

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.397 of 2015 and
M.P.No.1 of 2015

1. Fazullah Khan

2. Zubaida Khatton

...Petitioners

Vs.

1. State Rep. by
The Inspector of Police,
Head Quarters,
Crime Branch CID, Guindy,
Chennai.
CCB X Crime No.64 of 2009.

2. V.A.K.Engineering Private Limited.
Rep. by its Managing Director,
Rajesh Malhotra,
No.294, Thambu chetty Street,
Chennai-1.

... Respondents

Prayer: The Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to call for the records in C.C.No.361 of 2011 on the file of the learned Judicial Magistrate No.1, Thiruvallur, set aside the order dated 12.12.2014 passed in Crl.M.P.No.1512 of 2014 and discharge the petitioners.

For Petitioners : Mr.Shanmuga sundaram, Senior counsel
for Mr.A.M.Rahamath Ali

For Respondents : Mr.R.Ravichandran
Govt. Advocate (Crl side) For R1

Mr.Abudu Kumar Rajaratnam
for Mr.G.Krishnakumar For R2

O R D E R

This Criminal Revision has been filed against the order dated 12.12.2014 made in Crl.M.P.No.1512 of 2014 in C.C.No.361

of 2011 on the file of the learned Judicial Magistrate No.I,Tiruvallur. After the investigation, the respondent police has filed final report before the learned Judicial Magistrate No.I,Tiruvallur and the learned Magistrate has taken the case on file in C.C.No.361 of 2011. When the matter is pending before the learned Judicial Magistrate No.I,Tiruvallur, the accused 7 and 8/revision petitioners filed the petition under Section 239 Cr.P.C., in Crl. M.P.No.1512 of 2014 in C.C.No.361 of 2011 to discharge from the charge.

2. The 7th and 8th accused are the revision petitioners. They filed discharge petition under Section 239 of Cr.P.C. before the trial Court to discharge them from C.C.No.361 of 2011. After giving an opportunity, the learned Magistrate dismissed the petition in Crl.M.P.No.15112 of 2014. As against the said order, the revision petitioners/7th and 8th accused have filed the present revision before this court.

3. The learned Senior counsel appearing for the revision petitioners would submit that basis of this case against the accused will not stand, because the complaint preferred by one Rajesh Malhotra of VAK Engineering Private Limited is not valid one as the said Rajesh Malhotra was not the Director of the said company at the relevant point of time, when complaint was lodged. He also pointed out that the description in the name of the Village where the property is situated. The property is actually situated in Adambakkam Village. However, the title deed shows that the property is situated at St. Thomas Mount Village. The learned Counsel also brought to the notice of this court that A.8 has already canceled the power of attorney executed in favour of A.5 and therefore, Criminal Act done by A.5, will not bind on A.7 and A.8. The learned Counsel also projected the case that the defacto complainant has come to this Court with unclean hands.

4. Both the learned counsel for the second respondent and the learned Government Advocate (Criminal side) vehemently opposed the claim of the revision petitioner. They submitted that the accused have jointly manipulated the Government records to show that the property stood in their names. Based on the complaint given by one Rajesh Malhotra, Director of VAK Engineering Pvt. Ltd., the District Collector of Kancheepuram District preferred a complaint before the CBCID, Chennai. Based on this complaint, the police investigated the case and filed the charge sheet. During the investigation, it was found that the accused have submitted an application before CMDA with the signature of 9 persons. However, two signatories were already died. The petitioners who are mother and son, had conspired with other accused for the purpose of getting planning permission illegally from CMDA authorities. The learned Counsel pointed out

that the second petitioner is arrayed as A.8, entered into sale agreement on 31.05.2004 for the portion of the property in TS. No.122/9. In that sale agreement A.5 signed as witness. A sum of Rs.11.50 lakhs has been paid to the first petitioner (A.7). Therefore, the learned Counsel vehemently contented that the accused/petitioners herein have participated in the conspiracy to grab a valuable property and therefore, they are not entitled to be discharged from the offences.

5. Heard the rival submissions made on both sides and perused the documents available on record.

6. On a perusal of the Charge Sheet filed by the prosecution and also statements of the witnesses, this Court is of the view that prima facie case is made out against the petitioners. The learned Magistrate has dealt with an issue in detail and given sufficient reasons while dismissing the petition.

7. The allegations against the petitioners is that the petitioners have conspired to usurp a valuable property in the heart of the city and they have manipulated the Government records to show as if they are owner of the property. It is alleged that out of the nine signatories in the application given to the CMDA Authorities, two of them have already died. Therefore, there seems to be deep rooted conspiracy in this case. While considering the petition filed under Section 239 Cr.P.C. the Court has to consider the documents filed by the prosecution under Section 173 Cr.P.C. and not the defence. The probative value of the materials need not be gone into at this stage. The same can be gone into only after trial. From available materials this Court finds there are enough materials to proceed the case further against the petitioners. There is no merit in the revision and further there is no reason to interfere with the order passed by the learned Magistrate.

8. For the foregoing reasons, the revision fails and the same is dismissed and the order of the Court below is hereby confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rli

To

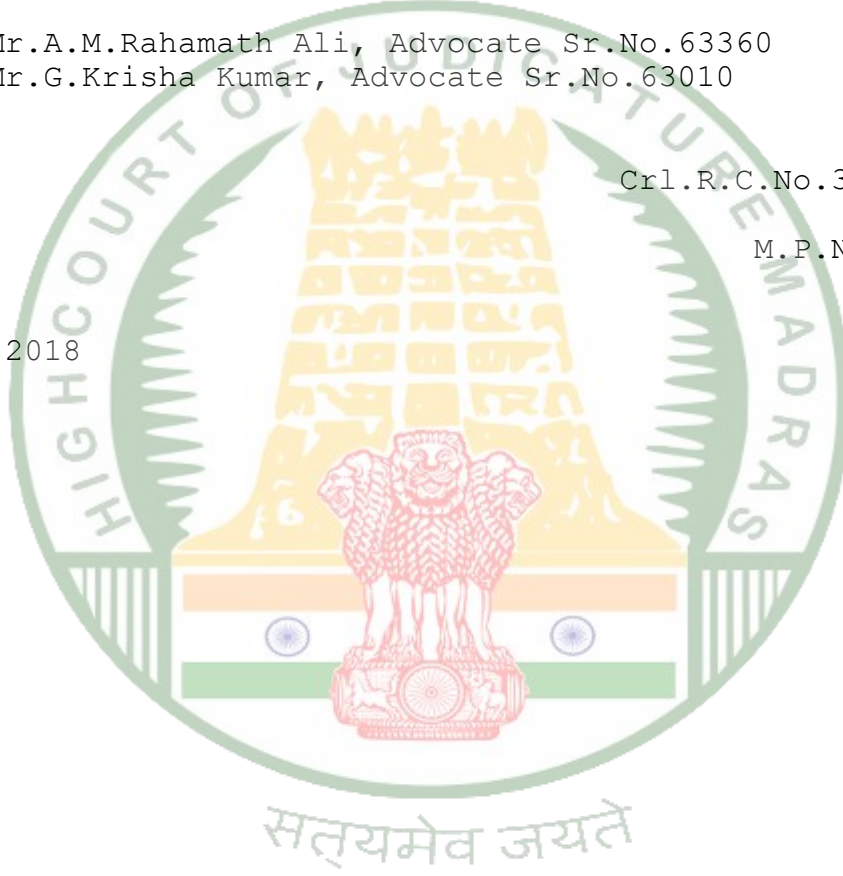
- 1.The Judicial Magistrate No.1,
Thiruvallur.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Head Quarters,
Crime Branch CID, Guindy,
Chennai.

+1 cc to Mr.A.M.Rahamath Ali, Advocate Sr.No.63360

+1 cc to Mr.G.Krishna Kumar, Advocate Sr.No.63010

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NMI (CO)
CSL/13.11.2018



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