

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.04.2018

DELIVERED ON: 13.04.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.2224 of 2017 & Crl.M.P. Nos.1595, 1596 & 3453 of 2018

Vidya

Petitioner

vs.

1 State represented by
the Inspector of Police
M1 Madhavaram Police Station
Madhavaram

2 Navaneethammal

3 B. Gajapathy

Respondents

(Impleaded as R3 vide order dated 09.04.2018 passed in Cr.M.P. No.2547 of 2018 in Crl.O.P. No.2224 of 2017)

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.35 of 2015 and quash the proceedings pending on the file of the Judicial Magistrate Court, Thiruvotriyur.

For petitioner Ms. Vidya - Party-in-person

For R1 Mrs. Kritika Kamal P.
Government Advocate (Crl. Side)

For R2 Mr. N.G.P. Rajaram

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in C.C. No.35 of 2015 and to quash the proceedings pending on the file of the Judicial Magistrate Court, Thiruvotriyur.

2 This is the second quash petition that has been preferred by the petitioner for quashing the prosecution in C.C. No.35 of 2015, the first being Crl.O.P. No.10652 of 2015, which, this Court has dismissed by a detailed order dated 30.04.2015.

The first quash petition in CrI.O.P. No.10652 of 2015 was filed through advocate Mr.R.Sankarappan and the present quash petition has been preferred by the petitioner herself as a party-in-person. Thus, when there is only this difference without distinction, it is not known under what circumstances the Registry has numbered this second quash petition.

3 Instead of repeating the facts, it will be in the fitness of things to extract the order dated 30.04.2015 passed by this Court in CrI.O.P. No.10652 of 2015 as under:

"3. On a complaint lodged by one Navaneethammal, the respondent police registered a case in Cr.No.528 of 2009 for offences under Sections 406, 467, 468, 471 r/w 420 IPC against two accused including the petitioner, and after completing the investigation a Final Report was filed, which was taken on file as C.C.No.35 of 2015, challenging which this quash petition has been filed.

4. On a reading of the Final Report it is seen that the son of Navaneethammal [defacto complainant], by name Subramanian is a mentally challenged person. It is the case of the de facto complainant that she was in dire need of money and raised money by mortgaging her house property. The de facto complainant was introduced to Vidya, the petitioner herein, who agreed to lend Rs.2.5 lakhs as mortgage loan. Believing the representation of Vidya, the de facto complainant went to Sembium SRO on 24.04.2003 and she signed a document, which believed to be a mortgage deed, but which later on turned out to be a sale deed. It is further seen in the Final Report that Vidya had set up a person to impersonate Subramanian, a mentally retarded son of the de facto complainant in the document and had the document executed.

5. The learned counsel for the petitioner submitted that the sale deed is of the year 2003, but the complaint was lodged only in the year 2009 and that there is a huge delay. Delay is not a reason to quash a criminal prosecution, if otherwise there are materials to proceed against the accused. In this case, it is seen that the petitioner had set up somebody to impersonate Subramania, who is a mentally challenged person and had executed a sale deed in respect of the de facto complainant's property. The learned counsel further submitted that the police had not collected the thumb impression, specimen signature and handwriting from Subramanian and did not send the same for Forensic examination. If the prosecution is

able to prove that Subramanian was a mentally challenged person, then the question of not obtaining his handwriting and thumb impression becomes irrelevant. Assuming for a moment that the police had failed to obtain thumb impression and handwritings of Subramania, yet, remiss in investigation cannot be a reason to quash the charge sheet and the accused can take advantage of it during trial."

4 It is the specific case of the de facto complainant that she is an unlettered lady and that she was asked to come to the office of the Sub-Registrar for executing a mortgage deed. However, the petitioner obtained a sale deed by deceit and had gone to the extent of setting up a person to impersonate the mentally challenged son of the de facto complainant.

5 Ms. Vidya, party-in-person, submitted that she obtained certain materials under the Right to Information Act, 2005, under which, on the complaint given by her to the Additional Director General of Police, a statement has been recorded from Gajapathy, son of the de facto complainant, who has stated that he had gone along with his mother and his brother Subramanian to the Registrar's Office and had signed the document. On the strength of such statement, Ms. Vidya submitted that the prosecution has to be quashed.

6 In this case, the de facto complainant-Navaneethammal breathed her last on 15.04.2015. Therefore, her son Gajapathy has been impleaded as the third respondent in this petition vide order dated 09.04.2018 passed in CrI.M.P. No.2547 of 2018. The statement of Gajapathy which is said to have been recorded on 20.08.2015 by the police is after the charge sheet has been filed in C.C. No.35 of 2015. It is not known under what circumstances, the police have recorded the further statement of one of the prosecution witnesses.

7 Be that as it may, this statement does not form part of the relied upon documents under Section 207 Cr.P.C. in C.C. No.35 of 2015. At the most, this can be considered as another Section 161 Cr.P.C. statement and much value cannot be attached to it especially in the light of the fact that the investigation conducted by the police clearly shows that Subramanian was mentally challenged and he could not have signed the impugned sale deed in favour of Ms. Vidya. It is open to Ms. Vidya to cross-examine Gajapathy on the strength of his previous statement and contradict him under Section 145 of the Evidence Act, while he is in the witness box.

8 In the result, this petition is dismissed as being misconceived with costs quantified at Rs.10,000/- payable to the Tamil Nadu State Legal Services Authority, Chennai.

9 It is seen that Ms. Vidya has been adopting every possible trick under the sun to put spokes in the wheel of the prosecution in C.C. No.35 of 2015. The Trial Court is directed to proceed with the trial expeditiously. If Ms. Vidya adopts any dilatory tactics, it is open to the Trial Court to remand her to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. Crl.M.P. Nos.1595 and 1596 of 2018 are closed and Crl.M.P. No.3453 of 2018 is dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

- 1 The Inspector of Police
M1 Madhavaram Police Station
Madhavaram
Chennai
- 2 The Judicial Magistrate Court
Thiruvotriyur
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104
- 4 The Secretary,
Tamilnadu State Legal Services Authority,
chennai.

+2cc to M/s.Vidya, Party in person sr.27965

+1cc to Mr. N.G.P. Rajaram, Advocate sr.no.27410

Crl.O.P. No.2224 of 2017

nr 20/04/2018