

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.10.2018

Pronounced on : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.5155 OF 2011

AND

CRL.M.P.NO.1 OF 2011

Karuppavees,
W/o.Pandiyan

.... Petitioners/Accused No.12

Vs.

1.State rep. by its,

Sub Inspector of Police,
Central Crime Branch,
XVA Team Egmore,
Chennai - 8.

X Crime No.454 of 2010. Respondent/complainant

2.S.Naveenatha Krishnan,

S/o.Santhanagopal Naidu. Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.47 of 2011 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai - 600 008 and quash the proceedings for the petitioner.

For Petitioner : Mr.P.Surendran

For R1 : Mrs.V.Saratha Devi,
Government Advocate

For R2 : No appearance

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.47 of 2011 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai - 600 008 and quash the proceedings against the petitioner.

2.The petitioner is the accused No.12 in C.C.No.47 of 2011. The case came to be registered on the complaint given by the second respondent / defacto complainant and the first respondent / complainant registered a case in Crime No.454 of 2010 on 13.09.2010, for the offences under Sections 419, 420, 465, 467, 468, 471 r/w. 120 (b) of the Indian Penal Code. After investigation filed charge sheet against the petitioner and 11 others before the Chief Metropolitan Magistrate, Egmore, Chennai - 600 008, which is taken on file in C.C.No.47 of 2011.

3.The case of the prosecution is that the second respondent, who is the defacto complainant is the power agent of one V.V.N.Ramavenkata Narayanan, S/o.Venkanna Choudry, who owned a land vide document N.1602/1961 by way of inheritance at Turnbulles Road, Kotturpuram, Mylapore Village. There seems to be some dispute with regard to the encroachment of the land by the Corporation of Chennai. A land measuring to an extent of 135 ground in S.No.3884/2 at Mylapore was inherited by the legal heir of Venkanna Choudry. Thereafter by way of sub division of T.S.No.3884/276 53 ground was apportioned in which 30 ground has been encroached upon by the Corporation of Chennai. Hence, there was a case between the petitioner and the Corporation of Chennai. Thereafter they were left with 23 ground.

4.The first accused Pandiarajan on 09.07.1965 on the strength of an unregistered 10 Rupees non-judicial document claimed that Vijaya Perumal Devar S/o.Ocha Devar, who said to have worked under Y.Venkanna Choudry, was given 1/3 of the 192 ground land, by using the forged document claiming right over the property, by forging the signature of Venkanna Choudry. The first accused claims to let out the land on ground rent to the second accused and created a document and thereafter, projecting as though A2 was refusing the vacant land. He had filed a civil suit before the 11th City Civil Court in O.S.No.441 of 2003 and in the said case A2 remained ex-parte order and an ex-parte order was obtained, thereafter, had approached the Tahsildar, Mylapore, for patta for the above said land. On the refusal of patta he filed a Writ Petition in W.P.No.20354 of 2004 before this Court and the same was disposed of with the direction to

the revenue authorities to verify the genuinity of the documents. The revenue authorities on verification of the documents came to know that the documents produced were forged and rejected the same. The accused does not belong to Devar community. But the accused makes a claim that his fore father is Vijaya Perumal Devar. Further, all the accused joined together created documents, by using the same, collected documents in favour of the other accused namely A4, A7 to A10 and tried to usurp the property of the defacto complainant. Thus, the accused have joined together, conspired, created forged documents, hence committed the above offences.

5.The contention of the learned counsel for the petitioner is that the petitioner's name does not find place in the complaint. The petitioner has been arrayed as A12, only for the reason that the petitioner is the wife of A1. She has nothing to do with the above offence. There is no overt act attributed against her in this case. For the reason best known the first respondent had arrayed the petitioner as an accused.

6.According to their case A1 in conspiracy with other accused created false documents such as Legal heirship certificate and obtained a Power of Attorney from A2 to A6, pursuant thereto A1 entered into an agreement of sale with A10 and A11 after receiving advance of Rs.5,00,000/- (Rupees five lakh only) with reference to 53 ground of land which belongs to the second respondent. The further allegations are that a partition deed was entered into between the first accused Pandian and his sisters viz., Pottiammal, Pechiammal, Mangammal and his brother Karutha Kannan. According to the partition deed A1 Pandian said to have got a share of 53 ground. In none of the above said documents, the petitioner had any role.

7.Further on perusal of the statement recorded, it is stated that except the petitioner being the wife of A1, there is no iota of materials to connect this petitioner either by statement of witnesses or any other documents. Hence, the petitioner prayed to quash the proceedings against her.

8.The contention of the prosecution is that the case was registered on the complaint of the second respondent. Thereafter, the investigation has been carried out and witnesses have been examined. The defacto-complainant/second respondent has been examined as LW1; Y.V.N.Ramavenkata Narayanan has been examined as LW2; LW3 and LW4 are the witnesses for the arrest and recovery of the documents; LW5 is the Tahsildar from the

Revenue Department; LW6 to LW11 are the witnesses from the Registration Department; LW12 is the Health Officer of the Corporation of Chennai; and LW13 is the Investigation Officer. On examination of the witnesses, collection of documents and after detailed enquiry, the charge sheet was filed.

9.It is found that the accused have joined together in a well organised manner and created the forged documents and produced the same before the authorities and had also filed the forged documents before the Court and obtained an ex-parte order, using the same wanted to grab the property of LW1/defacto complainant. The relevant documents were collected, annexed and thereafter, the charge sheet was filed.

10.Considering the rival submission and the materials produced before this Court, this Court finds that as regard this petitioner, none of the witnesses have spoken to about this petitioner having role in commission of the above offence, except for a passing reference made by LW1/defacto complainant that this petitioner is an accomplice. Other than this, no other materials are available by way of statements or documents to show that this petitioner had over tact in commission of the above offences and by no such imagination, it could be seen that this petitioner had conspired in commission of the above offence except being the wife of A1, this petitioner has no over tact.

11.In view of the above, the quash petition filed by the petitioner stands allowed. The trial Court is directed to proceed and complete the trial with regard to the other accused in this case as expeditiously as possible by giving top priority, within a stipulated time, since the case is pending from the year 2011. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Ah

To

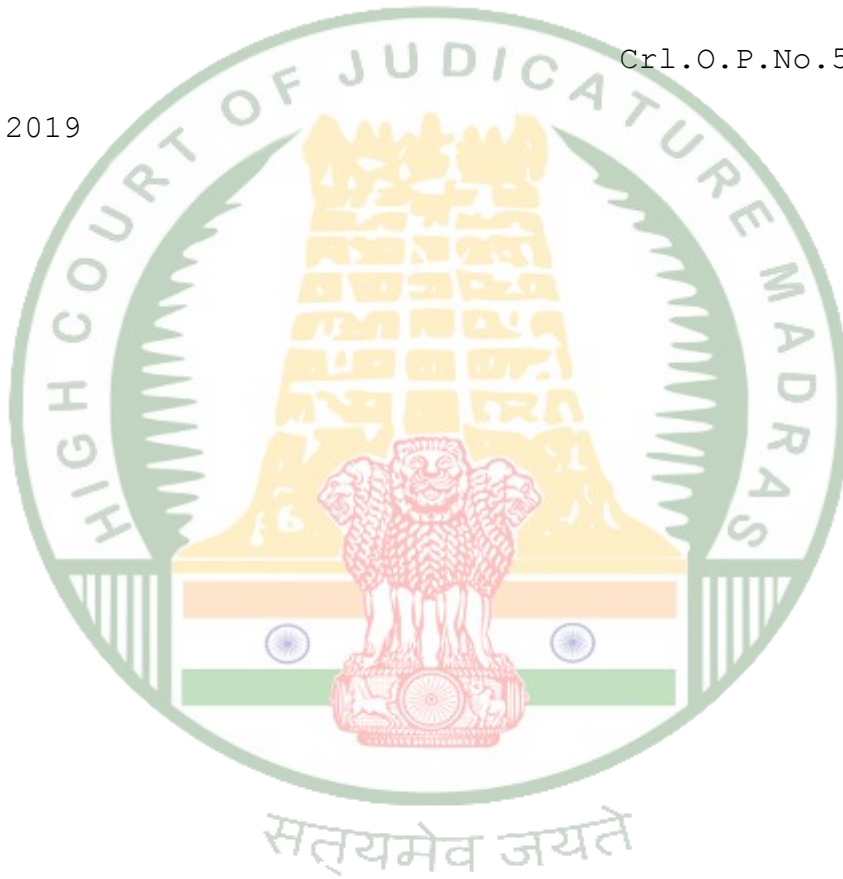
1.The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.

2.The Sub Inspector of Police,
Central Crime Branch,
XVA Team Egmore, Chennai - 8.

3.The Public Prosecutor,
High Court, Madras.

EV(CO)
CSL/08.04.2019

ORDER IN
Cr1.O.P.No.5155 of 2011



WEB COPY