

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2019

Pronounced on : 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.21687 of 2013

State rep. by,
K.Mariyappan,
Dy. Superintendent of Police,
Anti Land Grabbing Special Cell,
Salem. Petitioner

Vs.

1.V.P.R.Raja
2.Kavitha
3.Dhanapakiam
4.Selvam @ Thamiozharasan
5.Chitra
6.Valli
7.Raman Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the District Munsif Court, Attur, Salem District to send for the original unregistered sale agreement to the Forensic Handwriting Expert, Chennai through the Judicial Magistrate Court No.II, Attur, Salem District for the comparison of the signature of the witness - Tr.Ramasamy and also for the Expert's opinion of the forensic Handwriting Expert, Chennai and set aside the order passed in C.M.P.No.409 of 2013, dated 03.07.2013 by the Court of the Judicial Magistrate Court No.II, Attur, Salem District.

For Petitioner : Mr.S.Thankira
Government Advocate [Cr1. Side]

For Respondents: Mr.T.Murugamanickam

ORDER

This Criminal Original Petition has been filed to direct the learned District Munsif, Attur to send the original unregistered sale agreement dated 20.01.2006 to the Forensic Handwriting

Expert, Chennai through the learned Judicial Magistrate No.II, Attur for the comparison of the signature of the witness Ramasamy and also for the Expert's opinion of the Forensic Handwriting Expert, Chennai and set aside the order passed in C.M.P.No.409 of 2013, dated 03.07.2013 passed by the learned Judicial Magistrate No.II, Attur.

2.The petitioner is the Deputy Superintendent of Police, Anti Land Grabbing Special Cell, Salem, who is an Investigating Officer in Crime No.1 of 2012 for the offence under Sections 465, 471, 448, 506(i) r/w 3(i)(V)(VIII) of SC & ST (POA) Act, 1989. The respondents are the accused Nos.1 to 7.

3.During the course of investigation, an unregistered sale agreement dated 20.01.2006, which is purported to be forged document based on which the accused were claiming right over the property. The said unregistered sale agreement is said to have been signed by one Ramasamy of Attur as seller and by V.P.R. Raja as purchaser. The said Ramasamy, who is one of the witness in Crime No.1 of 2012 had denied the execution of unregistered sale agreement. On investigation, it came to be know that the respondents had filed a civil suit in O.S.No.205 of 2011 before the learned District Munsif, Attur and filed the said document.

4.For securing the said document and to send it to the Forensic Lab, the petitioner had filed a petition under Section 91 of Cr.P.C before the learned Judicial Magistrate No.II, Attur in Crl.M.P.No.409 of 2013. The learned Judicial Magistrate No.II, Attur by order dated 03.07.2013 dismissed the petition on the ground that the F.I.R in Crime No.1 of 2012 was at the investigation stage and the final report was yet to be filed before it and hence, the petition is not maintainable in law and further held that the learned Judicial Magistrate No.II, Attur has no power to issue summon to the learned District Munsif, Attur at the investigation stage to produce the sale agreement, which is Sub-Judice in O.S.No.205 of 2011. Against which the present Criminal Original Petition is filed.

5. The short facts of the case are as follows:-

5.1.The defacto complainant Kamalam purchased 6.56 acres of land on 24.07.2007 in Keeripatty Village in S.No.381/1A, 382/1B and 624/1C through an auction conducted by the Sub Court, Attur. The brothers of the defacto complainant Boopathy and Selvam had purchased 6.45 acres of land on 13.09.2010 in the same village in S.No.382/2 from Ramasamy of Attur. Thus, a total of 13 acres of land were in the possession of defacto complainant and her brothers. This being so, the 1st respondent viz., V.P.R.Raja, Town Secretary of D.M.K Party and formerly Town Panchayat Vice President of Thammampatty, created a forged unregistered sale

agreement dated 20.01.2006 prior to the date of purchase of land by the defacto complainant and her brothers for the entire 13.10 acres of land in the above mentioned Surveys. The said unregistered sale agreement was signed by the said Ramasamy as seller and by V.P.R Raja as purchaser.

5.2. On 21.05.2011, V.P.R.Raja along with his wife Kavitha, his mother Dhanabakkiam and others had trespassed into the property of the defacto complainant and scolded her by using her caste name and assaulted her and forcibly encroached the said land. When the defacto complainant along with others had approached the V.P.R.Raja and his family members on 30.12.2011 to explain the way of purchase of land and to question about the encroachment, the 1st respondent again abused defacto complainant in front of others by using her caste name. Hence, the defacto complainant preferred a complaint before the Superintendent of Police, Salem for which a case in Crime No.1 of 2012 has been registered for the offence under Sections 465, 471, 448, 506(i) r/w 3(i) (V) (VIII) of SC & ST (POA) Act, 1989.

6. The learned Government Advocate [Crl. Side] appearing on behalf of the petitioner would submit that the police on registration of the case had arrested V.P.R. Raja/the 1st respondent and Selvam/A1 and A3. The other accused had obtained Anticipatory Bail before this Court. During investigation 39 witnesses have been examined and their statements were recorded including the statements of Revenue Authorities and Registration Department Authorities. On investigation, it came to light that the 1st respondent had created the forged unregistered sale agreement dated 20.01.2006 and to escape from the forgery and to subvert the investigation had filed a civil suit in O.S.No.205 of 2011 for permanent injunction and has deposited the unregistered sale agreement documents in O.S.No.205 of 2011 on the file of the District Munsif Court, Attur.

7. Knowing the same, the petitioner made a request to the learned District Judge, Salem on 01.11.2012, who intern forwarded the request through a memo in D.No.6461 of 2012 dated 08.11.2012 to the learned District Musif, Attur to take action, which was not acted upon.

8. In the meanwhile the Deputy Director, TNFSL, Chennai was addressed with request along with the gist of the case to examine the document filed in O.S.No.205 of 2011 in the Court premises of District Munsif Court, Attur. The Deputy Director, Documents Division, Forensic Sciences Department, Chennai by its letter dated 30.11.2012 sent a reply is extracted here under:-

"1. The signatures/writings have to be photograph/examined under various immovable and

sophisticated instruments like video spectral comparator, stereo microscope. ESDA to detect the type of forgery. These instruments cannot be carried to the Court premises.

2.Occasions may arise to photograph the disputed and standard signatures using transmitted, oblique, ultra violet and infra red rays. These facilities are not made available in the Court premises.

3.Moreover, the examination of signatures/writings is not only confined to manual comparison but also includes others types of examination like superimposition, indentation, guidelines, alterations, additions, interlineations, transplantation and physical matching etc. These examinations can only be carried out in the laboratory premises. The above points are highlighted only to express the technical problems encountered in the examination of signatures/writings in the Court premises.

4.Further I may inform that Hon'ble Judge of the High Court of Judicature, Madras has recently passed orders to send the original documents to the laboratory through a responsible person for examination taking into consideration of the above facts. The copy of the same is enclosed.

5.Hence it is stated that the documents may be sent to this laboratory, The following procedures are being adopted to receive documents.

(i)For a thorough and proper scientific examination, original documents are necessary. Hence, the original documents (both standard and questioned) have to be procured and sent.

(ii)Sufficient specimen/admittedly genuine signatures/writings of the concerned person(s) made in the same language and nearest to the date of the disputed writings/signatures should be procured and sent for comparison with the disputed documents.

(iii)If it is a civil case as per G.O.Ms.No.996 Home (Pol.18) Department. Dated.08.09.2000 a minimum examination fee of Rs.1,500/- (Rupees one thousand five hundred only) is chargeable which can be paid either by cash or by Bank Draft drawn in favour of "The Director, Forensic Sciences Department, Chennai-600 004."

(iv) No fee for Crime No. allotted cases.

(v) The documents along with the examination fee may be sent to this department from the Court through Advocate Commissioner/Police Constable on any working day between 10.00 a.m and 03.00 p.m.

(vi) If the scientist of this department is summoned later for any evidence for a civil case, necessary TA/DA etc., have to be paid separately to the concerned scientist on the day of the evidence as per TA/DA rules of the Government of Tamil Nadu."

From the above it is clear that the unregistered sale agreement dated 20.01.2006 have to be examined by using scientific equipments by following certain procedures which could be done only in the Forensic Laboratory of the Department.

9. The petitioner/Investigating Officer was in a quandary since his request to the learned District Judge, Salem which was forwarded to the learned District Munsif, Attur was not acted upon. In the meanwhile the Forensic Department had also specified that the documents have to be sent to the laboratory for a thorough and proper scientific examination. Hence the petitioner moved I.A.No.1189 of 2015 in O.S.No.205 of 2011 as a third party before the learned District Munsif, Attur. Notices were sent to the accused, who are plaintiffs and the defacto complainant and others who are the defendants.

10. The petitioner has detailed about the necessity of the document to be examined by forensic department and filed an affidavit stating that the unregistered sale agreement dated 20.01.2006 is a vital document, in which the entire case hinges. The investigation is nothing but collection of evidence and the document is a vital evidence and its forensic study is imperative.

11. In the meanwhile the defacto complainant had filed a Writ Petition in W.P.No.18377 of 2017 before this Court seeking investigation to be carried out as per the procedure, within stipulated period. Further, as per rule(7) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, a charge sheet including the offences in the said act, is to be filed within sixty days before the concerned Jurisdictional Court. This Court in W.P.No.18377 of 2017 by order dated 19.07.2013 has directed the petitioner to complete the investigation and to file the charge sheet within a period of six months. Hence, the petitioner was in a predicament and had moved a petition in I.A.No.1189 of 2015 in O.S.No.205 of 2011 as third party before the learned District Munsif, Attur.

12.The objection of the learned counsel for the respondents before the civil Court was that the unregistered sale agreement dated 20.01.2006 is an important one. If the document is sent out of the civil Court, it would be misplaced and the same could not be retrieved by the police. Further there is no circumstance to send the document from the custody of the learned District Munsif, Attur. The defacto complainant and others have given no objection in support of the petitioner. All the defendants in the suit stated that subjecting the document to the forensic examination is an imperative one to arrive at a just decision of the case.

13.The learned District Munsif, Attur by its order dated 21.01.2016 had dismissed I.A.No.1189 of 2014 giving reasons that the petitioner ought not to have filed a petition as third party and it is not maintainable and further observed that there is no High Court order or direction to send the document from the custody of the learned District Munsif, Attur. If the investigating officer requires the document, only by following the procedures the same could be considered. Be that as it may.

14.It is to be seen that the petitioner has been filed under Section 151 of C.P.C, which is extracted here under:-

"Saying of inherent powers of Court-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court."

15.It is to be seen that this Court in a case of S.Chinnathai Verus K.C.Chinnadurai reported in MANU/TN/2281/2009 has observed as follows:-

"4.The word scientific investigation would also include sending the documents to a Forensic Expert in order to find out the truth or otherwise, as to whether a party to a suit has in fact signed the disputed document or not. Hence, the power is conferred under order 26 Rule 10A of the Civil Procedure Code to the Court to send a document to be compared with other admitted documents and get a report from the Forensic Expert.

8.The practice of either sending the copy of the original documents or directing the expert to come to the Court has been found to be impractical and difficult to implement. Moreover, there is no such procedure contemplated under the Civil Procedure as against the Order 26 Rule 10A of the

Civil Procedure Code. It is a well known fact that the Science and Technology has improved in leaps and bounds and it is always desirable to have the assistance and aid of an expert. It is also a matter of fact that an expert cannot bring all his instruments before the court for the purpose of finding out the fact that a party has signed the disputed document or not. Above all, it is nearly impossible for an expert to visit all the Courts through out the state for the above said purpose. Therefore, this Court is of the opinion that the provisions contended under Order 26 Rule 10A of the Civil Procedure Code will have to be complied with by the Civil Court in letter and spirit by sending the document to the expert instead either asking the expert to come to the Court or sending a copy of the document to the expert. It is also to be noted that it is very difficult for the expert to compare a copy of the original document. Similarly, it is always desirable for the Court to send the original document to the Government department while asking for a report. It is also to be noted, that there are not many Government experts with facilities in the State, in which there are number of Civil Courts."

16. In the Judgment reported in 2008 (2) Crimes 219 (SC) in the case of T.Nagappa Versus Y.R.Muralidhar, the Hon'ble Supreme Court of India has pleased to observe that it is a well settled principle of law that the wrong mentioning of provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass the orders.

17. The Hon'ble Apex Court in the case of Lakshimi & Another Versus Chinnammal @ Rayyammal and others in Civil Appeal No.2243 of 2009 on a similar situation, wherein the documents and forensic report were available in a Criminal Court had brought on record in a Civil Court in a Civil case had observed as follows:-

"12. If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged. We are not unmindful of the fact that the court in the said process would not encourage any fishing enquiry. It would also not assist a party in procuring a document which he should have himself filed.

13. There cannot furthermore be any doubt that by calling for such documents, the Court shall not bring about a situation whereby a criminal proceeding would remain stayed as it is a well settled principle of law that where a Civil proceeding as also a Criminal proceeding is pending, the latter shall get primacy.

14. In a Civil Suit, a document has to be proved. The report of an expert is also required to be brought on record in terms of the provisions of the Indian Evidence Act. Having regard to the provisions contained in Order XIII, Rule 9(1) first proviso (a) (i) of the Code, the Civil Court would furthermore be entitled to substitute the original document by a certified copy. We, therefore, fail to appreciate as to why the said original document could not be called for.

In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr.* MANU/SC/2173/2005 : AIR2006SC269, it was observed:

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.

The Hon'ble Apex Court had allowed the forensic report obtained by a Criminal Court to be taken on record in a Civil Suit. In this case, it is a converse situation.

18. The petitioner's contention is that in order to establish the prosecution case beyond any reasonable doubt, the forensic laboratory report with regard to the genuineness of the documents is essential. Therefore, the police was justified in requesting that the original documents to be handed over to them, so that the document could be sent for the forensic science laboratory for their opinion.

19. The petitioner being a Public Servant, duty is cast to investigate the crime, complete investigation within a

stipulated time and he has no interest in the outcome of the Civil Suit. This Court has issued direction on the civil side, subjecting the documents to forensic study in the Government Forensic Laboratory. Procedural wrangles cannot withhold investigation of crime, a statutory function.

20. Considering the facts that the sale agreement is a forged one, it is imperative that a Forensic science laboratory report be sought about its genuineness. In the absence of the forensic science laboratory report, the prosecution case would be weakened. This Court set aside the order dated 03.07.2013 in CrI.M.P.No.409 of 2013 of the Judicial Magistrate Court No.II, Attur.

21. The learned Judicial Magistrate No.II, Attur to whom report has been sent under Section 157 & 158 of Cr.P.C can send for the unregistered sale agreement dated 20.01.2006 in O.S.No.205 of 2011 pending before the learned District Munsif, Attur. The learned District Munsif, Attur shall hand over the original copy of the agreement to the petitioner or to the Court, Officer deputed in this regard after keeping a certified copy of the said document in the file of the Civil Suit in O.S.No.205 of 2011. The Investigating officer to submit the documents for forensic study to the Forensic Science Department, Chennai. Further, the Investigating officer is directed to keep the said document in safe custody after receiving the same from the Forensic Science Laboratory and to produce it before the Civil or Criminal Court as and when asked for. In the meanwhile, if the Crime No.1 of 2013 has been transferred to Designated Court or Special Court, the concerned Court has to follow the same procedure.

22. On receipt of the above said documents, the Director, Forensic Department is directed to give top priority to examine the documents and submit the forensic report preferably within a period of two weeks from the date of receipt of the documents.

23. The petitioner police is directed to complete the investigation within a period of three months from the date of receipt of the Forensic report and to file the final report within that period. The Superintendent of Police, Salem District is directed to monitor the progress of the investigation and ensure that there is no further delay and time limits are adhered to.

24. On filing of the charge sheet, if it is a positive charge sheet, the trial Court is directed to give top priority and to proceed with the trial on a day-to-day basis and also directed to conclude the trial within a period of three months from the date of filing of the charge sheet.

25. These directions are issued taking into consideration that the offence is of the year 2011. Inordinate delay has occurred in completion of investigation due to the multiplicity of proceedings and this Criminal Original Petition is pending from the year 2013, defeating the very purpose of the special enactment, which is a time bound one.

26. With the above said directions, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.II, Attur.
2. - do - Through The Chief Judicial Magistrate, Salem.
3. The District Munsif, Attur.
4. The Deputy Superintendent of Police, Anti Land Grabbing Special Cell, Salem.
5. The Superintendent of Police, Salem District.
6. The Public Prosecutor, High Court, Madras.

Copy to: The Director, Forensic Department, Chennai.

GJ-II(CO)
SSM(31/07/2019).

Crl.O.P.No.21687 of 2013

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