

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :06.07.2018

Orders Pronounced on:12.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1458 of 2017

and

Crl.M.P.Nos.5028 of 2017 and 14509 of 2017

John Elangovan ...Petitioner/Petitioner/Accused

Vs.

Station House Officer,
District Crime Branch,
Villupuram
(Crime No.29 of 2014) ...Respondent/Respondent/Complainant

Rev.V.Ponraj
Pastor, Assembly of God Church,
V.O.C.Nagar, Kallakurichi,
Villupuram District.
(R2 is impleaded as per the order of this Hon'ble Court dated
05.03.2018 made in Crl.M.P.No.3162 of 2018 in Crl.R.C.No.1458 of
2017)

PRAYER: Petition filed under Section 397 read with 401 of the
Criminal Procedure Code, to set aside the order passed in
C.M.P.No.2138 of 2017 in C.C.No.120 of 2015 dated 08.08.2017 on
the file of the learned Judicial Magistrate, Kallakurichi.

For Petitioner : Mr.A.Saravanan for Mr.P.Vajravel

For R1 : Mr.R.Surya Prakash,
Govt.Advocate (Crl.side)

For R2 :Mr.J.Antony Jesus and Mr.A.V.John

O R D E R

The sole accused is the Revision Petitioner herein.

2. The accused/revision petitioner has filed in C.M.P.No.2138 of 2017 under Section 239 of Cr.P.C., to discharge the accused in C.C.No.120 of 2015, after contest the same was dismissed. Hence, this Criminal Revision.

3. The respondent-Station House Officer, District Crime Branch, Villupuram has filed a final report in Crime No.29 of 2014 for an alleged offences under Sections 406 and 420 of I.P.C and the case was taken as C.C.No.120 of 2015. Pending trial, the above C.M.P., to discharge petition has been filed by the petitioner.

4. The case of the prosecution is that the petitioner is a pastor in the Assembly of God Church at Kallakurichi. While, he was discharging his duty, the devotees of church have donated money for purchase of the land for the construction of the Church. However, after collecting the amount to the tune of Rs.50 lakhs, he has purchased the land in his personal name to an extent of 49 ½ cents. When his wife gave a complaint to the Church in the Panchayat, he agreed to convey the property to the Church. However, he has sold 23 cents of the land to the third party and only 50% of the 49 ½ cents have been given to a Church and hence, based upon the complaint for alleged offences under Sections 406 and 420 of I.P.C, the case was registered by the District Crime Branch, Villupuram and final report, as stated above is filed, the petitioner herein filed the above C.M.P.No.2138 of 2017 to discharge petition. After hearing both the parties, the same was dismissed and hence, this Criminal Revision.

5. Pending the revision, the petitioner herein filed CrI.M.P.No.14509 of 2017 and obtained the stay of all further proceedings in C.C and the defacto-complainant has filed in CrI.M.P.No.5028 of 2017 to vacate the stay petition.

6. By consent of all the parties, the main criminal revision itself has taken up for final hearing.

7. The learned counsel for the revision petitioner would submit that the petitioner John Elangovan was a Pastor, Assembly of God Church, Kallkurichi and the devotees of the said Church have donated funds liberally to purchase the land for the construction of the Church and having collected from various people instead of purchasing the land in the name of the

Church. He had purchased in his personal name and on the complaint by the wife of the accused, the panchayat was conveyed by the senior member of the Church, wherein he agreed to return the amount or re-conveyed the land in his favour. However, he gave only 50% of the land and he has sold the remaining 23 cents to the third party and hence, the criminal complaint has been filed.

8. The learned counsel for the petitioner would submit that in an earlier proceedings in O.S.No.9 of 2014, on the file of the learned District Munsif, Sankarapuram, the list witnesses No.III filed by the suit and same was dismissed. Having obtained the dismissal in Civil Suit, they have given the criminal colour to the civil case and further, stated that in O.S.No.181 of 2010, he has challenged the sale deed said to have been obtained in favour of the Church by way of coercion and therefore, entire civil case has been given a criminal colour and also raised the issue that he is disputing the signature in the alleged receipts said to have been issued by him, by the devotees of the Church, in the absence of any expert opinion on the signature, he has to be discharged. Further, he also challenged the authenticity of the receipts collected by the investigation.

9. According to the learned counsel for the petitioner, the authenticity as well as the signature in the alleged receipts said to have been given for the donation received from the devotees have been questioned and hence, he seeks to discharge himself.

10. Yet another point is that the association in whose name in the complaint is given is non-existence and therefore, genuineness of the complaint is also doubtful. The defacto-complainant Rev.V.Ponraj, Pastor, Assembly of the God Church, Kallakurichi, Villupuram District has filed Intervening Petition and also for vacating the stay in CrI.M.P.No.5028 of 2017.

11. The learned counsel for the defacto-complainant could contend that in O.S.No.9 of 2014 on the file of District Munsif Court, Sankarapuram was filed by the L.W.3 since the prayer is one for an injunction restraining the accused herein from selling or re-convey property to any other person because, (the said land actually intended to be purchased in the name of the Church) even before filing of the suit, he has already conveyed the property to the third party and thus prayer in the said suit has become infructuous. Consequently the suit in O.S.No.9 of 2014 was dismissed for default and based upon the copies of the judgment in O.S.No.9 of 2014 enclosed in the typed set, he could contend that does not advance the case of the petitioner.

12. So long the Civil Suit in O.S.No.181 of 2010 is filed by the petitioner injunction restraining the defacto-complainant's Church namely the Assembly of God church from interfering with the peaceful possession and enjoyment of the property by the accused and same is also does not advance the case of petitioner in this discharge petition.

13. After going through the statement of witness given under Section 161 of Cr.P.C in the final report and also taking note of the plea raised by the petitioner herein that the signature in the receipt are being denied. The petitioner plea that in the absence of any expert evidence, he could not be proceeded with criminal trial cannot be accepted. If there is no expert evidence on this point, it is open to the petitioner/accused to take advantage of the same during the time of trial.

14. The next plea raised by the revision petitioner is that he has questioning the authenticity of the receipt and the signature thereon which is also is a matter for trial that is to be gone into viz donors who have donated the money for the purchase for the land for construction of Assembly of God Church at Kallakurichi, and also given the receipts issued by the accused herein.

15. In this view of the matter, I have no hesitation to come to the conclusion that there is sufficient material are available to show that the prima facie case against the petitioner/accused and in view of the presence of the sufficient material to frame charge against the petitioner, I am not inclined to entertain the revision and accordingly, this criminal revision is dismissed. The plea for the discharge is rejected, on a different grounds as discussed above and order passed in CrI.M.P.No.2138 of 2017 rejecting the request of the petitioner for discharge is hereby confirmed.

16. In view of the long pendency of the case, the trial Magistrate is hereby directed to complete the trial within a period of 16 weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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TO

1. THE JUDICIAL MAGISTRATE, KALLAKURICHI.

2. THE SECTION HOUSE OFFICER,
DISTRICT CRIME BRANCH,
VILLUPURAM.

3. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

4. THE SECTION OFFICER, CRIMINAL SECTION, HIGH COURT, MADRAS.

+1cc to Mr.J.ANTONY JESUS, Advocate, S.R.No. 45503

order in
Crl.R.C.No.1458 of 2017 and
Crl.M.P.Nos.5028 of 2017 and 14509 of 2017

BR(CO)
TR(25/07/2018)



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