

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.16841 of 2010 and

Crl.O.P.No.24590 of 2014 and

M.P.No.1 of 2014

1.K.Mahendran
2.M.Balasubramaniyan ...Petitioners in Crl.OP.No.16841/2010

1.K.Ramalingam
2.R.Kaliamuthan ... Petitioners in Crl.OP.No.24590/2014

vs.

1.The Inspector of Police,
District Crime Branch,
Thiruvavur & District.

2.D.Anand ... Respondents in both the
Crl.O.Ps

Prayer in Crl.OP.No.16841/2010: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the C.C.No.124 of 2010 on the file of the learned Judicial Magistrate, Thiruvavur.

Prayer in Crl.OP.No.24590/2014: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the C.C.No.124 of 2010 in F.I.R.No.11 of 2008, dated 04.08.2008, on the file of the learned Judicial Magistrate, Thiruvavur.

(In both the Crl.O.Ps)

For Petitioners : Mr.P.Vijendran

For Respondents : Mr.M.Mohamed Riyaz (for R1)
Additional Public Prosecutor

Mr.K.Sridhar (for R2)
for M/s.Sridhar Associates

COMMON JUDGMENT

Both the above Crl.O.Ps are filed to quash the Impugned Charge Sheet laid against the respective petitioners in C.C.No.124 of 2010 on the file of the Judicial Magistrate, Thiruvarur. The petitioners in Crl.O.P.No.16841 of 2010 are accused Nos. 3 and 4 and the petitioners in Crl.O.P.No.24590 of 2014 are accused Nos.1 and 2 in C.C.No.124 of 2010. The 2nd respondent in both the Crl.O.Ps is the de-facto complainant in the above Criminal Case.

2.The de-facto complainant/ 2nd respondent has lodged a complainant against the petitioners in the above Crl.O.Ps alleging that the Nanja land belongs to him in Survey No.469/1, 469/2 and 468/7 totally measuring an extent of 1 acre 36 cents in Vilamal village, Thiruvarur Taluk and District has been illegally sold by creating forged documents in the names of the accused by registering a sale deed in favour of them on 05.09.2007 at the Office of the Sub-Registrar, Thiruvarur, vide Document No.3462 of 2007. For creating the above said forged documents, the 4th accused assisted the accused 1-3 and thereby all of them have conspired with each other and committed the offence of cheating, creating forged document and involved in the criminal offence. On receipt of the complaint, the 1st respondent police has registered a case in Crime No.11 of 2005 against the petitioners and one Kaliyaperumal who was the Sub-Registrar of Thiruvarur at that time, for the offences under Sections 120(b), 420, 465, 467, 468, 471 and 477 IPC on 01.08.2008.

3.After completion of investigation, the 1st respondent police has laid charge sheet against the petitioners herein and against the above said Kaliyaperumal on 26.12.2009 charging the petitioners for the offences under Sections 120(b), 420, 465, 467, 468, 471 and 477 IPC. The above said charge sheet was taken on file by the Learned Judicial Magistrate, Thiruvarur in C.C.No.124 of 2010. Challenging the cognizance taken in the above said charge sheet, the petitioners herein are before this Court to quash the same.

4.The case of the petitioners is that the 2nd respondent ought not to have registered the case against the petitioners and other accused person. If he really a bonafide person, he ought to have filed civil suit before the concerned civil Court for appropriate remedy by challenging the validity of the sale deed. But it was not done by the 2nd respondent/de-facto complainant. But he has chosen to lodge a complaint to the 1st

respondent in order to threaten and to get money from the petitioners herein and other accused persons by colluding with the vendors of the property. It is a clear case of malafide. The 2nd respondent herein threatened the petitioners herein as well as other accused to circumvent the Civil Procedure Code by using the Criminal Procedure Code with a view to escape from the payment of Court fees. Hence, the charge sheet laid against the petitioners herein is liable to be quashed.

5.Per contra, it is justified by the other side the proceedings initiated under the criminal jurisdiction is well within its ambit and the same is entertainable. The learned counsel for the respondents further states that the police have properly investigated and on proper investigation evidences and documents the charge sheet has been filed. The petitioners should approach the Court below either by filing discharge or getting acquitted in the trial. The respondents prayed this Court for the dismissal of the original petitions.

6.I heard Mr.P.Vijendran, learned counsel for the petitioners, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the 1st respondent and Mr.K.Sridhar for M/s.Sridhar Associates, learned counsel for the 2nd respondent and the entire materials available on records are perused.

7.When the above Crl.O.Ps are taken up for final hearing by this Court on 14.03.2017 the Learned Counsel for the petitioners and 2nd respondent in both Crl.O.Ps have produced a compromise memo entered into between them. This Court has perused the memo of compromise produced on 14.03.2017 before this Court wherein the signatures of the petitioners and the 2nd respondent and also their respective counsels are found place. Along with the compromise memo a letter dated 20.04.2015 which was notarized by an Advocate K.Murugesan of the complainant/the 2nd respondent herein is enclosed. A perusal of the of the said letter would disclose that the de-facto complainant has wrongly given the complaint before the 1st respondent police against the petitioners herein and Kaliyaperumal and therefore he requested the 1st respondent police to Scott-free the accused in Crime No.11 of 2008 from the above criminal case as he has withdrawn the complaint lodged against them. In both the above Crl.O.Ps the Xerox copy of the said letter has been enclosed.

8.Considering the memo of compromise and the notarized letter dated 20.04.2015 of the complainant/2nd respondent herein, this Court without expressing any opinion on the merits of the case, directed the parties to approach the Trial Court to enter into the witness box and to compromise the matter in the light of the letter of the 2nd respondent herein mentioned above.

Since, the compromise memo filed by the parties without consisted the terms or mode and nature of compromise and also the parties are not appeared before this Court to ascertain the authenticity of the letter written by the de-facto complainant. Further the de-facto complaint has produced the Xerox copy of the letter and in which there is no detail as to whom it was addressed. That apart the said letter has indicated the intention of the complainant not to proceed the above criminal case against the petitioners herein as he has wrongly made a complaint against the accused in Crime No.11 of 2008. Further this Court is not able to ascertain whether the 2nd respondent herein has sent the said letter to the 1st respondent police or not. At the same time this Court keeps in mind the ambit of section 320 of the Code of Criminal Procedure wherein no prescribed format is given, but the interest of justice is prime factor to be taken up for consideration. In such circumstances, as stated above, both the petitioners and the 2nd respondent herein could very well compromise the criminal case in C.C.No.124 of 2010 pending before the trial Court by producing the letter dated 20.04.2015 by entering in the witness box and can very well give quietus to the issue. The memo of compromise filed before this Court dated 14.03.2017 is not the proper memo of compromise and on that basis the impugned charge sheet cannot be quashed by this Court. The memo of compromise should always be filed along with the affidavit of both the parties and the details about the nature of compromise. In the absence of the same the memo of compromise dated 14.03.2017 cannot be treated as a memo of compromise.

9. Therefore, both the Criminal Original Petitions are disposed of with the following direction:

(a) The petitioners in the respective CrI.O.Ps and the 2nd respondent/ de-facto complainant are directed to appear before the trial Court namely Judicial Magistrate Court, Thiruvavur and enter into the witness box and to compromise the C.C.No.124 of 2010 on the basis of the letter of the complainant dated 20.04.2015;

(b) The trial Court is directed to complete the proceedings within a period of 4 weeks from the date of receipt copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate,
Thiruvavarur.

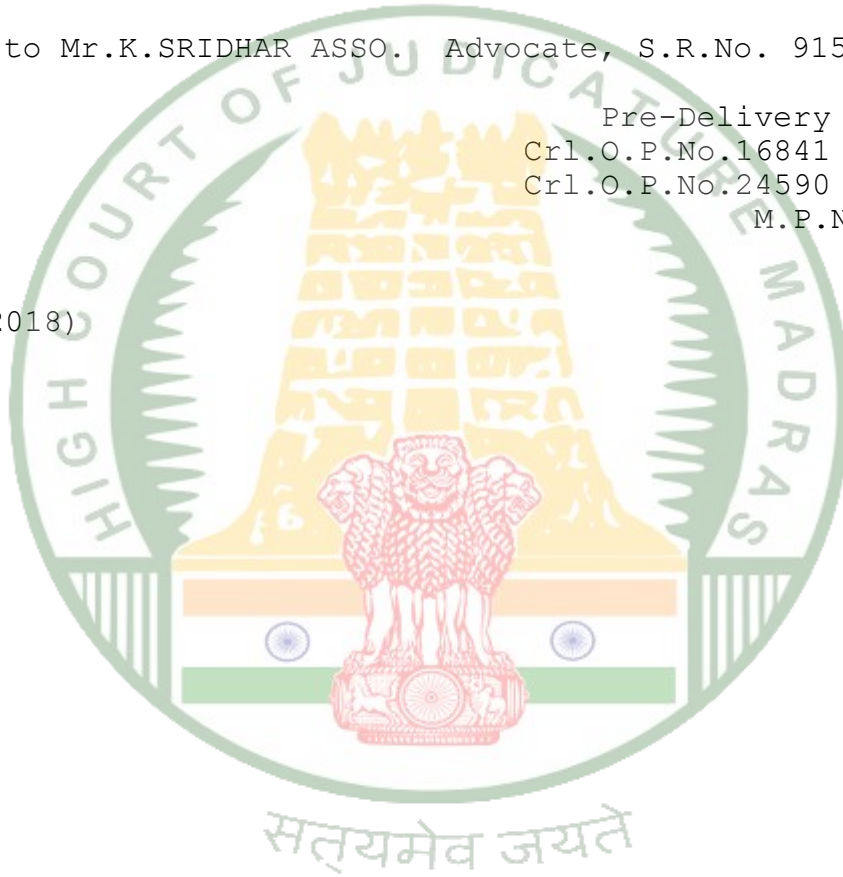
2.The Inspector of Police,
District Crime Branch,
Thiruvavarur & District.

3. The Public Prosecutor, High court, Madras.

+1cc to Mr.K.SRIDHAR ASSO. Advocate, S.R.No. 915

Pre-Delivery Judgment in
Crl.O.P.No.16841 of 2010 and
Crl.O.P.No.24590 of 2014 and
M.P.No.1 of 2014

SVI (CO)
TR(19/01/2018)



WEB COPY