample signatures and thumb impression were taken. A1 to A3 were present, but they filed their objection. The learned Judicial Magistrate dismissed their objection after hearing both sides and the present Revision is filed by A2 and A3 before this Court. The learned Judicial Magistrate treated the requisition given by the Sub-Inspector of Police, as a Petition under Section 311(A) of Cr.P.C., and issued Notice to all the accused in order to facilitate the investigation in Crime No.45 of 2013 of the respondent.

4. The respondent registered the FIR in Crime No.45 of 2013, dated 16.11.2013, for the offence punishable under Sections 417, 420, 468, 471 r/w120(B) of IPC., against the five accused persons including the petitioners herein, who are arrayed as A2 and A3. The FIR reveals the fact that A1 is the son of A2; and A3 is the wife of A1. A2 had executed a registered settlement deed in respect of Survey No.112/6, 16 Cents at Mappillai Oorani Village in favour of A1. The patta of the said land stands in the name of A2. A1 had executed a registered sale agreement for Rs.4,00,000/- in favour of the defacto complainant and received Rs.1,50,000/-, as advance on the date of registration of the sale agreement, at first instance and thereafter, received a sum of Rs.1,00,000/- from the complainant through A3 and executed a written document in Rs.20/- stamp paper. A4 and A5 are the attestors of the said sale agreement and also in the above said document written in Rs.20/- stamp paper. Thereafter, the complainant came to know that the property mentioned in the sale agreement is a Government Poramboke land and the alleged documents executed by A2 in favour of A1 and also the patta are bogus one and are forged and all the accused conspired together to cheat the defacto complainant and executed the alleged sale agreement by receiving Rs.2,50,000/-, as part of sale consideration. Hence, the said FIR was registered, as per order of the learned Judicial Magistrate, Land Grabbing Cases, Thoothukudi, in Cr.M.P.No.164 of 2013, dated 17.10.2013.

5. A1 to A3 have contended in their objection petition before the learned Magistrate that the alleged records / documents were created in their names at Police Station and the signatures found in those documents are not their signatures. Hence, the

[~~https://hcc.judgesecourt.gov.in/hccsec/~~](https://hcc.judgesecourt.gov.in/hccsec/) denied the signatures found in the disputed documents. Considering the above, the learned Judicial Magistrate dismissed their objection petition.



6. The learned counsel for the petitioners would contend that the proviso to Section 311-A of Cr.P.C., requires that the person from whom sample signature is to be obtained ought to have been arrested in connection with the investigation or proceedings and unless the person is arrested, no order can be passed by the learned Judicial Magistrate directing the accused person to give specimen signature. It is further contended that the new Section 311(A) of Cr.P.C., conferring the power on the learned Judicial Magistrate to order a person to give specimen signature or handwriting introduced by means of Cr.P.C., Amendment Act, 2005 (Act 25 of 2005). Though it has come into force with effect from 23.06.2006 as far as the State of Tamil Nadu is concern, the said Section 311-A of the Principal Act viz., in Cr.P.C., has been omitted, as per the Indian Penal Code and Code of Criminal Procedure Tamil Nadu Amendment Act, 2006 and therefore, the impugned order passed by the learned Judicial Magistrate is clearly unsustainable in the eye of law. The second limb of the above said argument was not addressed before the trial Court.

7. Admittedly, in the case on hand, the petitioners A2 and A3 were granted anticipatory bail, as per order of the learned Principal Sessions Judge, Thoothukudi, on 08.12.2014 in Cr.M.P.No.3169 of 2014, on condition that the petitioners should make themselves available for interrogation, as and when required by the respondent Police. In the Division Bench Judgement of this Court in **S.Balasubramanian and Another Vs. The State of Tamil Nadu Rep.by the Labour Welfare Officer, III Circle, Chennai**, reported in (2012-1- L.W. (Cr1.) 700) it has been held in para 60 as, which reads as follows:-

"60. Though the Central Act has been amended, it is widely stated that State Government has not notified the amendments. The Tamil Nadu Government introduced a Bill (L.A. BILL No.33 of 2006 dated 2.9.2006) in the Assembly bringing further amendment to the Code. The Bill has been passed and published in the Tamil Nadu Government Gazette Extraordinary, dated 2.9.2006. The said Bill has been sent to the Government of India for the assent of the President, and so far, no assent has been made by the President of India. The Part III of the Bill, Sl.No.3 to 11 reads as follows:-

"3. In Section 20 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Central Act 2 of 1974 the Principal Act,) sub-section (4-A) shall be omitted.

4. In section 24 of the principal Act, in sub-section (6) the Explanation after the proviso shall be omitted.



5. Section 25-A of the Principal Act shall be omitted.

6. Section 54-A of the Principal Act shall be omitted.

7. Chapter XXIA of the Principal Act shall be omitted.

8. Section 291-A of the Principal Act shall be omitted.

9. Section 311-A of the Principal Act shall be omitted.

10. In Section 378 of the Principal Act:-

(i) for sub-section (1) the following sub-section shall be substituted namely:

(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-section (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquitted passed by the Court of Sessions in revision.

(ii) in sub-section (2), for the portion beginning with the words, "the Central Government may" and ending with the words "or an order of acquittal passed by the Court of Sessions in revision". The following portion shall be substituted, namely:-

The Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3) to the High Court from the order of acquittal."

(iii) in sub-section (3) for the words 'No appeal to the High Court' the words 'No appeal, shall be substituted'.

11. The provisions to sub-section (1) of section 389 of the Principal Act shall be omitted

61. The Division Bench of this Court in W.P. (MD)No.222 of 2009 reported in 2009-2-L.W. (Cr1.) 1429) (S.Tamilarasan Vs. State of Tamil Nadu) (Director of Prosecution case), has pressed into service of Section 25-A, which was inserted to the Code of Criminal Procedure as per the Central Act 25/2005, which came into force, on 23.06.2006.



8. The Tamil Nadu Government Bill (L.A. BILL No.33 of 2006 dated 2.9.2006) published in the Tamil Nadu Government Gazette Extraordinary, dated 2.9.2006 has been sent to the Government of India for the assent of the President, and so far, no assent has been made by the President of India and hence, the said Bill has not taken the shape of law yet.

9. Considering the above situation also the Division Bench of this Court also in the Judgment reported in (2009-2-L.W.(Crl.) 1429) (cited supra) has pressed into service of Section 25-A, which was inserted to the Code of Criminal Procedure, as per the Central Act 25/2005, which came into force, on 23.06.2006.

10. The learned Government Advocate (crl.side) appearing for the respondent would contend by relying the decision of this Court in **Crl.R.C.(MD)No.540 of 2012**, dated 26.11.2012 (**S.Sundari Vs. The State Rep.by the Inspector of Police, District Crime Branch, Tirunelveli District**) that as per Section 73 of the Indian Evidence Act, 1872, the learned Judicial Magistrate can direct the petitioners A2 and A3 present in the Court to give their specimen signatures and writings for the purpose of comparison. In this connection it is not out of place for this Court to make a significant mention of the decision of the Kerala High Court in **B.C.Radhakrishnan and Others Vs. Saju Thuruthikunnel and Another** reported in **(2014 Crl.L.J.425)** in which it is stated that Section 73 of the Act does not prescribe any specific time for invocation of the Court's power and the direction to furnish any writings can be issued to a person present in Court. The obvious quoting of Section 311(A) of Cr.P.C., by the Sub-Inspector of Police in his requisition in the present case is not a correct legal position.

11. For the forgoing reasons and considering the Judgment of this Court, dated 26.11.2012 in Crl.R.C.(MD)No.540 of 2012 and also considering the Judgment of the Kerala High Court reported in **(2014 Crl.L.J. 425)** (cited supra) this Court does not find any infirmity in the order passed by the learned Judicial Magistrate, Special Court for Land Grabbing Cases (FAC), Thoothukudi, Thoothukudi District in dismissing the objection petition filed by the petitioners herein.

12. In the result, this Criminal Revision Petition stands dismissed and consequently the Crl.M.P.(MD)No.9914 of 2016 also dismissed and the interim stay already granted by this Court on 28.11.2016 stands vacated.

Sd/-

Assistant Registrar (CS-II)

/True copy/



To

1. The Judicial Magistrate,
Special Court for Land Grabbing Cases (FAC),
Thoothukudi,
Thoothukudi District
2. The Inspector of Police,
Anti Land Grabbing Special Cell,
Thoothukudi,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate, SR No.63013.

MPK

PSM/MR-KKR/SAR3/12.07.2017/6P/6C

Pre-Delivery Order made in

Cr1.RC(MD)No.704 of 2016

Dated:- **30.06.2017**