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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.07.2018

DELIVERED ON : 09.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1898 of 2017

J.Mullai

.. Petitioner

vs

A.Panneerselvam

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 01.9.2017 passed in I.A.No.8 of 2017 in O.S.No.11 of 2017 on the file of the learned Additional Sessions Judge/Fast Track Mahila Court, Karur.

For Petitioner : Mr.V.R.Shanmuganathan

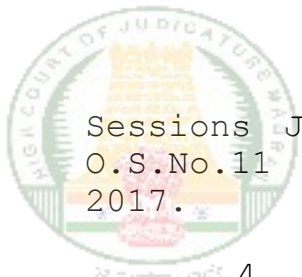
For Respondent : Mr.Veera Kathiravan
Senior Counsel
for Mr.A.Srinivasan

ORDER

Challenging the order dated 01.09.2017 of the learned Additional Sessions Judge/Fast Track Mahila Court, Karur made in I.A.No.8 of 2017 in O.S.No.11 of 2017, allowing the petition, the petitioner has filed this revision.

2. The petitioner, is the then Executive Officer of the plaintiff temple and the respondent is the 1st defendant in the suit. The plaintiff temple, represented by its Executive Officer filed the suit being O.S.No.55 of 2011 originally before the learned Sessions Court, Karur against the 1st defendant and 26 others for declaration declaring that the plaintiff idol was the absolute owner of the suit property and consequently for recovery of possession after removing the superstructure, if any, over the suit property, failing which to do the same through the process of court. The plaintiff has also sought for mesne profits regarding the suit property.

3. Pending suit, the 1st defendant has filed I.A.No.168 of 2015 under Section 151 CPC seeking to initiate proceedings under Section 340 Cr.P.C. and lodge complaint punishable under Sections 193 and 199 IPC against the respondent before the appropriate forum. Later, the suit was made over to the file of the learned Additional



Sessions Judge/Fast Track Mahila Court, Karur and re-numbered as O.S.No.11 of 2017 and the interlocutory petition as I.A.No.8 of 2017.

4. In I.A.No.8 of 2017, the 1st defendant alleged that the respondent was the Executive Officer in charge of the plaintiff temple and she had declared the correctness of the statements made in the suit. In paragraph 5 of the plaint, it was stated and declared by the respondent that the Government of Tamil Nadu under Inams Abolition Act 30 of 1963 issued patta in favour of the defendants in respect of the suit property without due enquiry with the plaintiff. Further, it was also stated that the defendants with the above assistance of the then Village Munsif and Karnam have managed to obtain patta in their names by misrepresenting the facts before the Settlement Tahsildar. Further, in paragraphs 9 and 13, it was alleged that after getting the report dated 30.11.1998 submitted by the DRO, the plaintiff came to know about the encroachments over the temple lands by the defendants. It was alleged that without disclosing anything about the Property Register maintained under Section 29 of the HR & CE Act, the suit has been filed by the respondent. According to the 1st defendant the issuance of patta was well within the knowledge of the Executive Officer, whereas the respondent who had signed the declaration has made false statements before the Court with ulterior motives. Since the action of the respondent was contrary to the guidelines issued by this Court, the 1st defendant has filed the petition seeking to initiate proceedings under Section 340 of the Cr.P.C. and to lodge a complaint punishable under Sections 193 and 199 IPC.

5. Resisting the petition, the respondent filed counter stating that no false averments have been wantonly included in the plaint and the plaint averments were prepared on the basis of the available information with the temple. Further more, the respondent was not having any personal interest in the suit but she filed the suit in the capacity of Executive Officer of the plaintiff temple. It is stated that with an ill-motive and ill-design of the 1st defendant, a criminal case was registered against the respondent and the said case was contesting by the respondent. It is stated in the counter that the grant of patta for the suit property to the defendants came to the knowledge of the respondent as the Executive Officer of the plaintiff temple only on receipt of a report from the DRO dated 30.11.1998. These averments have been made bona fide on the basis of the records and reports available with the temple. These facts can be established only during the trial. It is also stated that the claim of the 1st defendant that the statement made in the plaint signed by the respondent was contrary to a statement made in an earlier suit signed by the previous Executive Officer in O.S.No.36 of 1993 on the file of the learned Sub-Court, Karur was misconceived and cannot be construed as if a false statement has been made by the respondent. According to the respondent, there was no bona fide in the petition and the respondent has acted bona fide in the interest of the plaintiff temple. There was absolutely no



basis for initiating any criminal action against the respondent either under Section 340 Cr.P.C. or under any provisions of IPC.

6. Upon consideration of the rival submissions, the trial Court allowed the petition and directed the Sheristadar of Fast Track Mahila Court, Karur to lodge a complaint before the competent Magistrate. Challenging the order of the trial Court, the plaintiff has filed the present revision.

7. I heard Mr.V.R.Shanmuganathan, learned counsel for the petitioner and Mr.Veera Kathiravan, learned Senior Counsel for Mr.A.Srinivasan, appearing for the respondent and also perused the materials available on records.

8. The learned counsel for the petitioner/plaintiff submitted that the trial Court ought to have seen that the alleged perjury was that in the earlier suit in O.S.No.39 of 1993, the then Executive Officer of the temple had stated after an elaborate enquiry, the authorised officer under the Act 30 of 1963, granted patta in favour of the temple, but the present Executive Officer of the temple i.e, the revision petitioner had stated in the present suit that the Settlement Tahsildar, without due enquiry granted patta to the defendants for the lands belonging to the plaintiff temple and therefore, it was false statement on oath. Further, the list of properties of the temple as found in the Register under Section 29 of HR & CE Act do not contain the lands in dispute and therefore, the claim of the 1st defendant in the present suit that the land in dispute belong to the temple was false and thus, the respondent committed perjury. According to the learned counsel, the trial Court ought to have seen that the respondent has filed the suit only as a representative of the temple and she had no personal interest in the suit property.

9. The learned counsel further submitted that the trial Court ought to have seen that bare reading of Ex.P3 explicate that there was no sufficient opportunity and due enquiry with the plaintiff temple. At any rate, it was a factual aspect which requires evidence and therefore, the petition filed by the 1st defendant was premature. He would submit that in order to prosecute a person for perjury there must be mala fide intention and oblique motive. In the case on hand, nothing has been produced by the 1st defendant to show any mala fide intention and oblique motive. Thus, the trial Court erred in allowing I.A.No.8 of 2017 even after rejecting the plaint and prayed for setting aside the order of the trial Court. In support, the learned counsel relied upon the decisions in the case of Ashok Kumar Aggarwal v. UoI and others, reported in AIR 2014 SC 1020; Mohammad Ibrahim v. B.Rama Rao, reported in AIR 1976 SC 1822 and Dr.S.P.Kohli, Civil Surgeon, Ferozepur v. High Court of Punjab and Haryana, reported in AIR 1978 SC 1753.

10. reiterating the findings of the trial Court, the learned Senior Counsel for the respondent/1st defendant submitted that



contrary to the statements made in the earlier suit, the respondent has made false statements in the present suit with ulterior motives and that the action of the respondent was also contrary to the directions issued by this Court in a contempt proceedings reported in 2004 (5) CTC 612. The learned Senior Counsel would submit that upon hearing the parties, the trial Court has passed a well considered order and the same warrants no interference and prayed for dismissal of the revision. In support, the learned Senior Counsel relied upon the following decisions:

- (i) Crl.Misc.No.1860 of 2000, dated 15.09.2011 (Ashok Kumar v. Sharda Kadan and others) on the file of Punjab and Haryana High Court.
- (ii) Crl.O.P.No.6358 of 2010, dated 05.10.2017 (T.Dhinakaran (minor) and another v. V.Ranganathan and others) on the file of the Madras High Court.
- (iii) Crl.M.P.No.14262 of 2017 in Crl.O.P.No.5078 of 2010, dated 22.12.2017 (Krishna Kumar Sood v. Srinath Rajam) on the file of the Madras High Court.
- (iv) Re:Suo motu proceedings v. Unknown, reported in AIR 2001 SC 2204.

11. The point that arises for consideration is whether the trial Court was right in allowing I.A.No.8 of 2017 and was right in directing the Sheristadar of that Court to lodge a complaint against the respondent.

12. On a perusal of the typed set of papers, this Court finds that the plaintiff temple, represented by its Executive Officer filed the suit against the respondent/1st defendant and others for declaration and recovery of possession and also mesne profits. Pending suit, the 1st defendant took out applications to reject the plaint and also seeking to initiate proceedings under Section 340 Cr.P.C. and to lodge a complaint under Section 193 and 199 IPC against the respondent/ Executive Officer of the plaintiff temple. By an order dated 11.8.2017 in I.A.No.9 of 2017, the trial Court struck off the suit O.S.No.11 of 2017. After striking off the suit, by an order dated 01.9.2017, the trial Court allowed I.A.No.8 of 2017, thereby directed the Sheristadar of that Court to lodge a complaint before the competent Magistrate.

13. It is to be noted that I.A.No.9 of 2017 seeking to strike off the suit was heard by the trial Court on 8.8.2017 and I.A.No.8 of 2017 seeking to initiate criminal proceedings was heard by the trial Court on 07.8.2017. It is to be noted that after striking off the suit, the trial Court has passed an order directing the Sheristadar to lodge a complaint against the respondent in I.A.No.8 of 2017.

14. According to the respondent, the petitioner, who was the then Executive Officer of the plaintiff temple has given false statements in paragraph 5 of the plaint in O.S.No.11 of 2017 that the Government of Tamil Nadu under Inams Abolition Act issued patta



in favour of the defendants qua the suit property without due enquiry. Further, in paragraph 9 and 13, it was alleged that after getting the report from the DRO, the plaintiff temple came to know about the encroachments over the temple lands by the defendants. This according to the respondent, was contrary to the statement made in the earlier suit being O.S.No.36 of 1993. Therefore, the signatory of the plaint i.e., the then Executive Officer of the plaintiff temple has filed the suit with false statements and thus, criminal proceedings should have been initiated against the then Executive Officer (the petitioner herein).

15. On the other hand, it is the say of the petitioner herein that she has no personal interest in the suit property and the plaint averments were prepared on the basis of the available information with the temple. According to the petitioner, she filed the suit in her capacity as the Executive Officer of the plaintiff temple and as per the provisions of HR & CE Act, the Executive Officer was duty bound to protect the interest of the temple and its properties and to take appropriate action as per the directions of the higher authorities.

16. It appears from the order of the trial Court in I.A.No.9 of 2017 that the trial Court struck off the suit being O.S.No.11 of 2017 mainly on the ground that the Executive Officer has not obtained prior permission from the Commissioner of HR & CE to file the suit.

17. The trial Court allowed I.A.No.9 of 2017 on the ground that the statement given in the plaint after verification more particularly with regard to the enquiry of the Settlement Tahsildar was false one and which leads to perjury. Even after the matter was brought to the knowledge of the petitioner herein, she has not taken any step to rectify the same. Therefore, the act of the petitioner was an intentional one.

18. Nothing has been produced by the respondent herein to show that false averments has been wantonly stated by the petitioner herein in the plaint. The petitioner herein has filed the suit in her capacity as the Executive Officer of the plaintiff temple and has not having any personal interest in the suit. In fact, the petitioner herein has averred in the plaint that the grant of patta for the suit land to the defendants came to her knowledge only on receipt of the report dated 30.11.1998 from the DRO and the averments have been made bona fide on the basis of the records and reports available with the temple. Such an averment cannot be construed as the petitioner had wantonly stated false averments in the plaint.

19. In Ashok Kumar Aggarwal v. UoI and others, reported in AIR 2014 SC 1020, the Hon'ble Supreme Court held:

<https://hcservices.ecourts.gov.in/hcservices/>

12. The prosecution for perjury is required only where perjury appears to be deliberate and conscious and



the conviction is reasonable, probable or likely. In the circumstances, a mere impression or perception of the appellant would not make the deposition on affidavit by the respondent N.5 to be false as being a deliberate and conscious act."

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20. In Mohammad Ibrahim v. B.Rama Rao, reported in AIR 1976 SC 1822, the Hon'ble Supreme Court observed as under:

"5. Under Section 479-A Cr.P.C., not only is it necessary that the Court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the Court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. On this aspect of the matter, there is many a circumstance showing that it is not in the instant case expedient in the interests of justice that the respondent should be prosecuted for having made false statements in his counter affidavit. There is a plausible explanation as to the circumstances in which the respondent came to make the two particular statements now explained of. The question before us is not whether the respondent was negligent in falling to peruse the record carefully but whether he had intentionally made the false statements complained of and whether the interests of justice require that he must be prosecuted for having made the particular statements. Those whose duty primarily it was to study the record and to draft a counter affidavit on the basis of that record should have exercised the care demanded of them before the respondent was asked to swear the affidavit. Their failure to display care and caution cannot be visited upon the respondent who was but a small officer in a big department of the State Government."

21. In Dr.S.P.Kohli, Civil Surgeon, Ferozepur v. High Court of Punjab and Haryana, reported in AIR 1978 SC 1753, the Hon'ble Supreme Court held:

"17. It is now well settled that prosecution for perjury should be sanctioned by courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. It is also well recognised that there must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge."

22. In the case on hand, the respondent herein has failed to show a piece of paper that with an mala fide intention and an oblique motive, the petitioner has given false statements in the



plaint. There must be a prima facie case of deliberate falsehood on a matter of substance.

23. In the decision cited by the learned Senior Counsel for the respondent in Crl.Misc. No.18869 of 2009 in Crl.Misc.No.1860 of 2000, dated 15.09.2011 (Ashok Kumar v. Sharda Kadan and others), the Punjab-Haryana High Court held:

"..... It is, therefore, expedient in the interest of justice to file complaint against respondent no.1 herein, as required by Section 340 Cr.P.C. for commission of offences under Section 195 IPC. If no such complaint is filed, the litigants would feel emboldened and encouraged to file false petitions and false affidavits."

24. In Crl.O.P.No.6358 of 2010, dated 05.10.2017 (T.Dhinakaran (minor) and another v. V.Ranganathan and others), the learned Single Judge of this Court held as under:

"14. So, under the above discussions, it is very clear that the Court in which certain forged documents produced or given in evidence or false evidence is adduced, the said Court is the competent authority to direct the officer concerned of the said Court to initiate legal action as contemplated under Section 340 Cr.P.C."

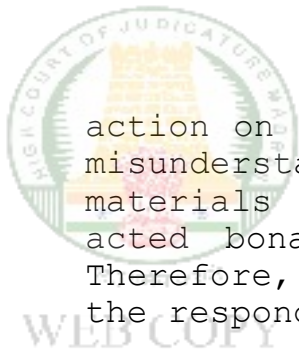
25. In Crl.M.P.No.14262 of 2017 in Crl.O.P.No.5078 of 2010, dated 22.12.2017 (Krishna Kumar Sood v. Srinath Rajam), the learned Single Judge of this Court held:

"27. Committing forgery is a most serious offence. Certainly, the forgery in this case has got to be treated as more serious crime, more particularly, when fraud is played on the Court."

26. In Re:Suo motu proceedings v. Unknown, reported in AIR 2001 SC 2204, the Hon'ble Supreme Court held:

"18. We are satisfied that such a statement supported by an affidavit of the respondent was known to him to be false which he believed to be false and/or atleast did not believe to be true. It is not disputed that an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under Section 193 IPC."

27. As stated supra, to make out a criminal liability, there should be a mala fide intention and an oblique motive on the part of the petitioner herein. The petitioner as the Executive Officer of the plaintiff temple has proceeded to recover the property of the temple, which could be seen from the report of the DRO, who was entrusted with the work of finding out the temple properties in the hands of third parties. More over, for the argument sake, any



action on the part of the petitioner by mistake, inadvertence or by misunderstanding does not amount to perjury. On a perusal of the materials available on record, it is seen that the petitioner has acted bona fide in the interest of the plaintiff temple only. Therefore, the decisions relied upon the learned Senior Counsel for the respondent would not apply to the case of the respondent.

28. The trial Court ought to have seen that there must be sufficient and distinct evidence for commission of perjury and thus, it has erred in allowing I.A.No.8 of 2017 even after rejecting the plaint. Normally, the Court ought to have seen that person committing perjury whether done it deliberately to have some benefit out of such commission. Admittedly, nothing has been shown by the respondent to prove that any such benefit accrued to the respondent. Moreover, the trial Court ought to have seen that there must be sufficient and distinct evidence for commission of perjury.

29. In the case on hand, as stated supra, nothing has been produced to show that perjury has been committed by the petitioner deliberately to have some beneficial order from the Court. There must be a distinct evidence of the commission of evidence, as mere suspicion cannot bring home the charge of perjury.

30. On overall analysis of the materials available on record, this Court finds that there was no bona fide in the petition being I.A.No.8 of 2017 filed by the respondent and the trial Court erred in allowing the petition of the respondent. Therefore, the impugned order of the trial Court is liable to be set aside.

31. In the result, the Civil Revision Petition is allowed, thereby setting aside the order dated 01.09.2017 passed in I.A.No.8 of 2017 in O.S.No.11 of 2017 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Karur. No costs.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Additional Sessions Judge,
Fast Track Mahila Court,
Karur.

+1cc to Mr.VR.Shanmuganathan, Sr.No.94724.

order made in
C.R.P. (MD) (PD) No.1898 of 2017
09.11.2018