



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)Nos.789 of 2017 and 32 of 2018
andCrl.M.P.(MD)Nos.9495 and 9496 of 2017
in

CRL RC(MD)No.789 of 2017

Ondimuthu : Petitioner in both Crl.R.Cs./
Petitioner/Accused No.3

Vs.

State Rep. by
The Inspector of Police,
City Crime Branch,
Tiruchirappalli,
Tiruchirappalli District.
(Crime No.23 of 2013).: Respondent in both Crl.R.Cs./
Respondent/Complainant.

PRAYER in Crl.R.C.(MD)No.789 of 2017: Criminal Revision Case is filed under Section 397(1) r/w 401 of the Criminal Procedure Code praying to call for the records and set aside the order dated 31.08.2017 passed in Cr.M.P.No.1978 of 2017 in C.C.No.200 of 2016 on the file of the learned Judicial Magistrate No.I, Tiruchirappalli, Tiruchirappalli District.

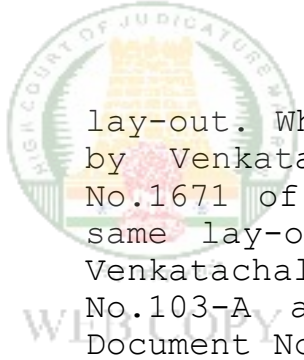
PRAYER in Crl.R.C.(MD)No.32 of 2018: Criminal Revision Case is filed under Section 397(1) r/w 401 of the Criminal Procedure Code praying to call for the records and set aside the charges dated 15.12.2017 framed in C.C.No.200 of 2016 on the file of the learned Judicial Magistrate No.I, Tiruchirappalli, Tiruchirappalli District as against the petitioner herein.

For Petitioner : Mr.A.Thiruvadi Kumar
in both petitions
For Respondent : Mr.C.Mayil Vahana Rajendran,
in both petitions Additional Public Prosecutor

COMMON ORDER

The factual matrix of the case is as under:

The plot bearing No.103-A originally belonged to one Venkatachalam (A-1). Venkatachalam (A-1) promoted a lay-out and through his agent-Ondimuthu (A-3) sold several plots in the said



lay-out. While so, plot No.103-A measuring 750 Square Feet was sold by Venkatachalam(A-1) to Karmegam (A-2) on 05.10.1987 vide Document No.1671 of 1987. Karmegam (A-2) wanted to buy another plot in the same lay-out and, therefore, he approached Venkatachalam (A-1). Venkatachalam (A-1) cleverly gave a different description to plot No.103-A and sold the same once again to Karmegam (A-2) vide Document No.1166 of 1988, dated 11.07.1988. After sometime, Karmegam (A-2) realized that Venkatachalam (A-1) had sold the same plot No.103-A twice to him. But, however, Karmegam (A-2) did not take any action against Venkatachalam (A-1). While so, Karmegam (A-2) sold the plot No.103-A to Faritha Begum (L.W.4) vide Document No.2870 of 2007, dated 17.09.2007, in which, Ondimuthu (A-3) had signed as witness. Therefore, there are sufficient materials to infer that Ondimuthu (A-3) knew that Karmegam (A-2) has sold Plot No.103-A to Faritha Begum (L.W.4). While so, Sarfudeen (defacto complainant), who suffers from partial deafness, wanted to buy a plot and he was introduced to Karmegam (A-2) by one Subramaniam. Karmegam (A-2) sold the same plot that was sold to Faritha Begum (L.W.4) once again to Sarfudeen (defacto complainant) vide Document No.446 of 2009, dated 20.02.2009. In that transaction, Ondimuthu (A-3) had actively assisted Karmegam (A-2). On the complaint of Sarfudeen, the police registered a case in Crime No.23 of 2013 against Venkatachalam (A-1) and Karmegam (A-2) and after completing the investigation, filed a final report against Venkatachalam (A-1), Karmegam (A-2) and Ondimuthu (A-3) in C.C.No.200 of 2016 before the learned Judicial Magistrate No.I, Tiruchirappalli. Ondimuthu(A-3) filed a petition in Cr.M.P.No.1978 of 2017 under Section 239 of the Code of Criminal Procedure before the learned Judicial Magistrate No.I, Tiruchirappalli for discharge, which was dismissed by the Trial Court on 31.08.2017, challenging which, Ondimuthu (A-3) has filed CrI.R.C.(MD)No.789 of 2017. Since this Court did not grant stay in CrI.R.C.(MD)No.789 of 2017, the Trial Court proceeded to frame charges against all the accused on 15.12.2017. Therefore, Ondimuthu (A-3) has filed the present Criminal Revision Case in CrI.R.C.(MD) No.32 of 2018 for quashing the charges. Hence, both the revisions were taken up for hearing.

2. Heard Mr.A.Thiruvadi Kumar, learned counsel for the petitioner and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the respondent.

3. Mr.A.Thiruvadi Kumar, learned counsel for the petitioner submitted that there are no materials to frame charge for the offence under Section 468 of the Indian Penal Code as against Ondimuthu (A-3), because Ondimuthu (A-3) had not signed as a witness in document No.446 of 2009, but, whereas, he had stood as witness only in respect of Document No.2870 of 2007, which was sold to Faritha Begum (L.W.4).

4. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor placed strong reliance on the judgment of the Supreme Court in State of Rajasthan vs. Fatehkaran Mehdu [2017(3) SCC 198].



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

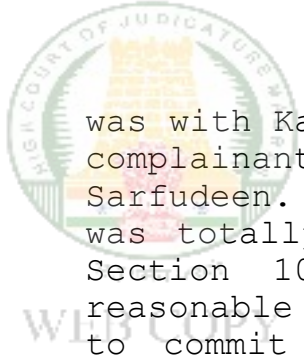
6. At the first blush, there appeared to be sufficient force in the submission of Mr.A.Thiruvadi Kumar, learned counsel for the petitioner, inasmuch as, even according to the case of the prosecution, Ondimuthu (A-3) had signed as a witness only in Document No.2870 of 2007 that was sold to Faritha Begum (L.W.4) and not in Document No.446 of 2009 that was sold to Sarfudeen (defacto complainant). However, on a reading of the complaint given by Sarfudeen and 161(3) Cr.P.C., statement of Sarfudeen, it is seen that he had paid Rs.35,000/- as sale consideration to Karmegam (A-2) and obtained the photocopies of the documents from Karmegam (A-2) through Ondimuthu (A-3) and applied for Encumbrance Certificate and found that there were no encumbrance in the property. It may be relevant to state that the Encumbrance Certificate would have been misleading, because both Venkatachalam (A-1) and Karmegam (A-2) had given two different descriptions for the same property. In such view of the matter, it cannot be stated that there are absolutely no materials as against Ondimuthu (A-3) in the offence.

7. Mr.A.Thiruvadi Kumar, learned counsel for the petitioner submitted that for the purpose of framing a charge, there should be substantive material, which is lacking in the instant case.

8. The following paragraph in the judgment cited by Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor may be relevant:

"26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

9. From a conspectus of the facts obtaining in this case, it is alleged that Ondimuthu (A-3) was the agent of Venkatachalam (A-1) and the said plot was sold twice to Karmegam (A-2). Thereafter, Karmegam (A-2) sold the plot to Faritha Begum (L.W.4), in which, Ondimuthu (A-3) had signed as a witness. However, Ondimuthu (A-3)



was with Karmegam (A-2) when the sale was made to Sarfudeen (defacto complainant), as could be seen from 161(3) Cr.P.C., statement of Sarfudeen. Therefore, Ondimuthu (A-3) cannot be heard to say that he was totally unaware of the sale to Faritha Begum (L.W.4). Under Section 10 of the Indian Evidence Act, 1872, when there is reasonable ground to believe that two or more persons have conspired to commit an offence, then, anything said and done by one is relevant as against the other. In this case, there are sufficient materials for the Court to believe that Venkatachalam (A-1), Karmegam (A-2) and Ondimuthu (A-3) had acted in conspiracy to give different descriptions for the same plot and to sell the same to two different persons. In such view of the circumstances, the secondly clause in Section 107 IPC may attract in the facts and circumstances of the case, and therefore, a charge for conspiracy and abetment can be framed against Ondimuthu (A-3). In such view of the matter, this Court does not find any serious infirmity in the charges framed by the Trial Court warranting interference.

10. It is made clear that whatever stated above is only for the purpose of deciding the present Criminal Revision Cases and the Trial Court shall proceed with the trial uninfluenced by what is stated herein.

11. It is also made clear that a substantive charge under Section 468 IPC cannot be framed against Ondimuthu (A-3). But, however, a charge of abetment under Section 109 r/w Sections 420 and 468 IPC can be framed against him.

12. The Criminal Revision Cases are dismissed with the above observation. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I,Tiruchirappalli,
Tiruchirappalli District.
- 2.The Inspector of Police, City Crime Branch,
Tiruchirappalli, Tiruchirappalli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.A.Thiruvadi Kumar, Advocate, SR.No. 42689

Common Order made in
Crl.R.C. (MD) Nos.789 of 2017 and 32 of 2018

Dated:-

18.01.2018