

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

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

Crl.O.P. No.20911 of 2018 &
Crl.M.P. Nos.11312 & 11313 of 2018

1 Sivanesan
2 Gokulakrishnan

Petitioners

vs.

The State represented by
the Inspector of Police
Poompuhar Police Station
Nagapattinam District

Respondent

(Ref. Cr. No.148/2014 dated 01.10.2014)

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.148 of 2015 on the file of the Judicial Magistrate Court, Sirkazhi, for offences under Sections 418,420,423 and 465 IPC and quash the said prosecution.

For petitioners :Mr. C. Arunkumar

For respondent Mrs. :M. Prabhavathi
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in C.C. No.148 of 2015 on the file of the Judicial Magistrate Court, Sirkazhi, for offences under Sections 418,420,423 and 465 IPC and quash the said proceedings.

2 On the complaint lodged by one Ravi, the respondent police registered a case in Cr. No.148 of 2014 on 01.10.2014 and after completing the investigation, has filed charge sheet in C.C. No.148 of 2015 before the Judicial Magistrate, Sirkazhi, for offences under the aforesaid provisions against 4 accused, for quashing which, A3 and A4 are before this Court.

3 Heard the learned counsel for the accused and the learned Additional Public Prosecutor appearing for the respondent State.

4 At the outset, the learned counsel for the petitioners brought to the notice of this Court that this is the second quash application by the petitioners and the first quash application in Crl.O.P. No.16290 of 2018 that was filed by A1 to A4 was dismissed by this Court on 25.06.2018 and that in the said quash petition, certain important points were not brought to the notice of this Court and therefore, the petitioners seek to urge those points in this petition in support of quashment of the charge sheet.

5 To appreciate the case of the petitioners/accused, it may be necessary to narrate the allegations in the charge sheet. It is the case of the prosecution that the de facto complainant entered into an agreement for sale with A1 and A2 on 16.12.2002, in which, A3 and A4 signed as witnesses, agreeing to sell 6 ½ cents of land, said to be belonging to A1 and A1 obtained a sum of Rs.5,10,000/- from the de facto complainant; thereafter, it came to light that the said land did not belong to A1, but, A2; A2 executed a Power of Attorney in favour of the de facto complainant, based on which, the de facto complainant sold the property to one Somasundaram (L.W.2); while so, A1 filed a suit to declare the sale as null and void and thus, all of them were playing truants by mis-representation in order to cheat the de facto complainant.

6 Mr. Arunkumar, learned counsel for the petitioners submitted that A3 and A4 have not signed as witnesses in the agreement dated 16.12.2002 and in support of this contention, he placed reliance on a certified copy of the agreement that was filed in the Civil Court in O.S. No.64 of 2011 before the District Munsif Court, Sirkazhi, preferred filed by A1 and submitted that A3 and A4 have not signed as witnesses in the said agreement at all.

7 In the opinion of this Court, whether the sale agreement dated 16.12.2002 contains the signatures of A3 and A4 is a disputed question of fact, which cannot be gone into in a quash petition. The fact remains that the agreement dated 16.12.2002 forms part of the relied upon documents that have been submitted along with the charge sheet. The circumstances under which all the four accused had joined together to represent to the de facto complainant about a land over which A1 did not have any title, goes to cumulatively implicate A1 to A4.

8 Mr. Arunkumar, learned counsel for the petitioners submitted that there was no forgery at all and therefore, Section 465 IPC will not stand attracted.

9 The question is whether the signatures in the agreement dated 16.12.2002 are those of the petitioners herein or not.

Explanation 1 to Section 464, IPC says a man's signature of his own name may amount to forgery. This Court has cited the above explanation, because, during trial, it can be established by the prosecution that A3 and A4 had differently signed in the said document and later, take a stand that the signatures found therein are not theirs. In such view of the matter, this Court cannot give any finding on such issues and the same has to be decided only by the Trial Court. Further, there are sufficient materials for the Trial Court to frame charges against the accused.

In the result, this Criminal Original Petition is dismissed with liberty to the petitioners to raise all the points urged in this Criminal Original Petition, before the Trial Court, after the charges are framed. Connected Crl.M.Ps. are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Judicial Magistrate
Sirkazhi
- 2 The Inspector of Police
Poompuhar Police Station
Nagapattinam District
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

Crl.O.P. No.20911 of 2018

GN(10/09/2018)

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