

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2018
PRONOUNCED ON : 12.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.21491 of 2017
and CrI.M.P.Nos.12637 and 12638 of 2017

N.S.Rajagopal ... Petitioner

Vs.

1.State rep by
The Deputy Superintendent of Police
District Crime Branch
Thiruvarur 610 001.

2.N.K.Vanan ... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records and quash the final report in C.C.No.146 of 2017 on the file of the Judicial Magistrate, Thiruvarur.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Ms.Aruna Elango
For R1 : Mrs.Kritika Kamal, P.
Government Advocate (Crl.Side)
For R2 : Mr.K.R.Ramesh Kumar

O R D E R

This petition has been filed to call for the records and quash the final report in C.C.No.146 of 2017 on the file of the Judicial Magistrate Court, Thiruvarur.

2. On the complaint lodged by Vanan, the second respondent, the first respondent police registered a case in Cr.No.7 of 2014 and after completing the investigation, have filed a charge sheet in C.C.No.146 of 2017 before the Judicial Magistrate, Thiruvarur under Sections 120-B, 467, 468, 471 and 420 IPC against Meenakshi [A1], Subramanian [A2] and Rajagopal [A3], for quashing which, Rajagopal [A3] is before this Court.

3. Heard Mr.N.R.Elango learned Senior Counsel for the petitioner/accused, Mrs.Kritika Kamal, P., learned Government Advocate [Crl.Side] appearing for the first respondent-State and Mr.K.R.Ramesh Kumar, learned counsel for the de facto complainant.

4. It is the case of the de facto complainant that the property in question originally belonged to Abayammal. Abayammal died on 24.07.1983 leaving behind as her heirs, Rajagopal [son/A3], Alavandar [son], Karvannan [son] and Ranganayagi [daughter]. The de facto complainant is the son of Karvannan. The allegations in the final report are that Rajagopal [A3] fabricated a Will dated 15.09.1992 purportedly executed by his mother Abayammal bequeathing the property in question to him absolutely; on the strength of the said Will, Rajagopal [A3] is said to have executed a Power of Attorney in favour of Subramanian [A2]; notwithstanding that, a sale deed (Doc.No.606/2003) was executed in respect of the said property to Meenakshi [A1] on 19.03.2003; in the said sale deed, Rajagopal [A3] has traced his title to the unregistered Will dated 15.09.1982.

5. Mr.N.R.Elango, learned Senior Counsel submitted that a suit was filed in O.S.No.64 of 2012 by the de facto complainant before the Sub Court, Thiruvarur, in which, there is a finding to the effect that Rajagopal [A3] has agreed to say no objection in transferring 1/4th share of the properties of Abayammal, Vanan and other plaintiffs.

6. Per contra, the learned Government Advocate [Crl.Side] and the learned counsel for the de facto complainant submitted that the said finding cannot have the effect of effacing the criminality in the transaction, inasmuch as Rajagopal [A3] has fabricated a Will of his mother and deriving title through the forged Will, he has executed a Power of Attorney in favour of Subramanian [A2] and also a sale deed in respect of Meenakshi [A1], who is none other than the wife of Subramanian [A2].

7. There appears to be sufficient force in the submission of the learned Government Advocate [Crl.Side].

8. On a reading of the complaint and the 161 Cr.P.C. statements, it is seen that even the sale deed that was executed on 19.03.2003 [sale deed document no.606/2003] has been presented by Subramanian [A2] and Subramanian [A2] has impersonated as Rajagopal [A3] and has registered the document. The Sub-Registrar has been cited as a witness and a copy of the forged Will forms part of the record.

9. In the light of such incriminating materials against the petitioner, the prosecution cannot be quashed at the threshold. Hence, there are prima facie materials to frame charges against the petitioner, inasmuch as the petitioner had conspired with Meenakshi [A1] and Subramanian [A2] to create forged documents, viz., the Will and the sale deed.

10. In the result, this petition is dismissed as being devoid of merits. Consequently, connected miscellaneous petitions are closed.

11. At this juncture, learned Senior Counsel for the accused submitted that the appearance of the accused before the trial Court may be dispensed with. Accepting the said submission, the presence of the accused before the trial Court shall be dispensed with on condition that he shall be present for receiving the charge sheet, for framing charges, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. He shall file an affidavit of undertaking before the Trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If thereafter the petitioner absconds, the trial Court shall direct registration of an FIR against him u/s 229-A IPC.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Deputy Superintendent of Police
District Crime Branch
Thiruvarur 610 001.

2.The Judicial Magistrate,
Thiruvarur.

3.The Public Prosecutor
High Court, Madras.

+ 2 ccs to Mr. K.R. Ramesh Kumar, Advocate Sr.45547
+ 3 ccs to Mr. Aruna Elango, Advocate SR.45483

CrI.O.P.No.21491 of 2017