

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018

Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28143 of 2009

and

M.P.No.1 of 2009

Anand,
S/o.Ramachandran. Petitioner/2nd Accused

Vs.

- 1.State Represented by,
The Sub-Inspector of Police,
Central Crime Branch,
Egmore, Chennai-600 008.
- 2.The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam Shopping Complex,
Thirumangalam,
Chennai-600 101. Respondent/Complainant

[Impleaded the 2nd respondent as per the
order of this Court dated 03.04.2017 in
Crl.M.P.No.4716 of 2017 in
Crl.O.P.No.28143 of 2009.]

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records in
C.C.No.7933 of 2006 pending on the file of the Chief
Metropolitan Magistrate Court, Egmore, Chennai-600 008.

For Petitioner : Mr.S.L.Sudarsanam

For Respondent : Mrs.V.Saratha Devi
Government Advocate [Crl. Side]

O R D E R

This Criminal Original Petition is filed by the petitioner, who is the 2nd accused in C.C.No.7933 of 2006 pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai-600 008 for the offences under Sections 419, r/w 34 of the Indian Penal Code.

2.The 1st respondent had registered a case, based on the complaint of the 2nd respondent. On completion of the investigation, on 15.12.2006, the 1st respondent had filed a charge sheet against the petitioner/2nd Accused and the 1st Accused one S.Manickammal.

3.The case of the prosecution is that, the said 1st Accused impersonated herself as C.J.Manickammal with the connivance of the Tamil Nadu Housing Board, Chennai Officials created forged documents for the purpose of allotment of Plot A.P.No.289 measuring 880 sq.ft. Situated at Anna Nagar with an intention of cheating. While, so, on 19.04.1984, the said 1st Accused, S.Manickammal impersonated the sale agreement and came to the petitioner/2nd Accused to inform about the balance amount due to be paid by her, along with forged allotment copy, as if the plot was allotted to her by the Tamil Nadu Housing Board, Chennai vide the letter of the Tamil Nadu Housing Board, Chennai No.G.Spl.V/43953/72, dated 30.09.1972. Based on that, the petitioner/2nd Accused signed the agreement without proper verification of the documents placed by the 1st Accused, on 07.08.1984. The petitioner issued a letter to hand over the plot to the 1st Accused vide Letter No.L.IV/289/84, dated 07.08.1984, based on the above order of the petitioner/2nd Accused, the Surveyor of the Tamil Nadu Housing Board, Chennai handed over the property to the 1st Accused on 07.08.1984.

4.It is now represented by the learned Government Advocate [Crl. Side] that the 1st Accused is no more and she died on 16.10.2014, which could be seen from the counter filed by the Sub-Inspector of Police, Central Crime Branch, Team XVII A, Vepery, Chennai on 07.03.2016, as regards now this petition is against the 2nd Accused for the offence under Section 419 r/w 34 of the Indian Penal Code.

5.The contention of the learned counsel for the petitioner is that, the petitioner was working in Tamil Nadu Housing Board, Chennai as Executive Engineer for the period from 15.09.1982 to

28.11.1984 at Special Division III Office and he was holding Additional Charge as Executive Engineer for Anna Nagar Division, during July 1984 and he was not in-charge of allotting the plots. Further, the allotment letter of the year 1972, is not signed by the petitioner and only the letter of communication was signed by him and the said letter mention about the plot would be handed over to the 1st Accused and the 1st Accused/allottee has to contact the Head Surveyor of the Division. The sale deed executed by the Tamil Nadu Housing Board, Chennai was not signed by the petitioner/2nd Accused.

6.The learned counsel for the petitioner further contended that the alleged occurrence had taken place during the period between 28.07.1984 and 08.04.1988. The F.I.R in the above case came to be registered on 21.08.2002 and the charge sheet has been filed on 15.12.2006. Further, the petitioner was an Executive Engineer whose primary responsibility is to oversee the work carried out by the Tamil Nadu Housing Board, Chennai and to look after proper care and custody of the stores, tools, plant and machineries, Engineering features of designs, for assisting the Accounts Branch for the proper and expeditious disposal of audit objections, for keeping a watch over the progress of expenditure against sanctioned estimate and to ensure that the claims of contractors and suppliers, for maintenance of all accounts and subsidiary registers, and he was more on the Technical matters and his work was predominantly of the sites, it is the Chief Accounts Officer, who has to follow the procedure for handing over the allottees of plots and in this case, the allotment order was from the Head Office.

7.The learned Government Advocate [Crl. Side] has produced the letter dated 07.08.1984, the letter of allotment to the 1st Accused of the Tamil Nadu Housing Board, Chennai was in the name of the 2nd Accused/petitioner.

8.On perusal of the same, it is found that the 2nd Accused's name has been typed as signed. Hence, the note file for the approved letter was perused, it could be seen that as per the note file was put up to the petitioner/2nd Accused by two other officers of the Tamil Nadu Housing Board, Anna Nagar Division had recommended and signed by the petitioner/2nd Accused approved the same, which is as per the office procedure. It could be said that the petitioner is an Executive Engineer had to necessarily rely upon his office subordinates in the office, who put up the file to him based on that he had approved the communication of allotment of the plot. Further, the request of the 1st Accused dated 19.04.1984 has been received and installed

and processed by the Assistant Revenue Officer of the Division, who had verified the allotment order dated 30.09.1972 submitted by the petitioner/2nd Accused, based on this document only the petitioner/2nd Accused had signed the allotment communication note file. The letter of allotment was communicated and it could not be said by this note that the petitioner has committed any offence.

9. Further, the learned counsel for the petitioner relied upon the following citation:

- 1) (1999) 3 Supreme Court Cases 102 in the case of Jai Bhagwan and Others Versus State of Haryana; and
- 2) (1999) 3 Supreme Court Cases 102 in the case of Ramashish Yadav and Others Versus State of Bihar.

10. The learned counsel petitioner submitted that he is roped in as accused under Section 34 of the Indian Penal Code. The main factors to be established are common intention and participation of the accused in commission of the offence is as follows:

"To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked."

11. It is submitted by the learned counsel for the petitioner, that he had earlier filed a CrI.O.P.No.19445 of 2009, which came to be dismissed on 14.09.2009. The point now raised were not raised there. Further, the legal ground is on the point of limitation, it seems that the offence charged against the petitioner under Section 419 of the Indian Penal Code, wherein the punishment is of three years and as per the under Section 468 of the Code of Criminal Procedure the limitation is three years. In this case the F.I.R came to be registered on 21.08.2002 and the charge sheet was filed on 15.12.2006 and hence, the charge sheet has been filed beyond the period of limitation. Further, it is admitted that the 1st Accused in the above case had died on 16.10.2004, taking into

consideration that the petitioner/2nd Accused is Septuagenarian and on the facts and circumstances of the case, this quash petition is allowed.

12. Accordingly, this Criminal Original Petition stands allowed and continuation of the proceedings as against the petitioner in C.C.No.7933 of 2006 pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai-600 008 is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.

2.The Sub-Inspector of Police,
Central Crime Branch,
Egmore Chennai 600-008.

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam Shopping Complex,
Thirumangalam,
Chennai-600 101.

4.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.28143 of 2009

mr[co]
srg 02/11/2018