



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 31.08.2018
ORDERS PRONOUNCED ON : 04.09.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1OP(MD)Nos.4311 of 2016 and 14705 of 2018 and
Cr1MP(MD)No.2162 of 2016

Cr1OP(MD)No.4311 of 2016

1. Pastor D.V.Issac Timothy

2.A.Irudhayaraj ... petitioners/Accused Nos.1 & 2
Vs

1.The Inspector of Police,
City Crime Branch,
Tiruchirappalli City,
Tiruchirappalli.
[Crime No.17 of 2012] ...Respondent/Complainant

2.The Inspector of Police,
Police Control Room,
Tiruchirappalli City. ...Respondent/ Respondent

3.J.Philomen ... respondent/Defacto Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No. 163 of 2015 pending on the file of the learned Judicial Magistrate No.V at Tiruchirappalli and quash the same.

For Petitioners : Mr.M.Killivalavan
For Respondent Nos : Mr.M.Chandrasekaran
1 & 2 Additional Public Prosecutor
For Respondent No.3 :Mr.S.Radhakrishanan

Cr1OP(MD)No.14705 of 2018

J.Philomen ... petitioner

Vs

1.The Commissioner of Police,
Police Commissioner Office,
Tiruchirappalli.



2.The Inspector of Police,
Central Crime Branch,
Trichy.

... respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to issue a direction directing the Respondents to attend the case in C.C.No.163 of 2015 in Crime No.17 of 2012 pending before the Learned Judicial Magistrate No.V, Trichy to complete the trial within three months.

For Petitioner : Mr.S.Radhakrishanan

For Respondent Nos : Mr.M.Chandrasekaran
1 & 2 Additional Public Prosecutor

COMMON ORDER

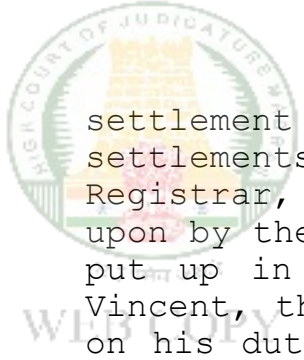
Both the cases are dealt together and a common order is passed, since the issues involved and the parties involved are the same in both the cases.

2.The petition in CrIOP(MD)No. 4311 of 2016 has been filed to quash the final report that has been filed by the respondent Police in CC No.163 of 2015, pending on the file of the learned Judicial Magistrate-V, Tiruchirappalli.

3.The third respondent filed a complaint before the learned Judicial Magistrate -V, Tiruchirappalli under Section 156(3) CrPC. Based on a direction given by the Court, the respondent Police registered a case in Crime No.17 of 2012 for the alleged offence under Sections 416, 420, 465 and 468 of IPC against the petitioners. The respondent Police after investigation have filed a final report for the offence under Sections 419, 420, 465 and 471 r/w Section 34 of IPC and the same has been taken on file by the learned Judicial Magistrate.

4.The sum and substance of the case of the prosecution is that the petitioners have created a forged document namely settlement deed dated 18.04.2002 as if it was executed Mrs.Arulmary alias Dhanamani Ammal, in favour of late Pastor D.Diraviam Vincent, who is the father of the first petitioner. The further case of the second respondent is that the petitioners have committed cheating by forging and are attempting to make unlawful gain through the said document.

5.It is seen from the records that the first petitioner's grand mother had transferred the properties including the property, which is the subject matter of the present complaint, by way of a



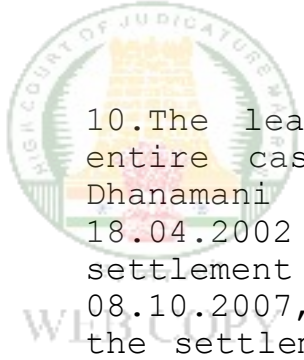
settlement deed dated 18.04.2002 and 07.11.2003 and all the settlements are duly registered before the Office of the District Registrar, Trichy District. The settlement deeds were also acted upon by the father of the first petitioner and construction was also put up in the property. After the demise of the said D.Diraviam Vincent, the first petitioner became a Pastor and has been carrying on his duty as a Pastor in the Church that was constructed by his father in the property in dispute.

6.The first petitioner's father died on 14.03.2004. The de facto complainant is the eldest son of the said Mrs.Arulmary alias Dhanamani Ammal. Even during the life time of the said Mrs.Arulmary alias Dhanamani Ammal, the de facto complainant and his brothers got two settlement deeds executed in their favour by settlement deeds dated 03.10.2007 with regard to the very same property, which was settled in favour of the father of the first petitioner. Subsequently, the settlement deeds that were executed in favour of the first petitioner's father was also cancelled by the said Mrs.Arulmary alias Dhanamani Ammal by executing deed of cancellation dated 08.10.2007 and 05.02.2008.

7.On the strength of the settlement deed executed in favour of the de facto complainant and his brothers and on the strength of the cancellation deeds referred herein above, the de facto complainant and his brothers filed a suit in OS No.1443 of 2007 for the relief of permanent injunction restraining the first petitioner and others from in any way interfering with the peaceful possession and enjoyment of the disputed property. Later the said suit was dismissed as not pressed on the basis of a memo filed by the plaintiffs in the said suit dated 01.06.2015.

8.In the meantime the second respondent filed a complaint before the learned Judicial Magistrate and based on the direction given by the learned Judicial Magistrate, an FIR came to be registered on 17.08.2014.

9.A reading of the final report reveals the fact that the de facto complainant has questioned the settlement deed dated 18.04.2002 which was executed by the above said Arulmary alias Dhanamani Ammal in favour of D.Diraviam Vincent, who is the father of the first petitioner. According to the de facto complainant, the settlement deed was a fabricated and forged one and the said Arulmary alias Dhanamani Ammal has been impersonated. As stated above, D.Diraviam Vincent died on 14.03.2004 and Arulmary alias Dhanamani Ammal died on 21.02.2010.



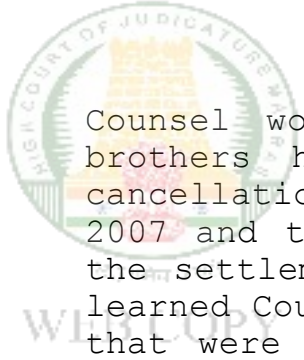
10.The learned Counsel for the petitioner would submit that the entire case of the prosecution is false, since Arulmary alias Dhanamani Ammal, never questioned the settlement deed dated 18.04.2002 during her life time. In fact, when she cancelled the settlement deed by virtue of a deed of cancellation dated 08.10.2007, the said Arulmary alias Dhanamani Ammal did not cancel the settlement deed on the ground that the earlier settlement deed was a forged and fabricated document. The settlement deed was cancelled only on the ground that the father of the first petitioner did not act upon the earlier settlement deed and was not interested in settlement deed and was not prepared to take the properties under the settlement deed and therefore, the settlement deed was cancelled.

11.The learned Counsel for the petitioners would further submit that the de facto complainant and others in fact forced the said Arulmary alias Dhanamani Ammal to cancel the settlement deed executed in favour of the father of the first petitioner and got the settlement deed executed in their favour. The learned Counsel for the petitioner would further submit that the de facto complainant did not file any complaint during the life time of the said Arulmary alias Dhanamani Ammal and after the death of the said Arulmary alias Dhanamani Ammal in the year 2010, the complaint was given on 07.08.2012 and the criminal law was set on motion. The learned Counsel would submit that the respondent Police did not investigate the case in this angle and have filed a final report without even satisfying themselves, when the petitioners have not committed any crime in this case.

12.The learned Additional Public Prosecutor would submit that the respondent Police have carried out a fair investigation in this case.The learned Additional Public Prosecutor also invited the attention of the Court to the report received from the Forensic Lab, wherein the document in dispute and the signature of the said Arulmary alias Dhanamani Ammal found in the settlement deed dated 03.10.2007, registered as Document No.5253 of 2007 was compared and the expert opinion reveals that the finger print and the signature does not tally.

13.The learned Counsel further submitted that the statement of the witnesses also clearly point out to the offence committed by the petitioners. Therefore, there is no ground to quash the final report.

14.The learned Counsel for the third respondent would adopt the arguments of the learned Additional Public Prosecutor and would further submit that the suit was filed by the de facto complainant and others against the first petitioner and others even during the life time of the said Arulmary alias Dhanamani Ammal. The learned



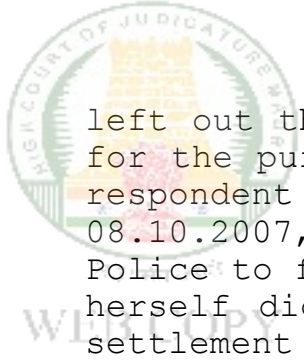
Counsel would further submit that the first petitioner and his brothers have not taken any steps till date to question the cancellation of the settlement deed, which took place in the year 2007 and that by itself shows that the petitioners are aware that the settlement deed dated 18.04.2002 is a fabricated document. The learned Counsel would further submit that the three settlement deeds that were executed by the said Arulmary alias Dhanamani Ammal in favour of the first petitioner and others were cancelled subsequently. None of those cancelled documents was questioned by either the father of the first petitioner or by the first petitioner and his brothers. Therefore, the learned Counsel would submit that there are sufficient materials for the Court below to frame the charges and the petitioners will have to face the trial and prove their innocence.

15.The first petitioner is the son of late Pastor D.Diraviam Vincent and also a witness in the settlement deed dated 18.04.2002 and the second petitioner was also a witness in the settlement deed dated 18.04.2002. Admittedly, this a registered settlement deed which was executed by late Mrs. Arulmary alias Dhanamani Ammal in favour of late Pastor D.Diraviam Vincent.

16.The best person, who could have questioned about the settlement deed dated 18.04.2002 was the said Arulmary alias Dhanamani Ammal, more particularly, due to the fact that she was aware about the existence of that settlement deed. The fact that the said Arulmary alias Dhanamani Ammal was aware of the those settlement is apparent, since she has chosen to cancel the settlement deed by means of a deed of cancellation dated 08.10.2007, which was unilaterally executed by the said Arulmary alias Dhanamani Ammal. She has not cancelled the settlement deed dated 18.04.2002 on the ground that it is a forged and fabricated document. But, she cancelled the settlement deed on the ground that the father of the first petitioner did not act upon the settlement and was not interested in receiving the property and never took possession of the property and therefore, the settlement was cancelled.

17.After the execution the said cancellation deed in the year 2007, the said Arulmary alias Dhanamani Ammal was alive till the year 2010, nearly for three years. Even during this point of time, she did not give any complaint with regard to the settlement deed dated 18.04.2002 on the ground that it was a forged and fabricated document. It is also evident from the record that the de facto complainant and others subsequently, got the very same property by way of the settlement deed dated 03.10.2007.

18.Surprisingly, in this case, the respondent Police did not care to investigate the case with regard to the deed of cancellation dated 08.10.2007, through which the settlement deed dated 18.04.2002 was cancelled. It looks like the respondent Police intentionally



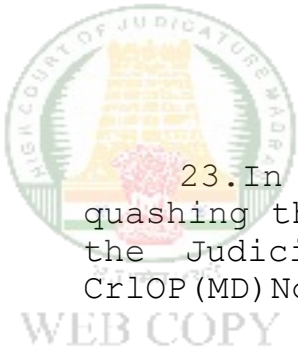
left out this document and had compared a different settlement deed for the purpose of substantiating the allegation of forgery. If the respondent Police had taken into account the cancellation deed dated 08.10.2007, there would have been no occasion for the respondent Police to file the final report, since the executant of the document herself did not complain that her earlier document namely deed of settlement dated 18.04.2002 was a forged and fabricated one.

19. It is also seen that the de facto complainant did not give any complaint against the petitioner during the life time of said Arulmary alias Dhanamani Ammal and has chosen to give complaint only after the death of Arulmary alias Dhanamani Ammal. This itself throws a lot of doubts on the genuineness of the very complaint given by the de facto complainant.

20. This is a clear case of abuse of process of Court. The best person to complain about the impersonation and forgery is the person, who has been impersonated and whose signature / finger print has been forged. Arulmary alias Dhanamani Ammal had never given any complaint during her life time with regard to the settlement deed dated 18.04.2002 as forged or fabricated. In fact she cancelled the settlement deed dated 18.04.2002 on the ground that it was not acted upon by the father of the first petitioner. The beneficiary under the settlement deed, for the reasons best known to him, waited till the death of the said Arulmary alias Dhanamani Ammal and after one year gave a complaint against the petitioner.

21. The allegations made in the final report along with documents relied upon by the prosecution, even if they are taken at their face value and accepted, does not prima facie constitute any offence against the petitioners. This Court also finds that the criminal proceedings is instituted with an ulterior motive and with a view to spite the petitioners due to private grudge. The de facto complainant and others had filed the suit in OSNo.1143 of 2007 (which was subsequently withdrawn in the year 2015) thought it fit to give a criminal complaint only to strengthen the civil case and to put pressure on the defendants in the said suit. Immediately after the final report was filed in this case on 08.05.2015, the de facto complainant and others chose to withdraw the suit on 01.06.2015. This is the reason why this Court held above that this a case where there is a clear abuse of process of Court.

22. This Court finds that the final report in CC No.163 of 2015 is clearly an abuse of process of Court and in order to secure the ends of justice, this Court exercises its power under Section 482 of CrPC and quashes CC No.163 of 2015 pending on the file of the Judicial Magistrate-V, Tiruchirappalli. Consequently, criminal original petition stands allowed and CrIMP(MD)No.2162 of 2016 is closed.



23. In view of the order passed in CrIOP(MD)No.4311 of 2016, quashing the proceedings in CC No.163 of 2015 pending on the file of the Judicial Magistrate-V, Tiruchriappalli, nothing survives in CrIOP(MD)No.14705 of 2018 and the same is dismissed.

/True Copy/

Sd/-
Assistant Registrar(CS-III)

Sub Assistant Registrar(CS-II)

To

1. The Judicial Magistrate-V,
Tiruchirappalli.
2. The Commissioner of Police,
Police Commissioner Office,
Trichy.
3. The Inspector of Police,
Central Crime Branch,
Trichy.
4. The Inspector Of Police,
City Crime Branch,
Tiruchirappalli City.
Tiruchirappalli.
5. The Inspector of Police,
Police Control Room,
Tiruchirappalli City.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2CCs TO MR.D.SENTHIL ADVOCATE IN SR.NO.82071,82070.

+1CC TO MR.S.RADHAKRISHNAN, ADVOCATE IN SR.NO.82019.

DSKD

DS PM SAR-2:01.10.2018: 7P/10C

Common Order made in
CrIOP(MD)Nos.4311 of 2016
and 14705 of 2018
and
CrIOP(MD)No.2162 of 2016
04.09.2018