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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.10767 of 2014

and

M.P. (MD) No.1 of 2014

Sakthivel

..Petitioner/A4

Vs.

1. State represented by
The Inspector of Police,
Woraiyur Police Station,
Trichy City.

2. A.M.Ashif

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in C.C.No.159 of 2014 on the file of the Judicial Magistrate No.IV, Trichy and quash the same.

For Petitioner	: Mr. E.K.Kumaresan
For Respondent	: Mr.K.Dinesh Babu, APP for R1 Mr.S.Ravi for R2

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.159 of 2014 on the file of the Judicial Magistrate No.IV, Trichy having taken cognizance for the offence under Section 120(b) of I.P.C. as against the petitioner/A4.

2.The learned counsel appearing for the petitioner would raise the following ground to quash the criminal proceedings as against the petitioner/A4:

The petitioner was working as Sub Registrar and while he was discharging his duty in his official capacity, the first respondent ought not to have registered the case as against the Sub Registrar and also ought not to have filed the charge sheet as against the petitioner herein. The first respondent also failed to obtain any sanction under Section 197 of Cr.P.C. before filing charge charge from the Inspector General of Registration. It vitiates the entire investigation as against the petitioner. The petitioner, due to objection, has already made the power of attorney deed as pending document filed by the first accused and only after getting clearance from the Tahsildar, Kuliithalai with regard to issuance of patta, the petitioner has



registered the said power of attorney and as such, he has no knowledge about the forged letter given by the Tahsildar and there is absolutely no conspiracy between the accused persons. Therefore, he prayed for quashment of the criminal proceedings as against the petitioner.

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3.The learned counsel for the second respondent/defacto complainant would submit that the first and second accused are brothers. Third accused is an independent person and the fourth accused/petitioner herein is Sub Registrar. The defacto complainant purchased the property comprised in S.No.457/3B, 457/4, 458/2, 458/3 admeasuring 5.40 cents land situated at R.T.Malai village, Kulithalai Taluk, Karur District from L.Ws.2 and 3 on 21.06.2012 and registered as document No.4630/12 in the office of Sub Registrar, Woraiyur. Further, he also obtained joint patta on 16.07.2012 as patta No.4046. While being so, the accused 1 and 2 and their mother partitioned the above said property as if the property belongs to their ancestors on 15.02.2007 and registered as document No.735 of 2007 and also obtained patta No.4632/2012 from the Tahsildar. Thereafter, the first and second accused executed the power of attorney deed in favour of A3 on 30.01.2013 and in connivance of A4/the petitioner herein registered as document No.2156 of 2013. While it was objected by the defacto complainant, it was kept as pending document. Therefore, even the petitioner knowingly very well that the letter given by the Tahsildar is a forged one, he registered the power of attorney deed. Therefore, all the accused conspired together and registered the power of attorney document. Therefore, the charge is made out as against the petitioner and hence, he prayed for dismissal of the quash petition.

4.The learned Additional Public Prosecutor appearing for the State would submit that the learned Judicial Magistrate No.IV has taken cognizance for the offence under Sections 419, 465, 471, 420 of I.P.C. read with 120(B) of I.P.C. against all the accused persons and the same is pending for trial. He further submits that as far as the petitioner is concerned he had knowledge about the bogus letter issued by the Tahsildar, Kulithalai and he registered the power of attorney document and he has been charged for the offence under Section 120(B) of I.P.C. alone and hence, he prayed for dismissal of the petition.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and also the learned counsel appearing for the second respondent.

6.Admittedly, the petitioner/A4 while he was working as Sub Registrar, Woraiyur a power of attorney document was presented for registration. On objection of the defacto complainant/second respondent, the said document was kept as pending document by the



petitioner herein. After receipt of the letter from the Tahsildar, Kulithalai, it was registered as document No.2156 of 2013. Therefore, the petitioner, when he was working as Sub Registrar, he discharged his duties in his official capacity.

7. Further, the first respondent did not obtain any sanction before filing the charge sheet as against the petitioner from the Inspector General of Registration under Section 197 of Cr.P.C. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **(2012) 6 Supreme Court Cases 228 - Army Head Quarters V. CBI**, wherein, the Hon'ble Supreme Court of India has held as follows:

"82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction."

8. In the case on hand, the petitioner was being the Sub Registrar of Woraiyur Registration Office has acted in good faith while performing his duty. In order to prevent the unnecessary harassment on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. Therefore, if the alleged act or omission of the public servants can be shown to have a reasonable connection, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction. Admittedly, the first respondent did not obtain any sanction to prosecute the petitioner herein.

9. The learned counsel appearing for the petitioner would further rely upon the judgment of this Court reported in **2018(1) TLNJ 177 (Criminal) - S. Annamalai Vs. State through By Superintendent of Police, Land Grabbing Preventive Cell, Virudhunagar District and another**, wherein, this Court has held as follows:



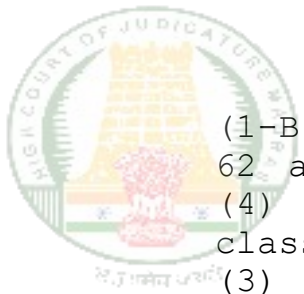
"9. So, the above said judgments show that the Sub-Registrar is having only duty to register the document until an objection is raised by some other party. In this case, at the time of registering the document, nobody was appeared before him and raised an objection. Furthermore, as of now, the disputed document registered at the time of alleged occurrence was cancelled on 27.02.2013. So, the entire facts clearly reveal that the petitioner herein is doing his duty only according to the norms fixed in Section 52 of the Registration Act, 1908, for which, laying the charge sheet against him without showing any evidence for conspiracy is nothing but erroneous. Therefore, this Court comes to the conclusion that the proceedings in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Virudhunagar, (subsequently, transferred to the Special Court constituted for Anti Land Grabbing Cases, Virudhunagar and renumbered as C.C.No.9 of 2013) pending against the petitioner, is liable to be quashed and accordingly, the same is quashed in respect of the petitioner/A6 alone.

10. The petitioner while serving as Sub Registrar at Woraiyur Sub Registrar's Office, when he performed his duty, he roped in a criminal case for performing his duty. On a perusal of Section 52 of Registration Act, 1908, it is found that the Registering Officer has not been mandated to verify the title and the ownership of the person, who alienates the property. He is just to bound to register the document, if the document is effected with the stamp duty levied on the document and the registration charges. It is relevant to extract Section 52 of the Registration Act, which read as follows:

"52. Duties of registering officers when document presented.- (1) (a) The day, hour and place of presentation, the photographs and fingerprints affixed under section 32-A and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of presenting it; and

(b) a receipt for such document shall be given by the Registering Officer to the person presenting the same;

(1-A) Subject to the provisions contained in section 62, where any document not being of the class specified in the rules made under sub-section (3) is admitted to registration, it shall, without any delay, be copied in the appropriate book according to the order of its admission.



(1-B) Subject to the provisions contained in section 62 and in the rules made under sub-sections (3) and (4) and under section 89-A, where any document of the class specified in the rules made under sub-section (3) is admitted to registration, a true copy thereof shall, without unnecessary delay, be filed in the appropriate book according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

(3) The State Government may, from time to time, specify by rules the classes of documents in respect of which true copies shall be filed in the appropriate book under sub-section (1-B).

(4) The true copy referred to in sub-section (1-B) shall be neatly handwritten, printed, typewritten, lithographed or otherwise prepared in accordance with such rules as may be made in this behalf.

(5) The provisions of this Act shall, in their application to the classes of documents specified in the rules made under sub-section (3), have effect subject to the modification set out in the Schedule."

11. Considering the said provision, the Registration authority cannot sit over the document presented for registration questioning the title and ownership of the persons, who execute the documents. The petitioners herein has simply discharged his official function in his capacity as Registering authority. Therefore, inclusion of the registering authority as one of the accused in this case is concerned is an abuse of process of law. It is also relevant to extract Rule 55 of the Registration Rules, which reads as follows:

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but, he is bound to consider objections raised on any of the grounds stated below.-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the person executing party is not really dead, as alleged by the party applying for registration; or



(e)that the executing party is a minor or an idiot or a lunatic."

12.A close reading of the said Rule would show that the registering authority is bound to consider the objection only on the ground stated in the said Rule. This rule does not provide enquiry by the registering officer with regard to the right and ownership of the property. Thus, the authorities concerned are bound to act only in accordance with the Act and Rules framed therein. Therefore, the petitioner cannot be implicated as an accused and it is nothing but malicious prosecution. Admittedly, there is no piece of evidence to rope the petitioner into this offence. There is no ingredients to attract the offence as against the petitioner. The entire criminal proceeding as against the petitioner is liable to be quashed.

13.In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in C.C.No.159 of 2014 on the file of the Judicial Magistrate No.IV, Trichy is quashed as against the petitioner/A4 alone. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate No.IV, Trichy.
2. The Inspector of Police,
Woraiyur Police Station,
Trichy City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.E.K.Kumaresan, Advocate Sr.No.86184

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VB/PM/SAR3/13.11.2018/6P/5C

order made in
Crl.O.P. (MD) .No.10767 of 2014 and
M.P. (MD) No.1 of 2014
19.09.2018