IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

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

Crl.O.P. No.9202 of 2016

and Crl.M.P.No.7203 of 2016

R.Sivakumar ... Petitioner

vs.

1.The State rep by
Inspector of Police
District Crime Branch
Cuddalore & District.

2.V.Lawrance ... Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records relating to Crime No.2 of 2016 on the file of District Crime Branch, Cuddalore & District and to quash the same.

For petitioner: Mr.P.Wilson
Senior Counsel
for Mr.G.Sankaran

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

For R2: Mr.V.Karthik
Senior Counsel
for Mr.John Zachariah

O R D E R

This petition has been filed to call for the records relating to Crime No.2 of 2016 on the file of District Crime Branch, Cuddalore & District and to quash the same.

2. On the complaint lodged by Lawrence, the first respondent police have registered a case in Cr.No.2 of 2016 on 25.03.2016 under Sections 468, 471 and 420 IPC against Ramasamy and six others, for quashing which, A3 is before this Court.

3. Heard Mr.P.Wilson, learned Senior Counsel appearing for the accused, Mr.Karthik, learned Senior Counsel for the de facto complainant and Ms.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the State.

4. This case appears to have had a chequered history. The facts admitted by the de facto complainant and the accused are as under:

[a] The de facto complainant is the owner of a property measuring 1,05,172 sq.ft. in Nanbargal Nagar, Cuddalore District. He wanted to sell this property and therefore, he executed two Powers of Attorney, viz., Document No.887 of 2015 dated 29.04.2015 and Document No.1017 of 2015 dated 19.05.2015 in favour of A1, which were registered in the Office of the Sub-Registrar, Kadampuliyur. By virtue of the two Powers of Attorney, the de facto complainant empowered A1 to sell the properties and deal with the same accordingly. While executing the Powers of Attorney, the de facto complainant has received Rs.1,60,39,875/- from A1 and therefore, he has executed the Powers of Attorney allowing A1 to deal with the property including alienation of it.

[b] On the strength of the Powers of Attorney, A1 executed a sale deed on 30.09.2015 in favour of A2 to A6. However, A1 found that though the de facto complainant did not have title to one portion of the property, viz., plot no.3, he had received the sale consideration for that portion of the property also. Hence, A1 was demanding the de facto complainant to clear the title towards that portion of the property also on account of which, disputes arose between the parties. The de facto complainant wanted to repudiate the sale deed dated 30.09.2015.

[c] Under the Tamil Nadu Registration Rules, when a document is executed on the strength of a Power of Attorney, the Power Agent is required to produce a Life Certificate that, the principal is alive. It was contended by the de facto complainant that, A1 had obtained a fabricated Life Certificate from Dr.Muthukumar and on the strength of it, he had registered the document on 30.09.2015 and thus, A1 had committed a fraud. However, the sale deed that was submitted on 30.09.2015 was registered by the Sub-Registrar as Document No.2164 of 2015. Hence, the de facto complainant gave a complaint to the Sub Registrar alleging that, the Life Certificate that was submitted by A1 was a fabricated document and therefore, the sale deed should be cancelled.

[d] Since the Sub Registrar was not taking any action, the de facto complainant filed W.P.No.31520 of 2015 for a writ

of mandamus directing the Sub Registrar to conduct an enquiry in respect of the Life Certificate. Accordingly, by virtue of the order dated 06.10.2015 passed by this Court in W.P.No.31520 of 2015, the Sub Registrar conducted an enquiry and passed an order dated 02.12.2015 holding that, the Life Certificate was not a fabricated document and therefore, the sale deed dated 30.09.2015 cannot be cancelled. Aggrieved by the said order, the de facto complainant preferred an appeal before the Inspector General of Registration. Thereafter, he filed W.P.No.19839 of 2016 for a similar direction to the Inspector General of Registration. This Court issued directions on 13.06.2016 in W.P.No.19839 of 2016, pursuant to which, the Inspector General passed a detailed order on 11.11.2016 rejecting the contention of the de facto complainant and upholding the order passed by the Sub Registrar.

5. Learned Senior Counsel for the de facto complainant submitted that the said order has been challenged in writ proceedings and the same is pending. Not satisfied with that, the de facto complainant lodged a complaint before the District Crime Branch, Cuddalore making all these allegations and disputing the genuineness of the Life Certificate. An enquiry was conducted by the Inspector of Police, District Crime Branch on the said complaint given by the de facto complainant. The enquiry conducted by the Inspector of Police was supervised by the Deputy Superintendent of Police, District Crime Branch. Both during the enquiry by the Sub Registrar as well during the enquiry by the District Crime Branch, Dr.Muthukumar who issued the Life Certificate was examined and he had given a statement that on 24.09.2015, a person claiming to be Lawrence appeared before him and that he compared the photo that was affixed on the Life Certificate with the features of the person who appeared before him and after having been satisfied that they tallied, he had issued the Life Certificate. Therefore, the Inspector of Police, District Crime Branch and the Deputy Superintendent of Police, District Crime Branch, closed the investigation by a detailed report dated 29.12.2015. Not satisfied with that, the de facto complainant approached the Superintendent of Police alleging that he was not present on that date at Cuddalore and that he was in Chennai undergoing treatment in Dental College and therefore, the investigation conducted by the Inspector of Police and the Deputy Superintendent of Police require to be reviewed. On the strength of this representation and on the orders of the Superintendent of Police, a fresh FIR has been registered against A1 to A7 on 25.03.2016 in Cr.No.2 of 2016, which is under challenge in this quash application.

6. The issue before this Court is not the validity of the Powers of Attorney. In other words, it is not the case of the

de facto complainant that the Powers of Attorney were forged by the accused. The de facto complainant has accepted the fact that he has given the Powers of Attorney. If it is the case of the de facto complainant that the petitioner had misused the Powers of Attorney, the remedy for the de facto complainant is to file a suit for declaration to declare the Powers of Attorney as null and void and the consequent documents that have been executed by the Power Agent on the strength of such Powers of Attorney. In this case, the de facto complainant has not chosen to file any suit challenging either the Powers of Attorney or the document dated 30.09.2015 that has been registered on the strength of Powers of Attorney. He is beating around the bush by trying to attack the Life Certificate by contending that he had not appeared before the Doctor.

7. It is also not the case of the de facto complainant that A1 had fabricated the signature of the Doctor in the Life Certificate. It is his contention that his signature in the Life Certificate has been fabricated.

8. Mrs.Kritika, learned Government Advocate (Crl.Side) produced the investigation report, which shows that the Life Certificate was sent to the Handwriting Expert, who compared the signature of the de facto complainant therein with the admitted signatures obtained from him. Apart from that, the Handwriting Expert was requested to compare the handwriting in the Life Certificate relating to the name and address of the de facto complainant with that of the handwritings of the de facto complainant. The report of the Handwriting Expert shows that he was not able to arrive at a conclusive opinion with regard to the disputed signature of the de facto complainant in the Life Certificate. However, the Handwriting Expert has given the opinion that the handwriting showing the name and address of the de facto complainant in the Life Certificate is not the handwriting of the de facto complainant.

9. Mr.Karthik, learned Senior Counsel appearing for the de facto complainant placed strong reliance on the judgment of the Supreme Court in Babubhai vs. State of Gujarat and others [(2010) 12 SCC 254] and placed specific reliance on the following paragraphs:

> "41. The expression "ordinarily" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes "extraordinary" or "special circumstances". (Vide Kailash Chandra v. Union of India [AIR 1961 SC 1346] ; Eicher Tractors Ltd. v. Commr. of Customs [(2001) 1 SCC 315 : AIR 2001 SC 196] and State of A.P. v. V. Sarma Rao [(2007) 2 SCC 159 : (2007) 1

SCC (Cri) 535] .)

42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances.

43. In the instant case, admittedly, the High Court has given detailed reasons for coming to the conclusion that the investigation has been totally one-sided, biased and mala fide. One party has been favoured by the investigating agency. The natural corollary to this finding is that the other party has been harassed in an unwarranted manner. Thus, the cause of the other party has been prejudiced.

44. The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge-sheet. Such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured.

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

46. Thus, the order of the High Court requires modification to the extent that the charge-sheets in both the cases and any order consequent thereto stand quashed. In case any of the accused could not get bail because of the pendency of these

appeals before this Court, it shall be open to him to apply for bail or any other relief before the appropriate forum. In case such an application is filed, we request the appropriate court to decide the same expeditiously and in accordance with law.

47. It is further clarified that those persons who were arrested in connection with CR No. I-155 of 2008 would not stand arrested in connection with CR No. I-154 of 2008. However, if during the fresh investigation, any incriminating material against any person is discovered, the investigating authority may proceed in accordance with law. It shall be open to the accused to approach the appropriate forum for any interim relief as per law."

10. He also placed reliance on the judgment of the Supreme Court in Dharam Pal vs. State of Haryana and others [(2016) 4 SCC 160], wherein, it is held in para 25 as under:

"25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

This Court has no two opinions on the law laid down by the Supreme Court in the aforesaid judgments. But, the facts of the present are totally different.

11. It is seen that A3, who is the purchaser from A1, has filed the present quash application and this Court has granted interim stay of all further proceedings on 01.06.2016. While investigation was under stay, the police have proceeded with the investigation by sending the Life Certificate along with the admitted signatures and handwriting of the de facto complainant to the Handwriting Expert for opinion, through the Office of the Judicial Magistrate, Panruti.

12. Mr.Wilson, learned Senior Counsel took very serious exception to the act of the police in conducting the investigation when the Court has granted stay. However, this Court cannot attach any credence to this, because investigating materials so collected will not stand vitiated, just because the investigation has proceeded ignoring the orders of stay. For ignoring the orders of stay, the police can be pulled up for contempt, but the materials collected during such an investigation, if otherwise relevant, cannot be eschewed, because illegally collected evidence is admissible in India unlike in the United Kingdom.

13. In State of Haryana v. Bhajan Lal [AIR 1992 SC 604], the Supreme Court has clearly issued the guidelines as to circumstances under which an FIR can be quashed. In the opinion of this Court, the present case falls within the ambit of the said guidelines for the following reasons:

[a] the petitioner [A3] is the purchaser of the property

for valid consideration;

[b] the de facto complainant has not challenged the Powers of Attorney nor the sale deed that has been executed by A1 in favour of the petitioner/A3 on the strength of the Powers of Attorney.

[c] the Life Certificate is insisted only to show that the principal was alive when the Powers of Attorney were put to use.

14. In this case, the fact remains that the de facto complainant [principal] is very much alive even today. The Sub Registrar, the Inspector General of Registration and the District Crime Branch have all enquired into this matter and have given independent findings about the genuineness of the Life Certificate.

15. Dr.Muthukumar [A7] who issued the Life Certificate himself has stated that he had issued the same after verifying the features in the photo with that of the person who brought it. Had the Handwriting Expert opined that the alleged signature of the de facto complainant in the Life Certificate does not tally with his admitted signatures, then, one can suspect that the signature of the de facto complainant has been forged, whereas, the Handwriting Expert has opined that he has not been able to come to a definitive conclusion on this aspect.

16. The opinion of the Handwriting Expert is that the handwriting in the Life Certificate with regard to the name and address of the de facto complainant differs from the admitted handwritings of the de facto complainant. Many a time, the form will be filled by a person on behalf of the applicant. Therefore, this by itself cannot lead to the inference that the Life Certificate has been forged especially in the light of the categorical statement of Dr.Muthukumar that he had issued the Life Certificate.

17. Lastly, the purchaser [A3] did not submit the Life Certificate to the Sub Registrar, but it was submitted by A1 along with the Powers of Attorney.

In the result, this petition is allowed and the prosecution in Crime No.2 of 2016 on the file of District Crime Branch, Cuddalore is hereby quashed as against the petitioner/A3 Consequently, connected miscellaneous petition is closed.

WP.9202 OF 2016 & CRL MP.7203/2016 FOR BEING MENTIONED

This petition has been posted on 28.04.2018 under the caption “for being mentioned”in pursuance to the order of this court dated 10.04.2018 and made herein in the presence of the aforesaid Advocate, the court made the following order:

> “In the result, this petition is allowed and the prosecution in Crime No.2 of 2016 on the file of District Crime Branch, Cuddalore is hereby quashed as against the petitioner/A3 Consequently, connected miscellaneous petition is closed.”

Sd/-
Assistant Registrar(CS-viii)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
District Crime Branch
Cuddalore & District.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.FOXMENDAL ASSO, Advocate, S.R.No.26700
+1cc to Mr.G.SANKARAN, Advocate, S.R.No. 26614

Crl.O.P. No.9202 of 2016

SG(CO)
TR(10/05/2018)