



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD) No.19047 of 2013 and

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

Sivasankaran

... Petitioner/Accused No.1

Vs.

1. The State of Tamilnadu,

Rep. by its Sub Inspector of Police,

Perungudi Police Station,

Madurai.

(Crime No.3 of 2011)

... 1st Respondent/Complainant

2. Ramayee

... 2nd Respondent/
Defacto Complainant

Prayer: Petition is filed under Section 482 of Cr.P.C., to call for records relating to the case in C.C.No.146 of 2012 on the file of the Judicial Magistrate Court No.VI, Madurai and quash the same as illegal.

For Petitioner : Mr.M.Kannan

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side).

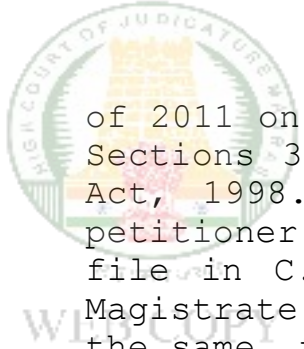
For R-2 : No appearance.

ORDER

This Criminal Original petition has been filed for quashing the criminal proceedings in C.C.No.146 of 2012 on the file of the Judicial Magistrate Court No.VI, Madurai.

2. The petitioner is figuring as first accused in C.C.No.146 of 2012 on the file of the learned Judicial Magistrate No.VI, Madurai.

3. The case of the defacto complainant is that the property in question belonged to one Andi Mooper. After he passed away, it devolved on his son Arumugam and his sisters which includes the second respondent herein/defacto complainant. The defacto complainant would allege that the petitioner herein cheated her brother Arumugam and obtained Power of Attorney in favour of the property. Based on the said Power of Attorney, he had also been plotting out and selling them to third parties. When the second respondent questioned the petitioner, she and her sisters were criminally intimidated. Therefore, she lodged an information in this regard on 11.01.2011, leading to registration of Crime No.3

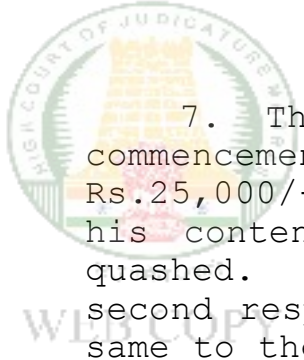


of 2011 on the file of the first respondent for the offences under Sections 323 and 506(ii) of I.P.C., r/w Section 4 of T.N.P.W.H. Act, 1998. The first respondent filed final report against the petitioner and also the said Arumugam and the same was taken on file in C.C.No.146 of 2012 on the file of the learned Judicial Magistrate No.VI, Madurai and summons were issued. Questioning the same, the present quash petition has been filed.

4. The petitioner would point out that the Power of Attorney was executed way back on 05.06.1998. It is a registered document. Based on the same, the petitioner had also plotted out and sold the same in favour of the third parties. After a gap of more than 12 years, the present complaint has been lodged. The defacto complainant is also residing in the same locality. It is not her case that she was unaware of the sale transactions executed by the petitioner in his capacity as Power Agent of their brother Arumugam. This long delay is not explained. This creates considerable doubt on the very bonafides of the complaint.

5. The learned counsel appearing for the petitioner would further point out that the entire exercise has been engineered at the instance of the said Arumugam. The petitioner had acted only as a Power Agent. It was the said Arumugam who was the principal. The final report has been filed not only against the petitioner but also against the said Arumugam. But then as late as on 08.07.2010, the said Arumugam and the defacto complainant and the other sisters had joined together and entered into a sale agreement in respect of another property. That shows that the said Arumugam and the defacto complainant were actually acting in tandem. This again discloses that the present proceedings suffer from lack of bonafides.

6. More than anything else, the petitioner has been primarily charged with having indulging in an act of cheating. The Hon'ble Supreme Court in the decision reported in 2009 8 SCC 751 (*Mohammed Ibrahim V. State of Bihar*) held that the offence of cheating and forgery cannot be made by a third party to the transaction. The petitioner was only a Power Agent. The power was given by the second accused Arumugam who is none other than the defacto complainant's brother. The petitioner has not held out any assurance to the defacto complainant. No promise or representation was made. The defacto complainant did not alter her position on account of any promise given by the petitioner. Therefore, in view of the aforesaid decision, the offences in question are not maintainable. No doubt, there are other offences thrown in. But then this Court can discern from the factual matrix that the grievance of the defacto complainant is only as regards the alienation of the family property.



7. The learned counsel for the petitioner even at the commencement of the hearing submitted that he shall pay a sum of Rs.25,000/- directly to the second respondent without prejudice to his contention that the impugned proceedings are liable to be quashed. The petitioner shall pay the said sum directly to the second respondent and produce a copy of the receipt and file the same to the Registry and report compliance within a period of four weeks from the date of receipt of a copy of this order. If the second respondent is not inclined to receive the said amount, it is open to the petitioner to deposit the said amount to the credit of C.C.No.146 of 2012 on the file of the learned Judicial Magistrate No.VI, Madurai and it will be open to the defacto complainant thereafter to withdraw the said amount.

8. Recording the said undertaking, the impugned proceedings are quashed in so far as the petitioner is concerned. The proceedings shall however continue as against the second accused.

9. The Criminal Original petition is allowed, accordingly. Consequently, connected Miscellaneous petitions are closed.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.VI,
Madurai.

2. The Sub Inspector of Police,
Perungudi Police Station, Madurai.

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

+1cc to Mr.M.KANNAN, Advocate, SR.No. 64758

CRL.O.P.(MD)No.19047 of 2013 and
M.P.(MD)Nos.1 & 2 of 2013
28.04.2018

PMU

KK/JC/SAR-3/22.06.2018/3P-5C