



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.161 of 2017
and
Crl.M.P(MD) No.1559 of 2017

1.A.Ramaiah
2.A.Kandaiah
3.A.Suresh

: Petitioners/Accused Nos.1 to 3

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.70 of 2009)

: Respondent/Complainant

2.V.Subbulakshmi

: Respondent/De facto
Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the order taking cognizance by the Special Court, for Land Grabbing Cases, Tirunelveli vide C.C.No.6 of 2017 through his order dated 10.02.2017 and set aside the same.

For Petitioner : Mr.R.Anand

For R-1

: Mr.Robinson,

Government Advocate (Crl.Side).

For R-2

:Ms.V.Jeyarani

ORDER

This criminal revision case is filed against the order dated 10.02.2017 taking cognizance of the final report in C.C.No.6 of 2017 on the file of the Special Court for Land Grabbing Cases, Tirunelveli.

2.Heard the learned counsel for the revision petitioner.
Records perused.

3.The sum and substance of the final report which is sought to set aside is that the several properties were purchased by the de-facto complainant, V.Subbulakshmi on 11.11.1983, 19.11.1983, 05.12.1983 and 16.06.1986. After the death of her father-in-law

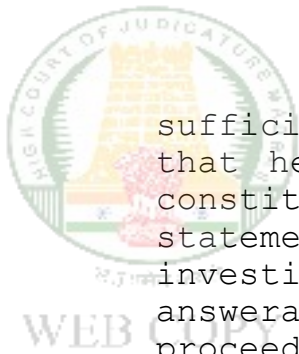


kandhadevar, the petitioners herein, who are her husband's brother's sons, with an intention to grab her property, have created a sale agreement by forging her signature and created record as if on 15.11.2007, she has agreed to sell the property mentioned above to the petitioners herein and received the sale consideration for the same. A suit for specific performance has been initiated by the first petitioner before the Sub Court, Tirunelveli in O.S.No.201 of 2008, in which the handwriting expert has given opinion that the signature found in the disputed document, namely, the sale agreement, differs from the admitted signature of the de facto complainant/ V.Subbulakshmi. Based on the handwriting expert opinion and the statements given by the witnesses, the first respondent had taken up the investigation and final report has been filed against these petitioners for offence under Sections 465, 468, 471 read with 34 and 109 IPC. The trial Court has taken cognizance of the report and proceeded with.

4. Aggrieved by the same, the present criminal revision case has been filed, on the ground that initially the suit for specific performance filed by the first petitioner was decreed by the trial Court and on appeal, the suit was remanded back and pending. The expert opinion, which is the fulcrum of the criminal prosecution, is not obtained by comparing the contemporaneous document admittedly executed by the de facto complainant with that of the disputed signature found in the sale agreement. While so, the Magistrate has taken cognizance without applying his mind. Hence, it has to be set aside.

5. In support of the said submission, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court reported in (2015) 12 SCC 420 (Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others), wherein the Hon'ble Supreme Court has observed that the precaution to be taken by the Magistrate while taking cognizance in the following words:-

"22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C followed by Section 204 Cr.P.C should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the Court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be



sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C, if any, the accused is answerable before the criminal Court, there is ground for proceeding against the accused under Section 204 Cr.P.C, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Section 190/204 Cr.P.C, the High Court under Section 482 Cr.P.C is bound to invoke its inherent power in order to prevent abuse of the power of the criminal Court. To be called to appear before the criminal Court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal Court shall not be made a weapon of harassment."

6.It is a well settled proposition of law that while taking cognizance, only the report of the police as well as the documents annexed along with that, has to be taken note of by the Magistrate and it is also now well settled that no document produced by the accused person can be taken note at the time of framing charges. However there are exceptions. When the defence could be able to establish that some vital facts or documents were not taken into consideration by the investigation agency and if such fact or document taken into consideration it will totally negative the contention of the prosecution and prove innocence of the respondent. In such circumstances, the material placed by the accused person can be taken note before framing charges.

7.The facts of this case indicate that the contention of the de facto complainant that her signature found in the sale agreement is forged, could be proved through comparing her admitted signature found in any contemporaneous signature executed by her with that of the disputed signature found in the sale agreement.

8.The learned counsel for the petitioner would submit that the admitted signature of the de facto complainant made recently has been given to the police, to compare her signature found in the sale deed executed in the year 2007. The documents of different period will not give the correct result and the opinion of the handwriting expert cannot be a conclusive opinion. Whereas, he is ready to place the documents which contains the signature of the de facto complainant executed during period in and around the year 2007.

9.For that purpose, it is also submitted by the learned counsel for the petitioner that he has already taken out an application in the Civil Court for sending the signature found in the disputed sale agreement and the signature executed by the de facto complainant in her vakalat filed in O.S.No.201 of 2008 on the file of the Sub Court, Tirunelveli and the same is pending. He also



submitted that the learned counsel for the petitioner that till the disposal of the interlocutory application, the criminal Court should not proceed further.

10. This Court is unable to countenance the said submission. If there is strong material by way of an expert opinion that the signature found in the disputed sale agreement is that of the de facto complainant, then, it will be a futile exercise to proceed against the petitioners herein and it will also cause severe hardship to them.

11. On the other hand, if the criminal prosecution is not allowed to proceed further till the disposal of the suit, the interest of the de facto complainant will also get affected and she cannot wait for justice till the civil suit gets finality. Therefore, to meet the ends justice, this Court is of the opinion that the inherent power of this Court under Section 482 has to be invoked. Accordingly, before proceeding further, the investigation officer is hereby directed to collect the vakalath of the de facto complainant filed in O.S.No.201 of 2008 on the file of the Sub Court, Tirunelveli, which contains the signature of the de facto complainant admitted by her. Further any other admitted document of the de facto complainant, which is available in her possession and executed contemporaneously to that of the disputed document, may also be collected for comparison. If the petitioners herein are in possession of any signature of the de facto complainant, the same has to be sent for comparison. The said signature can be first ascertained from the de facto complainant whether she admits it or not. If she admits it, those documents may also be collected and sent for comparison. The petitioners are given 15 days time to submit the documents, which petitioners want to send for comparison. The investigation Officer is given 90 days time to complete further investigation. After receiving the additional report based on the further investigation, the Magistrate shall proceed further.

12. This Criminal Revision case is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Special Judicial Magistrate,
The Special Court for
Land Grabbing Cases,
Tirunelveli.



2.The Inspector of Police,
District Crime Branch,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Ms.V.Jeyarani, Advocate in SR No.81949

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and
Cr1.M.P(MD) No.1559 of 2017

NM/PM/SAR I/02.11.18/5P/5C.