IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2018

PRONOUNCED ON : 02.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition Nos.23695 & 23696 of 2017 and 8178 of 2018
and Crl.M.P.Nos.13718 to 13721, 15227 and 15228 of 2017

N.Sekar ... Petitioner in Crl.O.P.23695/2017
N.Krishnan ... Petitioner in Crl.O.P.23696/2017
Dr.S.Senthil Kumar ... Petitioner in Crl.O.P.8178/2018

Vs.

1.State rep by
Deputy Superintendent of Police
Organized Crime Unit
Crime Branch CID
Salem City. ... R1 in all the Cr.O.Ps.

2.S.Senthil Kumar ... R2 in Crl.O.Ps.23695 & 23696/2017

N.Sekar
N.Krishnan
K.S.Subramanian
P.Venugopal .. R2 to R5 in Crl.O.P.No.8178/2018

Crl.O.P.Nos.23695 & 23696 of 2017 filed under Section 482 Cr.P.C., to call for the records in C.C.No.16 of 2016 on the file of the Chief Judicial Magistrate Court, Namakkal and quash the same.

Crl.O.P.No.8178 of 2018 filed under Section 482 Cr.P.C., to direct the Chief Judicial Magistrate, Namakkal to expedite the trial in C.C.No.16 of 2016 on the file of the Chief Judicial Magistrate, Namakkal.

Crl.O.P. Nos.23695 & 23696/2017:

For Petitioners	:	Mr.S.Anantha Narayanan Senior Counsel for Mr.C.D.Johnson
For R1	:	Mrs.M.Prabhavathi Additional Public Prosecutor
For R2	:	Mr.N.Jothi for Mr.M.Saravana Kumar

Crl.O.P.No.8178/2018:

For Petitioner	:	Mr.N.Jothi for Mr.M.Saravana Kumar
For R1	:	Mrs.M.Prabhavathi Additional Public Prosecutor
For R2 to R5	:	Mr.S.Anantha Narayanan Senior Counsel for Mr.C.D.Johnson

COMMON ORDER

Crl.O.P.Nos.23695 & 23696 of 2017:

These petitions have been filed to call for the records in C.C.No.16 of 2016 on the file of the Chief Judicial Magistrate Court, Namakkal and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. The brief facts leading to the filing of the present petitions are as under:

[a] Subramaniam and Natarajan are brothers. Dr.Senthil Kumar (de facto complainant) and Babu are the sons of Subramaniam. Sekar [A1] and Krishnan [A2] are the sons of Natarajan. Dr.Senthil Kumar (de facto complainant) is working as

Assistant Professor in Government Veterinary College and Research Institute, Namakkal and his brother Babu is a Software Engineer in TCS. There was a partition suit in O.S.No.165 of 1989 for partitioning the ancestral properties of Subramaniam and Natarajan and pursuant to the decree dated 29.03.1993, the properties were partitioned, by virtue of which, Subramaniam was allotted certain properties (which can be referred to as properties "x" for brevity) vide Partition Deed Document No.694 of 1993 registered in the Office of the SRO, Namakkal. While Subramaniam and his two sons Dr.Senthil Kumar and Babu were enjoying the properties "x" which were allotted to them, they received summons from the Sub Court, Namakkal in O.S.No.65 of 2012 on 20.03.2012. After receipt of the summons, Dr.Senthil Kumar (de facto complainant) made enquiries through his Advocate and learnt that his cousins Sekar (A1) and Krishnan (A2) have filed the said suit praying for a specific performance decree on the basis of an unregistered agreement of sale dated 05.06.2011 purported to have been signed by Subramaniam, Dr.Senthil Kumar and Babu.

[b] It may be necessary to state here that both Sekar [A1] and his brother Krishnan [A2] are Advocates practising in Sub Court, Namakkal and that they are the plaintiffs in O.S.No.65 of 2012. They filed the suit against their paternal uncle Subramaniam and his two sons Dr.Senthil Kumar (de facto complainant), Babu and minor Sarvesh.

[c] As stated above, the suit is for specific performance based on a sale agreement dated 05.06.2011. It is contended in the plaint that the defendants therein (de facto complainant group) had entered into the said agreement on 05.06.2011 for a total sale consideration of Rs.6 lakhs agreeing to sell properties "x" and Rs.5 lakhs was paid as advance and the balance of Rs.1 lakh is payable, which, the plaintiffs are ready and willing to deposit to show their *bona fides.*

[d] According to the de facto complainant group, they had not entered into any sale agreement with the accused party and that the signatures of Subramaniam, Dr.Senthil Kumar and Babu in the sale agreement dated 05.06.2011 have been forged. The de facto complainant group filed their written statement in O.S.No.65 of 2012 and parallely Dr.Senthil Kumar (de facto complainant) lodged a police complaint dated 09.04.2012, based on which, the District Crime Branch, Namakkal registered a case in Cr.No.39 of 2012 on 01.10.2012 under Sections 120-B, 467, 471 and 420 IPC against Sekar [A1] and his brother Krishnan [A2]. Sekar [A1] and Krishnan [A2] filed Crl.O.P.Nos.23101 and 23538 of 2012 respectively seeking anticipatory bail under Section 438 Cr.P.C. and this Court, vide order dated 15.10.2012, granted them the relief of anticipatory bail, however, had directed them to produce the original sale agreement to the police by filing appropriate petition before the Civil Court. The accused did not comply with that part of the order and remained stoic.

[e] Since there was no progress in the investigation, Dr.Senthil Kumar filed Crl.O.P.No.19956 of 2015 for transfer of investigation. During the hearing of the transfer application, the Investigating Officer of the District Crime Branch (Anti Land Grabbing Cell) reported to this Court that he has closed the investigation on the ground that the impugned document is in the custody of the Civil Court and therefore, only the civil Court should file a prosecution in terms of Section 195 r/w 340 Cr.P.C.

[f] Since this reasoning for closing the investigation was found to be so palpably erroneous, especially in the light of the authoritative pronouncement of the Constitution Bench of the Supreme Court in **Iqbal Singh Marwah and another vs. Meenakshi Marwah [(2005) 4 SCC 370]**, this Court transferred the investigation to the CB-CID, vide order dated 13.08.2015. This Court issued further directions to the Sub Judge, Namakkal, on whose file O.S.No.65 of 2012 was pending, to hand over the original agreement dated 05.06.2011 to the police for investigation, after taking photocopies of the same and certifying them.

[g] The CB-CID took up the investigation of the case and re-registered the case as Cr.No.1 of 2015 on 11.09.2015. The CB-CID filed application under Section 311-A Cr.P.C. before the Chief Judicial Magistrate, Namakkal and on the directions of the Magistrate, the specimen signatures of Dr.Senthil Kumar (de facto complainant), his brother Babu, Sekar [A1] and Krishnan [A2] were obtained and were sent to the handwriting expert for opinion. The handwriting expert has opined that the

signatures of the vendors (de facto complainant group) in the impugned sale agreement do not tally with their admitted signatures, whereas, the signatures of the accused in the impugned sale agreement tallies with their admitted signatures.

[h] The CB-CID recorded the statement of several persons including the statement of one Saravanan and Pushpa of Dhandapani Xerox, where the impugned agreement was typed and prepared. After completing the investigation, the CB-CID have filed a charge sheet in C.C.No.16 of 2016 before the Chief Judicial Magistrate, Namakkal for the offences under Sections 120-B, 467, 471, 420 and 511 IPC against Sekar [A1] Krishnan [A2], Subramanaim [A3] and Venugopal [A4], for quashing which, Sekar [A1] and Krishnan [A2] are before this Court.

4. Heard Mr.Anantha Narayanan, learned Senior Counsel representing Mr.C.D.Johnson, learned counsel on record for the accused, Mrs.M.Prabhavathi, learned Additional Public Prosecutor for the first respondent-State and Mr.N.Jothi, learned counsel representing Mr. M. Saravana Kumar, learned counsel on record for Dr.Senthil Kumar (de facto complainant).

5. **ARGUMENTS OF MR.ANANTHA NARAYANAN:**

[a] The de facto complainant, in his complaint dated 09.04.2012, given to the police has enclosed a photocopy of the impugned agreement; that photocopy does not have the seal of the Sub Court, Namakkal, where, O.S.No.65 of 2012 is

pending. Therefore, the de facto complainant had voluntarily entered into the agreement dated 05.06.2011 and that is why, they have a copy of it with them.

[b] Apart from the report of the handwriting expert, there is absolutely no iota of evidence to implicate the accused. In support of this proposition, he placed strong reliance on the following judgments:

(1) Kannan and others vs. State rep. by the Inspector of Police, Central Crime Branch, Madurai City (unreported judgment dt. 11.04.2017)

(2) State rep by Inspector of Police, CBI, ACB, Chennai v. R.Ulagaraj (unreported judgment dt. 28.06.2017)

(3) Senior Manager (P&D), RIICO. Ltd. vs. The State of Rajasthan and Ors [(2018) 1 SCC (Cri) 271]

(4) M.Kothandam vs. State rep. by Inspector of Police, CCB, Egmore, Chennai [2010(2) MWN (Cr.) 423]

(5) S.Gopalreddy vs. State of Andhra Pradesh [(1996) 4 SCC 596]

(6) S.P.S.Rathore vs. C.B.I & another [(2017) 5 SCC 817]

[c] The suit in O.S.No.65 of 2012 is pending and therefore, the parallel prosecution is an abuse of process of law.

6. Refuting the contentions, Mr.N.Jothi, learned counsel made the following submissions:

[a] The accused filed I.A.No.207 of 2012 along with O.S.No.65 of 2012 for an order of interim injunction on 20.03.2012. The injunction application was heard by the Sub Judge, Namakkal on 22.03.2012 and notice was ordered. On the same

day, the de facto complainant received Court notice along with the plaint, injunction petition and accompanying documents. The impugned sale agreement was part of the documents which were served on the de facto complainant. Just because the Court seal was not affixed on that document, it cannot be inferred that the de facto complainant had entered into the agreement and was having a copy of it with them.

[b] Apart from the report of the handwriting expert, there are overwhelming materials that have been collected by the CB-CID to show that the accused had entered into a conspiracy to forge the signatures of the de facto complainant, his father and brother, for the purpose of creating the sale agreement. He took this Court through the Section 161 Cr.P.C. statements of Thangaraj, Muthukumar and Pushpa. Pushpa is the owner of Dhandapani Xerox (Also colloquially referred to as Pushpa shop), from where, the accused had purchased the stamp paper, on which, the impugned agreement was prepared. Apart from running a photocopy shop, Pushpa is also a licensed stamp vendor. In her statement, she has implicated the accused. Similarly, Thangaraj and Muthukumar have also implicated the accused in their statements.

[c] The pendency of the suit cannot be a reason to quash the prosecution in a case of this nature, because, in law, there is no bar for the conduct of parallel proceedings.

7. The learned Additional Public Prosecutor supported the stand taken by Mr.N.Jothi and took this Court through the Section 161 (3) Cr.P.C. statements of various witnesses to show the incriminating materials as against the accused herein.

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

9. Admittedly, Sekar [A1] and Krishnan [A2] are practising Advocates. They have filed the suit in O.S.No.65 of 2012 based on the impugned agreement dated 05.06.2011 for specific performance against the de facto complainant and others. After the suit was instituted, the de facto complainant's father Subramaniam died on 27.09.2012.

10. The Constitution Bench of the Supreme Court, in **Iqbal Singh Marwah** (supra), has clearly held that if a document is manufactured outside the Court and filed in the Court, the provisions of Sections 195 and 340 Cr.P.C. will not apply and it is always open to the police to proceed with the investigation and prosecute the offender. Accordingly, the CB-CID have sent the impugned agreement along with the admitted signatures of the accused and the de facto complainant group to the handwriting expert for opinion. The handwriting expert's opinion dated 17.02.2016 clearly states that the questioned signatures of Dr.Senthil Kumar (de facto complainant), Babu and Subramaniam in the impugned sale agreement differ from their admitted signatures. However, the signatures of the accused in the impugned agreement agree with their admitted signatures.

11. Now, it may be necessary to refer to the various judgments relied upon by Mr.Anantha Narayanan.

[a] In **Kannan** (supra), the plaintiff filed a suit based on a promissory note which was decreed. However, in the first appeal filed by the defendant, this Court set aside the judgment and decree of the trial Court and remanded the matter to the trial Court for getting expert opinion on the signature in the pronote. The expert opinion showed that the signature in the pronote differed from the admitted signature of the defendant therein. The defendant filed a criminal complaint, based on which, a case was registered in Cr.No.42 of 2014 and after investigation, the case was closed as "further action dropped". Challenging the said order, the defendant approached this Court to set aside the closure report. While dealing with that application, this Court has stated that the handwriting expert opinion is not conclusive, because, it is only an opinion evidence. However, in that case, this Court had given opportunity to the defendant to file a protest application before the jurisdictional Magistrate against the closure report and agitate the matter in accordance with law.

[b] In **Ulagaraj** (supra), the accused was acquitted by the trial Court after a full fledged trial and this Court considered the evidence and confirmed the acquittal. In this case, the accused is seeking to quash the prosecution at the threshold.

[c] In **Senior Manager (P&D)** (supra), the case was closed by the Chief Judicial Magistrate, Sessions Court and the High Court holding that there was no material to show that the accused therein had committed forgery. In this case, apart from the handwriting expert opinion, there are sufficient materials to show that the accused herein were involved in the offence in question.

[d] **Kothandam** (supra), **Gopal Reddy** (supra) and **Rathore** (supra) are all cases which arose after full fledged trials.

Therefore, any observation in those judgments cannot be applied to the facts of the case at hand, because, here we are dealing only with a quash application.

12. As contended by Mr.Anantha Narayanan, it is true that the handwriting expert's report is a opinion evidence, but it is a powerful opinion evidence to show that the signatures found in the impugned document are not those of the de facto complainant group. Though there is no direct evidence to show that who among the accused had actually forged the signatures, yet, that cannot be a reason for this Court to quash the proceedings, because, the accused are charged for conspiracy under Section 120-B to commit the said offences. It is beyond cavil that conspiracies are hatched in secrecy and seldom will there be direct evidence for the police to nail all the conspirators **[See Kehar Singh and others vs. State-Delhi Administration (AIR 1988 SC 1883)]**. That is why Section 10 of the Evidence Act has been so crafted that it makes certain evidence relevant to fix criminal

responsibility in conspiracy cases. To illustrate, evidence shows that four persons take "A" inside a hotel room. Thereafter, "A" is found dead in the room. Unless one of the four turns approver, there will not be direct evidence as to who among the four had murdered "A". Can that be a ground to quash the prosecution against all the four? The answer in an emphatic 'No'.

13. Mr.Jothi contended that the value of properties "x" runs to crores of rupees and in order to usurp them, the accused have created an agreement, under which, the total consideration is fixed at Rs.6 lakhs, of which, Rs.5 lakhs is said to have been paid by the accused to the de facto complainant by cash and only balance Rs.1 lakh remains to the paid. If this is borne in mind, then *a posteriori* deductions by application of common sense would indubitably lead to the inference that the accused had forged the signatures for usurping properties "x". Just because there is no approver in this case to depose as to who had actually forged the signature, one cannot permit the accused to go scot-free, because, when fundamental facts are established by the prosecution, the burden will shift to the accused under Section 106 Evidence Act for proving facts, especially within their knowledge.

14. The explanation offered by Mr.N.Jothi that the de facto complainant had received a copy of the impugned agreement along with the summons in the interlocutory application appears plausible and acceptable. Even assuming for a moment that the de facto complainant had obtained a copy of the impugned agreement illegally from the civil Court, that cannot be a reason to give a clean chit

to the accused, because, that, by itself, will not efface the crime of forgery that is alleged against the accused.

15. It is not the case of the accused that they had not at all filed O.S.No.65 of 2012 based on the agreement dated 05.06.2011. The pendency of the civil suit cannot be a reason to quash the present prosecution case. The fact in issue and standard of proof in both the proceedings are different. A finding of the civil Court will not be binding on the criminal Court and vice versa in the light of Sections 41 to 43 of the Evidence Act. Such a finding can only be an additional circumstance in appreciating the evidence on record and cannot be used as conclusive proof. For example, if, in the civil Court, it is established that the accused had forged the impugned agreement, that, by itself, cannot be a reason for the criminal Court to convict the acused. Separate evidence has to be adduced before the civil Court and before the criminal Court to establish the respective facts-in-issue. There may be some overlappings, but, that can, by no stretch of imagination, be a ground to quash the prosecution.

16. The police statements of Pushpa, Thangaraj and Muthukumar clearly implicate the accused in the offence and therefore, it cannot be stated that there are no materials apart from the report of the Handwriting Expert.

17. Further, this Court has observed a very disquieting fact situation in this case. Sekar [A1] and Nataraj [A2] are practising Advocates in Namakkal District,

where the prosecution against them is pending. Though the charge sheet was filed in the year 2016, they have not even collected the same under Section 207 Cr.P.C. from the trial Court. May be they feel embarrassed to appear before the Court where they are practising.

18. It has also come to the notice of this Court that during the investigation of the case in Cr.No.39 of 2012, Krishnan [A2] lodged a complaint to the Principal District Judge, Namakkal on 26.11.2012 stating that he saw Dr.Senthil Kumar, Selvaraj and Paramasivam taking photocopy of the records in Cr.No.39 of 2012 from the Court; that when he questioned them, they abused him and tried to mow him down in the Court complex with their car bearing Registration No.TN-28-AF-9191. The said complaint was forwarded by the Principal District Judge, Namakkal to Nallipalayam Police Station, based on which, a case in Cr.No.833 of 2012 was registered on 27.11.2012 under Sections 294(b), 506(ii) and 380 IPC and on the same day, Dr.Senthil Kumar was arrested and remanded to judicial custody. Since Dr.Senthil Kumar was working as Assistant Professor in Tamil Nadu Veterinary and Animal Sciences University, he was placed under suspension on account of his arrest. Challenging the FIR in Cr.No.833 of 2012, Dr.Senthil Kumar filed Crl.O.P.No.32149 of 2013, in which, this Court, after hearing all the parties, including Krishnan [de facto complainant] in Cr.No.833 of 2012, quashed the FIR by order dated 04.11.2016 holding that the FIR was master-minded by Krishnan, Advocate, the de facto complainant in Cr.No.833 of 2012 and accused in Cr.No.39 of 2012.

19. Not content with the registration of the case in Cr.No.39 of 2012, Krishnan's brother Sekar gave a complaint on 07.02.2014, based on which, a case in Cr.No.130 of 2014 was registered under Sections 294(b) and 506(i) IPC against Dr.Senthil Kumar and after completing the investigation, a charge sheet has been filed in C.C.No.317 of 2014 before the Judicial Magistrate No.I, Namakkal for the said offences. This Court, vide separate order in Crl.O.P.No.5722 of 2016, has directed transfer of C.C.No.317 of 2014 from the file of the Judicial Magistrate No.I Court, Namakkal to the file of the Chief Judicial Magistrate Court, Salem.

20. Hence, this Court is of the view that to ensure fair trial, this case also deserves to be shifted from Namakkal to the adjoining Salem District. Before that, the petitioners are directed to appear before the Chief Judicial Magistrate, Namakkal and receive copies of the charge sheet and other papers under Section 207 Cr.P.C. in C.C.No.16 of 2016. The learned Chief Judicial Magistrate, Namakkal is directed to comply with the provisions of Section 207 Cr.P.C. qua all the accused in C.C.No.16 of 2016 within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Chief Judicial Magistrate, Namakkal shall transmit the entire file in C.C.No.16 of 2016 along with the properties to the file of the Chief Judicial Magistrate Court, Salem District. The Chief Judicial Magistrate, Namakkal shall bind over all the accused in C.C.No.16 of 2016 with a direction to them to appear before the Chief Judicial Magistrate, Salem on a particular date. On that date, the accused shall appear before the Chief Judicial Magistrate, Salem. If the accused adopt any

dilatory tactics, it is open to the trial Court to remand them to custody in the light of the law laid down by the Supreme Court in **State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]**. If any of the accused absconds, a fresh FIR can be registered against him under Section 229-A IPC.

21. Accordingly **Crl.O.P.Nos.23695 and 23696 of 2017 are dismissed with the above directions.** The trial Court is directed to proceed with the trial, without in any manner being influenced by the observations made hereinabove. Consequently, connected miscellaneous petitions are closed.

Crl.O.P.No.8178 of 2018:

22. Since this Court has transferred C.C.No.16 of 2016 from the file of the Chief Judicial Magistrate Court, Namakkal to the file of the Chief Judicial Magistrate Court, Salem, a direction is issued to the Chief Judicial Magistrate, Salem to expeditiously complete the trial in C.C.No.16 of 2016 after receipt of the records from the Chief Judicial Magistrate, Namakkal.

Accordingly, Crl.O.P.No.8178 of 2018 is ordered.

02.11.2018

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To

1.The Deputy Superintendent of Police
Organized Crime Unit
Crime Branch CID
Salem City.

2.The Chief Judicial Magistrate Court,
Namakkal.

3.The Chief Judicial Magistrate,
Salem.

4. The Judicial Magistrate No.I,
Namakkal.

5.The Public Prosecutor
High Court, Madras.

P.N.PRAKASH, J.

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Pre-delivery order in

Crl.O.P.Nos.23695, 23696 of 2017
Crl.O.P.No.8178 of 2018

02.11.2018