



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 28.11.2017
Pronounced on: 05.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.O.P.(MD)No.8095 of 2014 and 8706 of 2016
and

Crl.R.C.(MD) Nos.250, 294, 260, 261 of 2016
and

Crl.M.P.(MD) Nos.3276, 3277, 3965, 3421 to 3424 of 2016

Crl.O.P.(MD)No.8095 of 2014

John Britto

... Petitioner

vs.

1. The Superintendent of Police,
Sivagangai District,
Sivagangai.

2. The Inspector of Police,
Kalaiyarkovil Police Station,
Sivagangai District.

3.V.K.Amal Raj

... Respondents

(R3 impleaded as per order of this Hon'ble Court made in Crl.M.P. (MD)No.1 of 2015 in Crl.O.P.(MD) No.8095 of 2014, dated 07.09.2017 by SSSRJ)

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to direct the 1st respondent to transfer the case in Crime No.93 of 2010 on the file of the second respondent police to D.C.B. Police, Sivagangai District or to any other independent investigating agency and to investigate the same and file a final report with the period stipulated by this Hon'ble Court.

For Petitioner : Mr.R.Srinivasan

For Respondents : Mr.K.S.Duraipandian
1 and 2 Additional Public Prosecutor

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent 3 : Mr.V.K.Amal Raj



Crl.O.P.(MD)No.8706 of 2016

V.K.Amal Raj : Petitioner / De-facto Complainant

WEB COPY

-Vs-

1. The Superintendent of Police,
Sivagangai,
Sivagangai District.
2. Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to direct the Hon'ble Judicial Magistrate No.II, Sivagangai to take up this case, Crime No.3 of 2006, C.C.No.49 of 2012, for speedy trial, completion and delivery of justice within a maximum period of three months and to direct the police to coordinate and extend every assistance required for speedy completion of the trial within the stipulated period of time.

For Petitioner : Mr.V.K.Amalraj
Party-in-person

For Respondents : Mr.K.S.Duraipandian
Additional Public Prosecutor

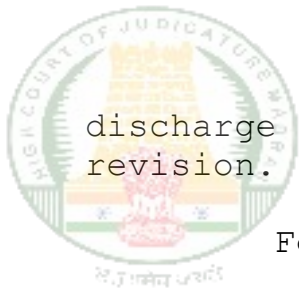
Crl.R.C.(MD)No.250 of 2016

Arul : Petitioner/Petitioner/1st Accused

-vs-

State through
the Inspector of Police,
District Crime Branch,
Sivagangai.
(In Crime No.3/2006) : Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records from the lower Court and set aside the order passed by the learned
Magistrate No.II, Sivagangai, Sivagangai District dated
15.03.2016 in Cr.M.P.No.347/2014 in C.C.No.49 of 2012 and



discharge the petitioner from the above case and allow the revision.

For petitioner : Mr.AR.Jeya Rhuthran
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Cr1.R.C.(MD)No.260 of 2016

Fathima Mary : Petitioner/Petitioner/3rd Accused

-vs-

State through
Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.
(In Crime No.3/2006) : Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records relating to the order passed in Cr.M.P.No.7858/2015 in C.C.No.49 of 2012, dated 15.03.2016 on the file of the learned Judicial Magistrate No.II, Sivagangai and set aside the same and allow the discharge petition.

For petitioner : Mr.R.Srinivasan
Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Cr1.R.C.(MD)No.261 of 2016

Josephine Jackuline Mary : Petitioner/Petitioner/4th Accused

-vs-

State through
Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.
(In Crime No.3/2006) : Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records relating to the order passed in Cr.M.P.No.7857/2015 in C.C.No.49 of 2012, dated 15.03.2016 on the file of the learned Judicial Magistrate No.II, Sivagangai, Sivangai District and set aside the



same and allow the discharge petition.

For petitioner : Mr.R.Srinivasan
Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

WEB COPY

Crl.R.C.(MD)No.294 of 2016

K.John Britto @ Peter : Petitioner/Petitioner/2nd Accused

-vs-

State through
Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.
(In Crime No.3/2006) : Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of the Criminal Procedure Code to call for the records relating to the order passed in Cr.M.P.No.43/2016 in C.C.No.49 of 2012, dated 15.03.2016 on the file of the learned Judicial Magistrate No.II, Sivagangai and set aside the same and allow the discharge petition.

For petitioner : Mr.AR.Jeya Rhuthran
for M/s.R.Meenakumari
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

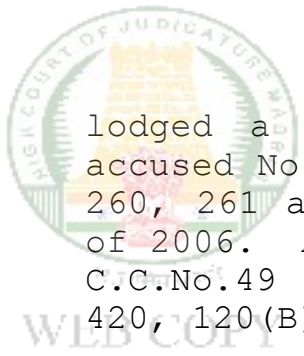
COMMON ORDER

Crl.O.P.(MD) No.8706 of 2016 has been filed by one V.K.Amalraj who has appeared as party-in-person to direct the Judicial Magistrate No.II, Sivagangai, to take up the case in C.C.No.49 of 2012 and dispose of the case within a period of three months and to direct the police to coordinate and extend every assistance required for speedy completion of the trial of C.C.No.49 of 2012.

2.All the four accused in C.C.No.49 of 2012 as petitioners have filed Crl.R.C.(MD) Nos.250, 260, 261 and 294 of 2016 to set aside the order passed by the learned Judicial Magistrate No.II, Sivagangai, dated 15.03.2016 dismissing the individual petitions filed by the four accused in C.C.No.49 of 2012 to discharge them from the criminal case.

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

3.The petitioner in Crl.O.P.(MD)No.8706 of 2016 has

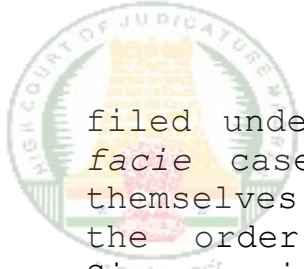


lodged a complaint against his brothers and sisters, who are accused No.1 to 4 and also the petitioners in CrI.R.C.(MD)Nos.259, 260, 261 and 294 of 2016. The case was registered in Crime No.3 of 2006. After filing charge sheet, the case was taken on file in C.C.No.49 of 2012 for offences punishable under Section 406, 419, 420, 120(B) r/w Section 34 I.P.C.

4.The accused 1 to 4 are the brothers and sisters of the de-facto complainant, namely, the petitioner in CrI.O.P.(MD) No.8706 of 2016. It is stated in the complaint that the de-facto complainant was a non-resident of India and had been residing in Dubai. Since the de-facto complainant was earning and could not purchase properties, it is stated in the complaint that he was sending money to the accused to purchase properties and to invest the money in real-estate. Since the accused misappropriated huge amount and sold properties without the knowledge of the de-facto complainant, it is alleged that the petitioners in the criminal revision petitions, who are accused 1 to 4, have cheated the de-facto complainant. The further allegation in the complaint is that the properties which were purchased out of the money sent by the de-facto complainant, in his father's name were sold by the petitioners after the death of the father of the de-facto complainant without his knowledge fraudulently. Pursuant to the complaint, a case was registered in Crime No.3 of 2006 on the file of the District Crime Branch, Sivagangai. After investigation, it appears that originally, the Investigating Officer closed the complaint as mistake of fact on 03.02.2007 mainly on the ground that the complaint is purely civil in nature. Thereafter, the de-facto complainant filed a protest petition and further investigation was ordered by the Magistrate. Thereafter, the Deputy Superintendent of Police, District Crime Branch, conducted further investigation and filed a final report on 24.12.2009 for offences under Sections 406, 419, 420, 120-B r/w. Section 34 of I.P.C. against all the four accused. It appears that yet another investigation was done by the Deputy Superintendent of Police, District Crime Branch, who filed a final report on 18.02.2011 stating that it is purely a civil case and no offence is made out. Thereafter, the Judicial Magistrate, passed an order refusing to accept the amended final report and directed the four accused to appear before the Court on 02.07.2013. This order of the Judicial Magistrate No.II, Sivagangai, was challenged before this Court in CrI.R.C.(MD)No.271 of 2014. This Court has passed the following order:

"2. After the matter was remitted to the trial Court for passing fresh orders, the Magistrate has passed a detailed order on 13.05.2014, which is assailed in this criminal revision petition. In the order impugned herein, the learned Magistrate has gone into the

<https://hcservices.southbarodirect.com> recorded by the Police under Section 161(3) Cr.P.C. and has found that the *de facto* complainant-Amalraj has been sending money from abroad, with which A1



filed under Section 239 of Cr.P.C. holding that there is *prima facie* case and that the petitioners are not entitled to get themselves discharged under Section 239 of Cr.P.C. Aggrieved by the order passed by the learned Judicial Magistrate No.II, Sivagangai, the accused 1 to 4 in C.C.No.49 of 2012 have preferred the four criminal revision petitions before this Court. The first accused in C.C.No.49 of 2012 is the petitioner in CrI.R.C.(MD) No.250 of 2016. The second accused is the petitioner in CrI.R.C.(MD) No.294 of 2016 and accused 3 and 4 are the petitioners in CrI.R.C.No.260 and 261 of 2016 respectively. CrI.O.P.(MD) No.8706 of 2016 is filed by the de-facto complainant for early disposal of C.C.No.49 of 2012 on the file of the learned Judicial Magistrate No.II, Sivagangai.

6.The petitioners in the criminal revision petitions have raised common grounds in all the petitions. It is contended that the property was purchased by the petitioners' father and that the properties available after the life time of their father were equally divided among the petitioners and the de-facto complainant. It is contended that the petitioners have sold the property leaving the property of the de-facto complainant. Hence, there is no cheating involved in this case. With regard to misappropriation of funds, the learned counsels appearing for the petitioners submitted that there is no dispute about the receipt of money by the petitioners. But there is no criminal offence involved. The learned counsel appearing for the petitioners further submitted that the learned Magistrate failed to note that the earlier Investigation Officer who investigated the matter had closed the complaint on the ground that the dispute is purely civil in nature. Further, it is contended by the learned counsel appearing for the petitioners that the complaint is nothing but an abuse of process of law and no offence is made out against the petitioners as per the complaint. The learned counsel appearing for the petitioners in CrI.R.C.No.250 of 2016 further submitted that the trial Court has failed to look into the legal issues involved in this case and that the discharge petitions were dismissed on misconception of facts.

7.Sum and substance, it was reiterated that the complaint does not disclose any offence as against the accused No.1 to 4. The grounds raised in all the criminal revision petitions are based on certain facts which can be agitated at the time of trial of the case. However, the complaint clearly disclose the offence for which the case was registered. The contention that the petitioner in all the criminal revision petitions have sold their property leaving the property of the de-facto complainant has to be examined. Interestingly, in this case, it appears that the petitioners have divided the property among themselves even though it is contended by the de-facto complainant that the property was purchased out of his own money. It is admitted before this Court

<https://hcservices.ecourts.gov.in/hcservices/> does not disclose any partition between the parties by way of a partition deed in which the de-facto complainant is a party. Even assuming for the sake of argument that the petitioners are all co-



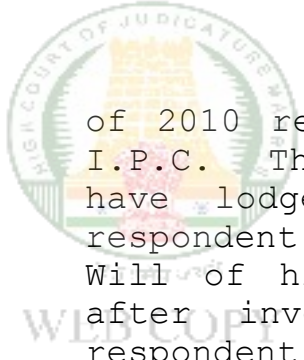
owners, they cannot claim exclusive right in respect of a specific property without there being an actual partition by metes and bounds. Selling a specific property without disclosing the rights of de-facto complainant itself is mischievous. The allegations against the petitioners are serious and this Court is unable to see any legal ground to entertain the revision against the order dismissing the petitions filed for discharging the petitioners from the criminal case. Only in a case where the materials and the allegations makes out no case, the petition filed by the petitioners before the lower Court to discharge them from the criminal case can be entertained. Even a strong suspicion founded on materials before the Magistrate is sufficient for framing of charge. In this case, the Magistrate has specifically found that there is *prima facie* material to frame charges against all the accused. The accused in this case therefore cannot be discharged.

8.The contention of the petitioners that the Investigation Officer earlier had closed the complaint on the ground that the dispute is purely civil in nature and that the order of learned Judicial Magistrate No.II, dismissing the discharge petitions without considering the closure report earlier has no merits. As referred to earlier, the petitioners have filed Crl.R.C.(MD)No.271 of 2014 as against the order dated 13.05.2014 in C.C.No.49 of 2012 directing the accused to appear. This Court has found that the Magistrate had taken cognizance on the positive report filed by the police initially. It has been further held by this Court that cognizance once taken by the Magistrate should not be undone as the Magistrate has no power to recall his own order. In such circumstances, the petitioners cannot be discharged on the basis of a report which was not accepted by the learned Judicial Magistrate. In such circumstances, this Court do not find any merit in these Criminal Revision Petitions. Hence, all the criminal revision petitions in Crl.R.C.(MD)No.250, 260, 261 and 294 of 2016 are dismissed.

9.Insofar as Crl.O.P.(MD)No.8706 of 2016 is concerned, this Court is able to see that the complaint was lodged long back and as a matter of fact, the First Information Report was filed in Crime No.3 of 2006 on 15.02.2006. Even after 12 years, the trial of the proceedings is delayed. In such circumstances, the disposal of Crl.O.P.(MD)No.8706 of 2016 with a direction for early disposal of C.C.No.49 of 2012 on the file of the Judicial Magistrate No.II, Sivagangai, will be appropriate and in the interest of justice. Hence, the learned Judicial Magistrate No.II, Sivagangai, is directed to expedite the trial and dispose of C.C.No.49 of 2012 within a period of four months from the date of receipt of a copy of this order.

Crl.O.P.(MD)No.8095 of 2014

10.Though this Criminal Original Petition is unconnected with the other proceedings, the parties are one and the same. The petitioner in Crl.O.P.(MD)No.8095 of 2014 is the second accused in C.C.No.49 of 2012. He is the de-facto complainant in Crime No.93



of 2010 registered for offences under Sections 420, 468, 471 of I.P.C. The petitioner in CrI.O.P.(MD)No.8095 of 2014 appears to have lodged a complaint as against his brother, the third respondent herein, alleging that the third respondent has forged a Will of his father. The petitioner himself has admitted that after investigation in Crime No.93 of 2010 by the second respondent, the case was closed as action dropped. However, alleging that the then Investigation Officer has not done proper investigation, the petitioner prayed for transfer of case in Crime No.93 of 2010 on the file of the second respondent police to District Crime Branch, Sivagangai District or to any other independent investigating agency to investigate and file a final report. In the transfer petition, the petitioner has stated that the petitioner is ready to prove his case by producing sufficient document before the Investigation Officer and that the second respondent will not investigate the matter in proper manner. It is further stated that the Inspector of Police by name Senguttuvan who was investigating the case earlier was arrested for seeking bribe. No valid ground is made out to transfer the investigation at this stage when the final report had already been filed, after completion of investigation. This Court has earlier directed the learned Judicial Magistrate No.I, Sivagangai, to submit a report on or before 18.01.2016. Pursuant to the direction of this Court, the learned Judicial Magistrate No.I, filed a report on 29.10.2016 stating that the Inspector of Police filed a final report treating the case as "Further Action Dropped" on 12.01.2015. Since criminal original petition is pending before this Court, it is stated in the report that after knowing the fact that the Criminal Original Petition is pending before the Hon'ble High Court at Madurai Bench, the referred charge sheet is kept pending without any further proceedings. Later another report is received from the concerned Judicial Magistrate, Sivagangai, dated 12.01.2016. It is further pointed out that the referred charge sheet is filed as "Further Action Dropped" and not filed as mistake of fact. As a matter of fact, Referred Charge Sheet number is also mentioned. Since the report has been filed indicating that further action is dropped, no further investigation is contemplated by the second respondent. Hence, this Court is of the view that the transfer of investigation is not required in this case and however, the petitioner is at liberty to file a petition before the learned Judicial Magistrate for an appropriate relief. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/



To

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

2. The Superintendent of Police,
Sivagangai District,
Sivagangai.

3. The Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.

4. The Inspector of Police,
District Crime Branch,
Sivagangai.

5. The Inspector of Police,
Kalaiyarkovil Police Station,
Sivagangai.

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

+ 1 cc TO Mr.V.K.Amal Raj , Party-in-Person, in SR No. 67121
+ 1 cc TO Mr.R.Srinivasan , Advocate in SR No. 67256

SRM

AE/KKR/SAR1/13.06.2018/10P/9C

Order made in
CRL.O.P.(MD)No.8095 of 2014 and 8706 of 2016
and
Crl.R.C.(MD) Nos.250, 294, 260, 261 of 2016
05.06.2018