IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.08.2018

PRONOUNCED ON: 21.08.2018

CORAM:

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

Crl.O.P. No.25290 of 2017
Crl.O.P. Nos.26303 to 26306 of 2017
Crl.O.P. Nos.16962 to 16965 of 2018
&
Connected Crl.M.Ps.

Kanaka	Petitioner in Crl.O.P. No.25290 of 2017
A. Chockalingam	Petitioner in Crl.O.P. No.26303 of 2017
S. Narayanan	Petitioner in Crl.O.P. No.26304 of 2017
A. Ashok Kumar	Petitioner in Crl.O.P. No.26305 of 2017
D. Karthikeyan	Petitioner in Crl.O.P. No.26306 of 2017
A. Ashok Kumar	Petitioner in Crl.O.P. No.16962 of 2018
A. Chockalingam	Petitioner in Crl.O.P. No.16963 of 2018
S. Narayanan	Petitioner in Crl.O.P. No.16964 of 2018
D. Karthikeyan	Petitioner in Crl.O.P. No.16965 of 2018

vs.

1 The State of Tamil Nadu
represented by the Inspector of Police
Central Crime Branch
Coimbatore
..1st Respondent in Crl.O.P. 25290,26303 to 26306/2017.

2 Shanthi Anand Kumar
..2nd Respondent in all Crl.O.Ps

1 The State of Tamil Nadu
represented by the Assistant Commissioner of Police
Central Crime Branch
Coimbatore District, Coimbatore
..1st Respondent in Crl.O.P. 16962 to 16965/2018.

Prayer in Crl.O.P. No.25290 of 2017:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records and quash the FIR registered in Cr. No.88 of 2017 as against the petitioner on the file of the first respondent.

Prayer in Crl.O.P. Nos.26303 to 26306 of 2017:

Criminal Original Petitions filed under Section 482 Cr.P.C. seeking to quash the FIR registered in Cr. No.88 of 2017 dated 10.11.2017 as against the petitioners, pending investigation on the file of the first respondent police.

Prayer in Crl.O.P. Nos.16962 to 16965 of 2018:

Criminal Original Petitions filed under Section 482 Cr.P.C. seeking to call for the records and quash the FIR registered in Cr. No.44 of 2017 dated 20.06.2017 as against the petitioners, pending investigation on the file of the respondent police.

For petitioner in Crl.O.P. No.25290 of 2017	Mr. Sunder Mohan
For petitioners in Crl.O.P. Nos.26303-26306 of 2017	Mr. Satish Parasaran, Sr. Counsel for Mr. K.M.D. Muhilan
For petitioners in Crl.O.P. Nos.16962-16965 of 2018	Mr. Satish Parasaran, Sr. Counsel for Mr. K.M.D. Muhilan
For R1 in all Crl.O.Ps.	Mrs. M. Prabhavathi Addl. Public Prosecutor
For R2 in Crl.O.P. Nos. 26303-26306 of 2017 & 16962-16965 of 2018	Mr. S. Shanmugavelayutham Sr. Counsel for Mr.S.P. Sudalaiyandi
For petitioner in Crl.M.P. Nos.4316-4319 of 2018 in Crl.O.P. No.26303 to 26306 of 2017	Mr. N.R. Anantha Rama Krishnan

COMMON ORDER

Two FIRs, viz., the FIR in Cr. No.44 of 2017 and the FIR in Cr. No.88 of 2017 on the file of the first respondent police are sought to be quashed in this batch of 9 Criminal Original Petitions.

2 In view of inter-connectivity of the issue involved and also the fact that the de facto complainant and the accused 1 to

4 in both the FIRs are one and the same, these 9 Criminal Original Petitions are considered and decided by this common order.

3 For the purpose of clarity and better understanding, this Court thinks it fit to deal with the issue at hand FIR-wise and accordingly, proceeds further.

4 While the four petitions being Crl.O.P. Nos.16962 to 16965 of 2018 have been preferred seeking quashment of the FIR in Cr. No.44 of 2017, the remaining five petitions being Crl.O.P. Nos.26303 to 26306 of 2017 and 25290 of 2017 have been preferred seeking quashment of the FIR in Cr. No.88 of 2017.

5 On the complaint lodged by Dr. Shanthi Anandakumar, the de facto complainant/second respondent, the first respondent police have registered a case in Cr. No.44 of 2017 on 20.06.2017 under Sections 120-B, 409,468,469,471 and 420 IPC against five accused, for quashing which, Crl.O.P. Nos.16962 to 16965 of 2018 have been preferred by A1 to A4.

6 At this juncture, it may be pertinent to state here that this Court, in Crl.O.P. No.16109 of 2017, vide order dated 08.11.2017, has quashed the prosecution in Cr. No.44 of 2017 as against Sitaram Nayak (A5), Manager, Indian Bank, Ram Nagar Branch and the challenge made thereagainst by the de facto complaint before the Supreme Court, failed.

7 On the complaint lodged by Dr. Shanthi Anandakumar (de facto complainant/second respondent), the first respondent police have registered a case in Cr. No.88 of 2017 on 10.11.2017 under Sections 120-B and 420 IPC against 5 accused, for quashing which, Crl.O.P. Nos.26303 to 26306 of 2017 and 25290 of 2017 have been preferred by 5 accused.

8 Heard Mr. Satish Parasaran, learned Senior Counsel representing Mr. K.M.D. Muhilan, learned counsel on record for A1 to A4 in both the Crime Numbers, Mr. Sunder Mohan, learned counsel for A5 in Cr.No.88 of 2017, Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent State in all the cases, Mr.S.Shanmuga Velayutham, learned Senior Counsel representing Mr. S.P. Sudalaiyandi learned counsel on record for the de facto complainant and also Mr.N.R.Anantha Rama Krishnan, learned counsel for the de facto complainant.

9 To appreciate the contentions raised at the Bar, it may be necessary to narrate the facts admitted by both sides.

9.1 Dr. Shanthi Anandakumar, the de facto complainant and her husband Dr. Anandakumar are dentists by profession and Ashok

Kumar (A1) is the brother of Dr. Anandakumar and brother-in-law of the de facto complainant.

9.2 Ashok Kumar (A1), Narayanan (A2), Chockalingam (A3) and Karthikeyan (A4) started TIPSTECH Pvt. Ltd. (for short "TIPSTECH") and established TIPSTECH Global Institute and College in 361-1A3, Karuvaloor Road, M.G.C. Palayam, Coimbatore.

9.3 The de facto complainant purchased a land measuring 3.87 acres adjacent to the college run by A1 to A4 and it is her case that, in the year 2012, Ashok Kumar (A1) requested her to permit him to use her land also for the expansion of the college and for putting up a temporary structure thereon and she also obliged; Ashok Kumar (A1) assured her that he would purchase her land by paying 1 ½ times of the prevailing market price; Ashok Kumar (A1) wanted to mortgage his property with Indian Bank, Ram Nagar Branch, for raising a loan and when he requested her to join the mortgage, she agreed and mortgaged her land also for raising the loan.

9.4 The de facto complainant has admitted in her complaint that when Ashok Kumar (A1) wanted to put up a temporary structure in her land and requested her to submit the necessary application to the Municipal Corporation, she acceded to his request and signed in the necessary forms on 08.08.2013 and accordingly, necessary planning permission was obtained; however, instead of putting up a temporary structure, Ashok Kumar (A1) had put up a pucca structure in her land.

9.5 It is her further allegation that Ashok Kumar (A1) and other Directors had forged her signature in the building permit application forms dated 24.04.2016, 25.04.2016 and 01.05.2016 and obtained permission for additional construction from the Municipal Corporation.

9.6 She has further alleged that since TIPSTECH had failed to discharge the mortgage, Indian Bank initiated proceedings under the SARFAESI Act to bring all the properties, including hers, to sale.

9.7 Her further allegation is that Sitaram Nayak, Manager, Indian Bank, Ram Nagar Branch, Coimbatore, had colluded with Ashok Kumar (A1) in sanctioning the mortgage loan without properly verifying the documents and on the said allegation, Sitaram Nayak was added as A5.

10 As stated above, this Court quashed the proceedings as against Sitaram Nayak (A5) in Crl.O.P. No.16109 of 2017 on 08.11.2017, which has been confirmed by the Supreme Court in the appeal preferred thereagainst by the de facto complainant.

11 To complete the narration, it may be relevant to give the facts relating to the second FIR, viz., the FIR in Cr. No.88 of 2017. In this FIR, the de facto complainant, after narrating the events set out in the first FIR in Cr. No.44 of 2017, has further stated as under:

All the mortgaged properties were valued at Rs.14.03 crores and by sale publication notice dated 22.03.2017, Indian Bank called for a single bid qua all the properties; thereafter, Indian Bank issued a fresh notice dated 19.08.2017, in which, each property was valued and they were kept in separate lots; the de facto complainant's property was purchased by her father-in-law in the public auction on 26.10.2017 and the sale certificate was confirmed by the bank. This, according to the de facto complainant, was done by the accused, in collusion with Kanaga, Assistant Manager, Indian Bank and therefore, she has been arrayed as A5 in Cr. No.88 of 2017.

12 Mr. Satish Parasaran, learned Senior Counsel for A1 to A4 contended that both the FIRs are clearly an abuse of process of law, inasmuch as, the de facto complainant was part of the college and she was a Guest Lecturer in the college and she knew the expansion and developments which had taken place in the college very well and therefore, her plea that she saw huge buildings constructed overnight in her land against the assurance that only a temporary structure would be put up, is a figment of her own imagination.

13 Per contra, Mr. Shanmuga Velayutham, learned Senior Counsel appearing for the de facto complainant contended that the de facto complainant's signature has been forged in the application forms for planning permission submitted to the Municipal Corporation and hence, when the matter requires to be investigated, the FIRs should not be quashed.

14 This Court gave its anxious consideration to the rival submissions.

15 As admitted by the de facto complainant, she had volunteered to give her land for use by the college and she has also admitted that her land was mortgaged with Indian Bank for raising the loan. However, her contention that the accused had put up huge buildings on her land without her knowledge defies credulity, because, even according to her, she was in Coimbatore only and overwhelming materials produced show that she was a Guest Lecturer in the college run by her brother-in-law, i.e., Ashok Kumar (A1). Had it been her contention that she was abroad and she was unaware of the developments which had taken place at home, one can appreciate the same. Contrarily, she had

been part and parcel of the institution and had voluntarily mortgaged the property with Indian Bank and defected from TIPSTECH only when Indian Bank initiated recovery proceedings under the SARFAESI Act for recovery of their dues.

16 Mr. Shanmuga Velayutham, learned Senior Counsel appearing for the de facto complainant, contended that the de facto complainant has signed in the applications for planning permission dated 25.09.2013, 15.05.2014 and 15.11.2014 and that she had not signed in the application forms dated 24.04.2016, 25.04.2016 and 01.05.2016. He further contended that the de facto complainant gave permission only for raising a temporary structure and not for putting up a pucca structure.

17 On a perusal of the copy of the application forms, it is seen that the same have been submitted by Sri Renuka Builders, represented by one Ranganathan, B.E., L.B.S., a licensed building surveyor. In all the application forms, including the disputed ones, the intended use of the building has been given as "farm house building". In other words, both in the admitted and disputed application forms, permission has been sought for constructing "farm house building". Had there been any discrepancy on this aspect, between the admitted and the disputed application forms, then, this Court can extend the benefit of doubt to the de facto complainant and infer that her signature has been forged in the subsequent application forms for the purpose of constructing college building. However, even in the disputed applications, the nature of construction has been shown as "farm house building".

18 At this juncture, it is worthwhile to refer to the definition of the expression "forgery" under Section 463 IPC and the same is profitably extracted below:

> "463. Forgery
>
> Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

19 A reading of the above definition shows that when a false document is made with an intent to cause damage or injury to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, only then, the offence of forgery will stand completed. Supposing a person merely practises the signature of another person without

anything more, he cannot be prosecuted for forgery. Only if he uses such a forged document to cause either of the aforesaid harms, can he be prosecuted. This has been explained by the Supreme Court in Dr.Vimla vs. Delhi Administration (AIR 1963 SC 1572), which is a locus classicus on forgery law. To sustain an allegation of forgery, there should be two ingredients, viz., (a) deceit and (b) injury.

20 In the case at hand, the application forms for building permit have been submitted by Sri Renuka Builders. Both in the admitted and disputed application forms, permission has been sought for constructing "farm house building". It is to be remembered that the construction of a college building in violation of the conditions of building permission will only attract penal provisions of the City Municipal Corporation Act concerned, resulting in the building being demolished by the Municipal Corporation and nothing more and that being so, the accused and the bank officials cannot be charged for the offence of forgery, especially in the light of the categorical admission by the de facto complainant that she had joined the mortgage with Ashok Kumar (A1) for raising loan from Indian Bank.

21 Under such circumstances, this Court is of the view that the FIR in Cr. No.44 of 2017 is an abuse of process of law and accordingly, the same is quashed. As a sequitur, Crl.O.P. Nos.16962 to 16965 of 2018 are allowed. Connected Crl.M.Ps. are closed.

22 Coming to the FIR in Cr. No.88 of 2017, as stated above, Indian Bank issued a public notice by clubbing all the properties into one lot. Since there were no bidders, Indian Bank sought legal opinion from one R. Venkatesan, their panel lawyer, who has given his opinion dated 03.08.2017, which reads as under:

> "The above said criminal complaint will not be an embargo for the bank to initiate further measures under the provisions of the SARFAESI Act. The bank is entitled to bring the property in entirety or separately in lots fixing the bids separately. You have to justify that if the properties are sold under separate bids, different auction purchasers will be bidding the respective properties. If the same is bid by the respective parties whether the said properties can be enjoyed independently and whether they will have access from the main road to the separate properties. You have to satisfy the same and proceed to bring the property separately in separate bids."
>
> (emphasis supplied)

23 On the strength of the aforesaid legal opinion, Indian Bank issued a sale notice dated 18.09.2017, which included all the properties in different lots. It is true that the father-in-law of the de facto complainant purchased her property in the auction and that, by itself, cannot be a reason to conclude that the accused had conspired with the Manager of Indian Bank to knock away the property of the de facto complainant. It is always open to the de facto complainant to challenge the sale before the Debts Recovery Tribunal. In the opinion of this Court, both the FIRs in Cr.Nos.44 and 88 of 2017 have been registered, perhaps, with the intention to wriggle out of the recovery action that has been initiated by Indian Bank under the SARFAESI Act to realise their debt.

24 In such perspective of the matter, the FIR in Cr. No.88 of 2017 also is quashed and as a sequel, Crl.O.P. Nos.26303 to 26306 and 25290 of 2017 are allowed. Connected Crl.M.Ps. are closed.

To sum up, the FIRs in Cr. Nos.44 and 88 of 2017 are quashed and all the 9 Criminal Original Petitions stand allowed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

cad
To
1. The Assistant Commissioner of Police
Central Crime Branch
Coimbatore District
Coimbatore
2. The Inspector of Police
Central Crime Branch
Coimbatore District
Coimbatore
3. The Public Prosecutor
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Chennai 600 104
+1 CC to Mr. Sundar Mohan, advocate sr 56992.
+5 Ccs to Mr. Muhilan, Advocate sr 57308.

Crl.O.P. Nos.26303 to 26306 of 2017
Crl.O.P. Nos.16962 to 16965 of 2018
and
Crl.O.P. No.25290 of 2017

SP(05/09/2018)