



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Cr1.O.P.(MD)No.15823 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013

M.R.Chandra

... Petitioner

Vs.

1. State Rep. by
The Inspector of Police,
District Crime Branch,
Virudhunagar District.
(Crime No.18/2018)

2. V.Ramasamy

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.54 of 2013 on the file of the Judicial Magistrate Court No.II, Virudhunagar and quash the same as illegal.

For Petitioner	:	Mr.G.Marimuthu
For R1	:	Mr.A.Robinson Government Advocate (Criminal side)
For R2	:	No Appearance

ORDER

The petitioner is shown as Accused No.6 in C.C.No.54 of 2013 on the file of the Judicial Magistrate Court No.II, Virudhunagar. The de-facto complainant in this case is the second respondent herein.

2.Though the second respondent has been served and his name is also figuring in the cause list, he has not not chosen to appear before this Court either in person or through counsel.

3.The case of the de-facto complainant is that the first accused in this case had illegally sold away his properties by taking advantage of the similarity of nomenclature of his father with that of the father of the second respondent. It is seen that in respect of one of the properties belonging to the second respondent, the first accused viz., Selvaraj executed Power of Attorney, dated 16.08.2005, in favour of the fourth accused, who in turn executed another Power of Attorney, dated 15.03.2007, in favour of the petitioner herein. On the strength of the said Power of Attorney, the petitioner had sold the property in favour



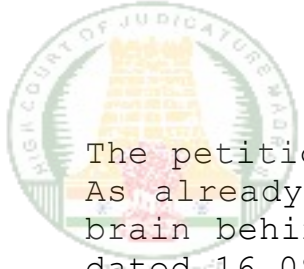
of a Company on 02.04.2007. The second respondent lodged a complaint in this regard on 16.05.2008. The second respondent had moved the learned Judicial Magistrate No.I, Sattur, who directed the first respondent to register the present FIR in Crime No.18 of 2008. The first respondent conducted investigation and laid the final report under Sections 120-B, 419, 465, 468, 471 r/w. 109 IPC. The petitioner is shown as 6th Accused in the Final Report. The jurisdictional Magistrate took cognizance of the same and issued summons to the accused in C.C.No.54 of 2013. To quash the proceedings, insofar as she is concerned, the petitioner/A6 has filed the present Criminal Original Petition.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side) appearing for the first respondent.

5. The learned Government Advocate (Criminal side) pointed out that the petitioner had played a role in the transaction and that her name has been specifically referred in the statements recorded under Section 161(3) Cr.P.C. He drew the attention of this Court to the statement of the de-facto complainant and that of one Palani, who is shown as L.W.6.

6. The learned counsel appearing for the petitioner pointed out that the learned Judicial Magistrate No.I, Sattur, did not have any jurisdiction in the matter and therefore, the very registration of the FIR following direction of the said Court vitiated the entire proceedings. He placed reliance upon the decision rendered by this Court reported in **2018 (1) MWN (Cr.) 423 [S.Madhiyazhagan Vs. State, Rep. by the Inspector of Police, CBCID, Tirupur District]**.

7. This Court while respectfully concurring with the aforesaid decision, is of the view that, in this case, in view of the subsequent developments, the question of applying the said judgment will not arise. If the petitioner herein had come to this Court questioning the direction issued by the learned Judicial Magistrate No.I, Sattur, in this case, then, this Court would have set aside the same. But, in this case, the direction issued by the learned Judicial Magistrate No.I, Sattur, was not only followed but later, investigation was conducted and final report was filed and the same was also taken on file in C.C.No.54 of 2013 by the learned Judicial Magistrate No.II, Virudhunagar. Therefore, much water has flown under the bridge and it is late, in the day, on the part of the petitioner to raise the point of territorial jurisdiction of the Magistrate, who issued direction under Section 156(3) Cr.P.C. But, then, the other contention of the learned counsel for the petitioner merits acceptance. The learned counsel appearing for the petitioner pointed out that the petitioner did not have any direct link with the first accused.



The petitioner was not the Power of Attorney of the first accused. As already pointed out, the first accused, who appears to be the brain behind the entire crime had executed the Power of Attorney, dated 16.08.2005, in favour of A4. It was the fourth accused, who had executed fresh Power of Attorney, dated 15.03.2007, in favour of the petitioner. The petitioner acting on the same, sold the property in question on 02.04.2007. The only material to establish a joint conspiracy under Section 120-B IPC is the statement of one Palani.

8. This Court went through the said 161(3) Cr.P.C. statement of L.W.6 - Palani. It stretches the credulity of this Court. The said statement has been prepared deliberately to rope in all the accused. The de-facto complainant merely points out that A1 to A4 have joined together and created false documents. The only allegation that is made against the petitioner by the de-facto complainant is that the petitioner based on the false document executed in her favour by A4, had executed a further sale deed. This Court is of the view that there is no legally acceptable material to fasten any penal liability on her. Therefore, the impugned prosecution in C.C.No.54 of 2013 is quashed in respect of the petitioner alone. This Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Inspector of Police,
District Crime Branch,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Jothi Basu, Advocate Sr.No.60910

SMN2

VB/RSK/SAR1/04/05/2018/3P/5C