



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
17.01.2018	24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.R.C. (MD)No.728 of 2017

and

CrI.M.P. (MD) .Nos.8458 and 9578 of 2017

Anwardeen : Petitioner/Petitioner
Vs.
Paragathullah : Respondent/Respondent.

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code praying to call for records pertaining to Cr.M.P.No.4739 of 2017 in C.C.No.441 of 2007, on the file of the learned Judicial Magistrate No.II, Dindigul and set aside the order dated 16.08.2017 passed by the learned Judicial Magistrate No.II, Dindigul and allow the Criminal Revision Case.

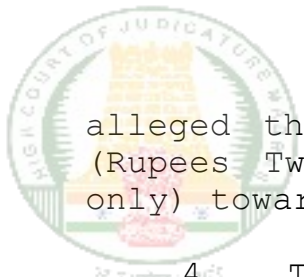
For Petitioner : Mr.S.A.Ajmal Khan
For Respondent : Mr.B.Mohammed Kalibullah

ORDER

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

2. Anwardeen (Accused) is the elder brother of Thoulathnisha. Paragathullah, the complainant herein, is the husband of Thoulathnisha. The other siblings of Anwardeen and Thoulathnisha are Sadiq Batcha (brother), Safar Ali (brother), Rajapunisha (sister) and Parakathnisha (sister). Their mother Jeenathnisha is also alive. Their father - S.M.Abdul Sukkoor had purchased a property measuring 1.10 acres in R.S.No.773/2B in Ooty and he died intestate on 18.12.1989. Thus, the said property will devolve upon his widow Jeenathnisha and children in accordance with the Muslim Law of Inheritance. While so, the mother, the brothers and sisters gave a Power of Attorney dated 08.11.1994 to Anwardeen empowering him to dispose of the said Ooty property and distribute the shares in accordance with the Shariat Law.

3. Paragathullah lodged a complaint on 21.07.2006, against his brother-in-law - Anwardeen. But, the police did not take any action. Therefore, he filed a private complaint in C.C.No.441 of 2007 against Anwardeen before the learned Judicial Magistrate No.II, Dindigul, alleging that his wife - Thoulathnisha is the absolute owner of the property measuring 24.75 cents in Survey No.773/2B and that she had given a Power of Attorney to Anwardeen; that Anwardeen <https://hservices.mous.gov.in/hservices/> Power of Attorney and sold the property to 18 persons and cheated his wife to the tune of Rs.65,93,000/- (Rupees Sixty Five Lakhs and Ninety Three Thousand only). He has also



alleged that Anwardeen had cheated another sum of Rs.25,54,300/- (Rupees Twenty Five Lakhs Fifty Four Thousand and Three Hundred only) towards the share from the business of late S.M.Abdul Sukkoor.

4. The trial Court dealt with the private complaint under chapter XIX-B of the Criminal Procedure Code.

5. On behalf of Paragathullah, he examined himself as P.W.1 and examined one Ganesan as P.W.2. He closed his evidence at the pre-charge stage. At that juncture, Anwardeen filed Cr.M.P.No.4739 of 2017 in C.C.No.441 of 2007 for discharge under Section 245 Cr.P.C., which has been dismissed by the trial Court, by order dated 16.08.2017 on two grounds that (a) there are prima facie materials against Anwardeen (b) the High Court had dismissed the quash petition filed by Anwardeen in CrI.O.P.(MD)No.2275 of 2009 dated 25.01.2017. Challenging the order of dismissal, Anwardeen has filed the present Criminal Revision Case.

6. Heard the learned counsel for Anwardeen and the learned counsel for Paragathullah.

7. The learned counsel for Paragathullah submitted that Anwardeen had suppressed the filing of quash petition in the Criminal Revision Case and on the ground itself, this Criminal Revision Case should be dismissed.

8. On a perusal of the records, it is seen that even in the order passed by the trial Court in Cr.M.P.4739 of 2017, there is a clear reference to the dismissal of the quash application by this Court. Therefore, it cannot be stated that Anwardeen has suppressed this fact. On a careful perusal of the evidence of Paragathullah and Ganesan, it is seen that there is no material to show that Paragathullah's wife Thoulathnisha is the owner of 24.75 cents of land in Survey No.773B, because, EX-P3, that has been filed by Paragathullah in the trial Court, which is the Power of Attorney dated 08.11.1994, clearly shows that the entire property belongs to all the legal heirs of late S.M.Abdul Sukkoor. All the legal heirs, including Thoulathnisha, have given Power of Attorney to Anwardeen to deal with the property. This is evident from the document, namely Ex.P.3, filed by Paragathullah himself. Hence, there is a fallacy in the very foundation of the prosecution case laid by Paragathullah against Anwardeen.

9. In such view of the matter, a criminal colour is given to a purely civil transactions between the parties. That apart, Thoulathnisha has not even got into the witness box, whereas, the complaint is being filed on behalf of Thoulathnisha by her husband Paragathullah. Thus, in the opinion of this Court, there are no prima facie materials for the purpose of framing charges against Anwardeen. It is true that this Court has dismissed the quash application that was filed by Anwardeen in CrI.O.P.(MD)No.2275 of 2009 on 25.01.2017. In the quash application, Anwardeen had



challenged only the complaint perse. Therefore, this Court read the complaint and held that it is too premature for quashing same. During the pendency of the quash application, Paragathullah has got into the witness box as required under Section 244 Cr.P.C. and has given evidence. This Court perused the evidence of Paragathullah and Ganesan, PW-2 and this Court is of the view that there are no materials to frame charge against Anwardeen.

10. The learned counsel for Paragathullah filed additional typed set of papers and submitted that as per the family arrangement, dated 09.04.1993, the property should be shared in the proportion of 1:1:2 between Parakathisha - one share, Thoulathnisha - one share and Anwardeen - two shares. Unfortunately, the family arrangement dated 09.04.1993 has been given a go by in the power of attorney, that was registered on 08.11.1994 [EX-P3], in which it is stated that the said Ooty property would devolve on all the legal heirs, according to the law of Shariat. Admittedly, Paragathullah has also filed Civil Suit in O.S.No.60 of 2010 and sought declaration to declare the sales effected by Anwardeen as void.

11. On a conspectus of the facts obtaining in this case, it is clear that Paragathullah is fighting a legal battle for and on behalf of his wife - Thoulathnisha, after all the family members had executed a power of attorney in the year 1994, in favour of Anwardeen authorizing him to sell the ooty property and share proceeds in accordance with Shariat.

12. In such view of the matter, this Court is of the view that there are no prima facie materials for framing a charge of cheating against Anwardeen.

13. In the result, the order dated 16.08.2017 made in Cr.M.P.No.4739 of 2017 in C.C.No.441 of 2007, on the file of the learned Judicial Magistrate No.II, Dindigul, is set aside; Anwardeen is discharged and the Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II, Dindigul.

+1CC to Mr.S.A.Ajmal Khan, Advocate, SR.No. 44256

+1CC to Mr.L.Prabhu, Advocate, SR.No. 44187

ORDER MADE IN

Cr1.R.C.(MD)No.728 of 2017

Dated:-

24.01.2018

NB