



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC (MD) No.330 of 2017

Alagu Lakshmi : Petitioner/Complainant

Vs.

Alagarsamy : Respondent/Respondent

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records Cr.M.P.No.8133 of 2016 on the file of the learned Judicial Magistrate No.II, Thoothukudi, Thoothukudi District and set aside the order dated 02.01.2017.

For Petitioner : Mr.A.Thiruvadi Kumar

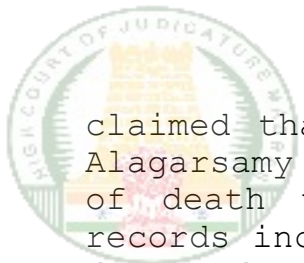
For Respondent : Mr.S.Raja Prabhu

ORDER

This Criminal Revision has been filed praying to set aside the order, dated 02.01.2017, passed in Cr.M.P.No.8133 of 2016, by the learned Judicial Magistrate No.II, Thoothukudi, Thoothukudi District.

2. This Criminal Revision is taken up for final hearing in the admission stage itself, with the consent of both sides.

3. The learned counsel appearing for the petitioner would submit that the petitioner is one of the daughters of the deceased Alagarsamy born through Athulayee Ammal, wife of the said Alagarsamy, who died intestate leaving one Alagarsamy, the petitioner herein and one Subbulakshmi, that is the sister of the petitioner. The petitioner filed a suit for partition in O.S.No.540 of 2004 before the Principal District Munsif Court, Tuticorin and preliminary decree was passed on 18.11.2009. In that suit, for the petitioner 1/3rd share and the remaining 2/3rd shares to the sister Subbulakshmi and their father Alagarsamy each 1/3rd share was allotted. In the meantime, the petitioner's father Alagarsamy died intestate on 08.02.2011, leaving behind the petitioner and her sister Subbulakshmi as legal heirs. The respondent is said to have



claimed that himself and one Murugan are the sons of the deceased Alagarsamy born through the 3rd wife viz., Subbuthayammal, whose date of death was not registered and created, fabricated and forged records including the name one Ayyappa Naicker, as the father of the deceased Alagarsamy. In the Death Certificate of the said Alagarsamy in which father name was kept blank, was submitted in support of his claim for the legal heirs certificate of the Alagarsamy and the said application was rejected by the Tahsildar also his application in I.A.No.185 of 2015 filed in final decree proceedings in O.S.No.540 of 2004, was dismissed on 22.10.2015 and the final decree was also passed in favour of the petitioner.

4. It is further stated that the respondent filed Cr.M.P.No.7239 of 2012, before the learned Judicial Magistrate No.II, Tuticorin giving false evidence and obtained an order dated 27.03.2013, directing to register the date of death of his mother Subbuthayammal, before the Registrar of Birth and Death, as 13.01.1974. Hence, the petitioner filed Cr.M.P.No.8133 of 2016 under Section 156(3) of Cr.P.C., to order Registration and Investigation of a case against the respondent and the said petition was dismissed by the learned Judicial Magistrate, Thoothukudi, stating that there is bar under Section 195 of Cr.P.,C., for taking cognizance of offences under Sections 193, 471 etc., of IPC., and the petition under Section 156(3) of Cr.P.C., is not maintainable. Aggrieved by the order of dismissal, the petitioner preferred the present Criminal Revision for the aforesaid relief.

5. The learned counsel for the petitioner in support of his contention relies the Judgment of the Hon'ble Apex Court in **Iqbal Singh Marwah & Anr vs Meenakshi Marwah & Anr** reported in **(2005 (4) SCC 370)** in which it is held that, if such offence is committed prior to its production or giving in evidence in Court, no complaint by the Court would be necessary and a private complaint would be maintainable.

6.The learned counsel appearing for the Revision Petitioner would contend that the bar under Section 195 of Cr.P.C., would not be applicable, in view of the averments made in the complaint and the said bar under Section 195 Cr.P.C., is applicable only when the documents, which are in the custody of the Court, are tampered with. It is the version of the complaint that the respondent had produced forged and fabricated documents and had presented the same in civil proceedings and in the present case, the Death Certificate and other revenue documents happened to be fabricated and the same were presented before the Court and as such, the respondent is liable for fabrication and forgery of documents punishable under Sections 467, 468 and 471 IPC., and hence, the impugned order is liable to be set aside.

7. Perused the materials on record. Heard and considered the rival submissions made by either side.



8. On a perusal of the impugned order, the learned Judicial Magistrate dismissed the petition filed by the petitioner under Section 156(3) of Cr.P.C., on two grounds, one there is a bar provided under Section 195 of Cr.P.C., for taking cognizance of the offence under Sections 193, 471 etc., of IPC., that a written complaint should be made by the Court concerned and secondly, the civil suits are pending regarding the legal heirship. At this juncture it is relevant to extract Section 195 of Cr.P.C., which reads as follows:-

"Section 195 of Cr.P.C., reads as follows:-

1. No Court shall take cognizance-

- (a) (i)
- (ii)
- (iii)

2.

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

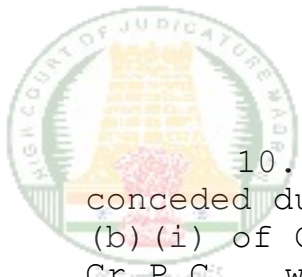
(iii)(except on the complaint in writing of that Court, or by such officer of the Court as that court may authorize in writing in this behalf or some other Court to which that Court is subordinate.

(2)

(3)

(4) "

9. The petitioner has complained that the respondent has given false evidence to pass an order dated in CrI.M.P.No7239 of 2012, on the file of the learned Judicial Magistrate No.II, Tuticorin, directing to register the date of death of her mother Subbuthayammal before the Registrar of Birth and Death, as 13.01.1974, since the respondent claims that her mother Subbuthayammal is the 3rd wife of Late. Alagarsamy. The petitioner further has complained that the respondent has fabricated and forged the death certificate of Alagarsamy mentioning / intruding 'Ayyappa Naicker', as father of the Late Alagarsamy, which is a Revenue / Government records and hence, the respondent committed the offence of forgery under Sections 568, 471 and 420 IPC.



10. The learned counsel appearing for the petitioner has conceded during his arguments that there is bar under Section 195(1)(b)(i) of Cr.P.C., in taking cognizance of offence under Section 193 Cr.P.C., without written complaint of the concerned Court. But there is no bar under Section 195(1)(b)(ii) of Cr.P.C., taking cognizance of offence of forgery and fabrication of documents by the respondent, since the alleged offence of forgery and fabrication of documents was committed prior to the Court proceedings. In otherwards, the bar would be attracted only when the offences enumerated in Section 195(1)(b)(ii) of Cr.P.C., have been committed with respect to the documents after it has been produced or given in evidence in any Court that is during the time, when the document was in *custodia legis*.

11. The learned Magistrate has not discussed in detail about the applicability of bar under Section 195(1)(b)(ii) of Cr.P.C., in respect of the offence of forgery and fabrication of documents that is the death certificate of Late Alagarsamy including the name Ayyappaicker as father of the said Alagarsamy. The respondent claims that the said Ayyappaicker is the father of the Late Alagarsamy before the revenue officials and there is a dispute between the parties as to the father's name of Late Alagarsamy. The claim of the respondent to implead herself and another as legal heirs of the deceased Alagarsamy in a partition suit filed by the petitioner, was also dismissed. No legal heir suit is pending before any Court. The death certificate of the deceased Alagarsamy containing the name Ayyappaicker as father of the deceased requires investigation in this case. Material records are produced by the petitioner to show that the other death certificate issued in respect of the deceased does not contain the name of the father of the deceased Alagarsamy. Hence, investigation is required in respect of the death certificate of the Late Alagarsamy, in the considered opinion of this Court.

12. In the result, this Criminal Revision is allowed by setting aside the impugned order of dismissal passed in Cr.M.P.No.8133 of 2016 on 02.01.2017 by the learned Judicial Magistrate No.II, Thoothukudi. Further, the learned Judicial Magistrate is directed to forward the complaint of the petitioner herein to the concerned Police for registration and investigation and also report in respect of the offence of forgery and falsification of the death certificate / revenue records.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate No.II,
Thoothukudi,
Thoothukudi District.

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

3. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.A.THIRUVADI KUMAR, ADVOCATE IN SR No. 43006

MPK

TE/KKR/SAR-2 : 15/02/2018 : 5P/6C

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