

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 15.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.5468 of 2017
and
Crl.M.P.No.4117 of 2017

Vighas

... Petitioner

Vs.

1. The State rep. By
The Inspector of Police,
District Crime Branch,
Salem District.
(Crime No.22 o 2010)

2. N.Prabhu

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the criminal case in C.C.No.85 of 2013 on the file of the learned Judicial Magistrate No.2, Attur, quash the same in so far as the petitioner is concerned, by allowing this quash petition.

For Petitioner : Mr.M.Govindaraju

For Rl : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

This petition has been filed challenging the proceedings in C.C.No.85 of 2018, pending on the file of the learned District Munsif cum Judicial Magistrate No.II, Attur.

2. The petitioner has been added as A2 in the final report filed by the respondent police. The respondent police have filed a final report as against four accused persons and the court below has taken cognizance of the final report for an offence under Sections 471 and 420 of IPC, in so far as the petitioner is concerned.

3. The case of the prosecution is that one K.V.N.Sundara Reddiar was owning certain properties and during his life time he has executed a registered Will deed dated 05.11.1992 in favour of his two daughters. After the death of the said K.V.N.Sundaram Rettiar on 19.07.2002, his two daughters have become the owners of the property. One of the daughters had also executed a gift settlement deed in favour of her son. Thereby, Prabu and Selvarani became the absolute owners of the properties. It is the further case of the prosecution that A1 with an intention to grab the properties, fabricated and created false Will dated 28.12.2001, as if the above said K.V.N.Sundaram Rettiar had executed a Will in favour of A1. This Will has been attested by A3 and A4. The present petitioner, who has been added as A2, has been roped in this case on the ground that A1 has executed a registered gift settlement deed for one portion of the property in favour of A2. Incidentally, A2 is the son of A1. Therefore, this petitioner has also been added as an accused by the respondent police in the final report.

4. The learned counsel for the petitioner would submit that this petitioner has nothing to do with the alleged offence. The learned counsel for the petitioner brought to the notice of this Court, the allegations made in the final report as well as the statement of the de-facto complainant recorded under Section 161 (3) of Cr.P.C. According to the learned counsel for the petitioner, a reading of entire materials, does not make out any case against the petitioner. Learned counsel would further submit that it is not the case of the prosecution that there was a conspiracy between A1 and A2 for the purpose of creating the document. The learned counsel also brought to the notice of this Court, the cancellation of the settlement deed 17.03.2014 made by A1. Therefore, the learned counsel would submit that the proceedings insofar as this petitioner is concerned, is a clear abuse of process of Court and the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

5. The learned Government Advocate would submit that there are sufficient materials for the court below to frame charges against the petitioner and the issues raised by the petitioner have to be agitated only before the court below in the course of trial and there are absolutely no grounds to interfere with the proceedings at this stage.

6. This Court has carefully considered the submissions made on either side.

7. It is seen from the records that this petitioner has been arrayed as an accused only on the ground that A1 has executed a registered gift settlement deed with respect to one portion of

the property in favour of A2. The entire allegations in the final report as well as the statements given by the witnesses is against A1 for having created a forged Will and against A3 and A4, who have signed as attesting witnesses in the Will. This petitioner has been added as an accused only on the ground that the settlement deed dated 28.12.2001 bearing document No.323/2001, has been executed in his favour by A1. In order to substantiate the addition of this petitioner as accused, the prosecution ought to have come up with the case of conspiracy against the petitioner and only then, this petitioner can be roped in as an accused person. The prosecution has not even investigated this case on the angle of conspiracy. Therefore, the mere execution of the settlement deed by A1 with regard to a portion of the property in favour of A2, does not automatically make out an offence against A2. In this case, it is also pertinent to note that the settlement deed has subsequently been cancelled by A1 on 17.03.2014. This petitioner had no role to play either at the time of execution of settlement deed or at the time of the cancellation of settlement deed. Therefore, in the considered view of this Court, there are absolutely no materials to sustain the case of the prosecution, insofar as the petitioner is concerned.

8. The continuation of this proceedings against the petitioner will clearly amount to abuse of process of Court and therefore, the same require interference by this Court. In the result, proceedings in C.C.No.85 of 2018 on the file of the learned Judicial Magistrate No.2, Attur, is quashed insofar as the petitioner is concerned. The court below is directed to proceed further with the case insofar as A1, A3 and A4 are concerned and complete the case within a period of four months from the date of receipt of a copy of this order.

9. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dss

To

1. The Judicial Magistrate Court, No.2,
Attur.

2. The Inspector of Police,
District Crime Branch,
Salem District.
3. The Public Prosecutor,
Madras High Court, Madras.

+1 cc to M/s.N.Manokaran, Advocate Sr.No.78161

Crl.O.P.No.5468 of 2017

CNR(CO)
CSL/07.12.2018



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