IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2019

PRONOUNCED ON : 03.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition Nos.27197 to 27199 of 2015

H.V.Vimalan ..Petitioner/Accused No.6 Crl.OP.27197/2015
..Petitioner/Accused No.8 Crl.OP.27198/2015
..Petitioner/Accused No.3 Crl.OP.27199/2015

Vs

State by
The Inspector of Police,
Neravy Police Station,
Karaikal. (Cr.No.30/2012) ..Respondent/Complainant in all Crl.O.Ps

Prayer in Crl.O.P.No.27191 of 2015:- This Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the final report in C.C.No.160 of 2013 on the file of the learned Judicial Magistrate No.2, Karaikal in as much as the petitioner/accused 6 is concerned.

Prayer in Crl.O.P.No.27198 of 2015:- This Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the final report in C.C.No.159 of 2013 on the file of the learned Judicial Magistrate No.2, Karaikal in as much as the petitioner/accused 8 is concerned.

Prayer in Crl.O.P.No.27199 of 2015:- This Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the final report in C.C.No.152 of 2013 on the file of the learned Judicial Magistrate No.2, Karaikal in as much as the petitioner/accused 3 is concerned.

For Petitioner in all Crl.O.Ps	:	Mr.Kamala Kumar
For Respondent in all Crl.O.Ps	:	Mr.V.Balamurugan, Additional Public Prosecutor (Pondy)

COMMON ORDER

These Criminal Original Petitions are filed under Section 482 Cr.P.C., to quash the final report in C.C.Nos.160, 159 and 152 of 2003 on the file of the learned Judicial Magistrate No.2, Karaikal, wherein, the petitioner herein has been arrayed as accused 6, accused 8 and accused 3 respectively.

2.The final reports in the above three cases filed by the respondent indicate that between 22.12.2011 and 28.12.2011 at Sub Registrar Office, Neravy, Karaikal, the accused person noted in the charge sheet in Col.No.11 from A.1 to A.6 had criminally conspired with A.1 (Ramu @ Radhakrishnan) and A.2 (Ezhilarasi) have prepared a document relating to the properties mentioned in the document schedule (Commune No.34, TR Pattinam Natham Manai Survey No.121/505 Patta No.1242 (N) to the extent of 3 ares and 75 Santhiyar or 27.18/64 Kuzhi) with the forged power of attorney document of the complainant (Vinotha), registered some properties on 22.12.2012 in the name of A.3 (Murugan) and re-registered the above mentioned properties on 28.12.2011 in the name of A.2 (Ezhilarasi) by A.6 (Vimalan) being a public servant, which he knows or believes to be incorrect, intending thereby to cause injury to the complainant. Thus, A.1 and A.2 committed offences punishable U/s 465, 420 I.P.C., r/w 120(B) I.P.C., and A.6 (Vimalan) committed offences U/s 167 r/w 120(B) I.P.C.

3.The petitioner herein contends that the materials collected during the investigation and placed before the Court for trial does not disclose any offence against the petitioner. As a public servant, working under the District Registrar he is bound to register the documents presented for registration by any parties. Accordingly, he has done the duty in accordance with the Registration Act. When there was objection for registering the document received from the defacto complainant, he has kept the document pending without registering. Meanwhile, the party who presented the document, preferred statutory appeal before the District Registrar under Section 72 of the Registration Act, and the same was allowed. Therefore, pursuant to the order passed by the District Registrar, the petitioner has registered the subject document, which is now been alleged by the defacto complainant as forged and fabricated document executed with intention to cheat.

4.The brief facts of the case as found in the petition is that, the petitioner was working as a Deputy Tahsildar in the Department of Revenue and Disaster Management, Government of Puducherry. He was posted as Sub Registrar, Neravy and in charge of Karaikal and Thirunallar Registrar Office. While so, on 22.12.2011, Ramu @ Radhakrishnan presented three sale deeds for registration along with a power of attorney deed executed in his favour by Vinotha (defacto complainant). After screening, he registered two documents. When he was about to register the third document, Vinotha objected contending that she has cancelled the power of attorney. The said fact was denied by A.1 - Ramu @ Radhakrishnan. The relevant documents were produced by the respective parties. On perusing the documents, the petitioner found that on 28.12.2001, the defacto complainant Vinotha has executed power of attorney in favour of Ramu @ Radhakrishnan in respect of certain properties and the said power of attorney deed has been registered at the office of the Sub Registrar, Tirunallar on 02.01.2002 as document No.1/2002. Again on 16.11.2004, she has executed another power of attorney deed in favour of A.1, in respect of few other properties stood in her name. The said document was registered at the Sub Registrar Office, Tirunallar as document No.74/2004. Later, Vinotha has cancelled the power of attorney executed in favour of Ramu @ Radhakrishnan/A.1 on 28.12.2001. The cancellation deed got registered at the Office of Sub Registrar Office, Tirunallar on 14.07.2011 as document No.106/2011. On the same day, another deed of cancellation was also registered by the defacto complainant - Vinotha with intention to cancell the second power of attorney executed by her in favour of the first accused on 16.11.2014. However, in the said document, the operative portion, has been wrongly mentioned as "the power of attorney deed executed on 28.12.2001 stands cancelled" in stead of mentioning the power of attorney deed dated 16.11.2004 stands cancelled.

(Emphasis supplied)

5.While so, on 20.12.2011, the first accused Ramu @ Radhakrishnan, the husband of the defacto complainant, had presented three sale deeds executed as power of attorney of the defacto complainant, based on the power of attorney deed dated 16.11.2004. Due to the error crept in the cancellation deed dated 14.07.2011, technically, the second power of attorney deed dated 16.11.2004 executed by Vinotha, in favour of A.1 Ramu @ Radhakrishnan, was not cancelled. Therefore, taking advantage of that, the sale deeds were presented for registration by A.1.

6.The petitioner herein, in the capacity of Deputy Registrar registered first two documents. While the third document was under scrutiny, the defacto complainant came and represented about the cancellation. At that time only, on scrutiny, it has been realised that there was an error in the cancellation deed in respect of the second power of attorney executed by the defacto complainant on 16.11.2004. When this was pointed out to the defacto complainant, she has realised the mistake and presented a deed of rectification on 23.12.2011 wherein, the error crept in the cancellation deed dated 14.07.2011 sought to be rectified to effect the cancellation of the power of attorney document dated 16.11.2004.

7.While so, the first accused aggrieved by the act of the petitioner keeping the third document pending has preferred appeal to the District Registrar as per section 72 of the registration Act. In the explanation given by the petitioner herein as Sub Registrar, he has pointed out that the power of attorney has been cancelled vide cancellation deed dated 14.07.2011. The error in the deed was also rectified vide rectification deed dated 23.12.2011. Therefore, the document presented for registration by the power agent whose power has already been cancelled cannot be registered. However, the District Registrar overruled his explanation allowed the appeal and directed the Deputy Registrar to register the document since, the error in the cancellation deed was rectified only after the presentation of the document.

8.It is contended by the learned counsel for the petitioner that based on the objection given by the defacto complainant, he refused to register the third document exercising his power under Section 71 of the Registration Act. The first accused has preferred an appeal under Section 72 of the Registration Act, and as per the order of the Registrar, passed in the said appeal, he has registered the third document. While so, his act done in the course of the 'official duty' cannot be the subject matter of prosecution. Since, he has discharged the duty in good faith and bonafidely, he cannot be held liable for the claim in any suit for damage under Section 86 of the Registration Act. Similarly, he cannot be prosecuted without sanction as provided under Section 197 of Cr.P.C.

9.To substantiate his claim, the learned counsel for the revision petitioner submitted that the petitioner who is an officer holding the post of Deputy Tahsildar is appointed by the Government and can be terminated only by the order of the Government. In this connection, he has also circulated a memorandum No.1044/Rev/Estt/A2/2007 Puducherry dated 26.02.2007, which is his appointment order as Deputy Tahsildar in the year 2007 and posted in the office of Deputy Collector (Revenue) Karaikal.

10.He would also rely upon the order passed by the District Registrar 25.01.2012 wherein, the petitioner was directed to register the pending document No.P.72/2011. The said order of the District Registrar is pursuant to the appeal preferred by Ezhilarasi, the second accused. This order is outcome of the petition filed by Ezhilarasi aggrieved by the act of the petitioner, as Sub Registrar, Neeravi, withholding the registration of the document presented on 20.11.2011. In this order, the district Registrar has passed the following order:-

> "In this regard, it is advised to the Sub-Registrar, Neravy & T.R.Pattinam, that after due process of the document and perusal of the connected documents produced by the Executant/Claimant, identification of the Executant/Claimants and the witnesses produced before him and due payment of registration fees etc., the Sub-REgistrar is allowing the document to be registered by assigning a permanent registration number. Whereas in this present case, what is the necessity arise to keep the document as pending and insisting to produce the original title deed, to lift the document and to return, after the completion of all process under the Registration Act, and Rules thereof ?
>
> Further, it is added that, in this connection two circulars issued at two instances by the District registrars, Registration Department, Puducherry vide
> (i)Circular No.272/JT.SR/DRO/2004 dated 25.10.2004 and
> (ii)Circular No.3889/DEO/RD/2008 dated 15.12.2008 are enclosed herewith for ready references and to state, on the light of the above facts, production of original title deed documents may not be insisted upon and the copy of the document obtained from the Sub-Registry Office concerned and produced by the claimant may be verified with the original copy of records available with the Sub-Registry office and on satisfaction, the pending document No.P-72 of 2011 may be lifted by assigning permanent registration number and the original document returned to the claimant under intimation to the undersigned."

11.Since, the petitioner has contended that he had no criminal intention or privity to the alleged conspiracy, his act of registering the document after the objection made by the defacto complainant was only pursuant to the order passed by the District Registrar who is the appellate authority, this Court thought fit that 'whether the said order was passed by the District registrar, as the appellate authority'. The Investigation Officer was directed to verify the same. Accordingly, the Inspector of Police, Karaikal, Neravy Police Station has filed an affidavit stating that the file related to the communication of the District Registrar bearing file

No.308/Dist.Regr./Pub.Pet/C-5/50 Puducherry, the dated 25.01.2012, could not be traced.

12.In the said circumstances, it is also brought to the notice of this Court that A.1 herein was done to death allegedly by the defacto complainant. Later, the defacto complainant was allegedly done to death by A.2 on 11.01.2013.

13.As far as the material available against the petitioner herein is concerned, the prosecution has relied upon the statement of Chandrasekar, Upper Divisional Clerk in Neravy Sub Registrar Office who have spoken about the role of the petitioner herein in the registration of the documents which are under scrutiny and subject matter of this case. In his submission, Chandrasekar has specifically stated that the error in the cancellation deed of Vinotha was known to Vimalan - the petitioner herein but, in connivance with his friend Ramu @ Radhakrishnan - A.1, the petitioner allowed the registration of the sale deeds based on the power of attorney alleged to have been executed by Vinotha without the knowledge of Vinotha/the defacto complainant. He has further stated that even when the first two deeds were registered on the strength of power of attorney executed by Vinotha on 20.12.2011, Vinotha objected for registration but, the petitioner did not take note of her objection.

14.The other statement incriminating the petitioner herein has been given by R.Baskaran, the District Registrar. In his statement, he has said that after Vinotha has expressed her desire to revoke the power of attorney executed in favour of her husband Ramu @ Radhakrishnan/A.1, the power of attorney deed is deemed to be cancelled. This statement has been recorded by the Investigating Officer on 02.05.2013. After the private complaint given by Vinotha before the Judicial Magistrate, Karaikal, was taken on file and ordered to be investigated by the Police. In this statement, Baskaran, the District Registrar has not whispered about the order passed by him on 25.01.2012 wherein, he has directed the petitioner herein to lift the pendency of the document and to give permanent registration number eventhough the deed of power of attorney was cancelled and even after rectification deed registered.

15.If the Registrar has given a statement suppressing and contrary to his order dated 25.01.2012 then, he is also liable to be prosecuted. If the said order is forged document then, the petitioner herein is liable for per jury. So, to ascertain 'whether the communication of District Registrar dated 25.01.2012 which is not part of investigation, is genuine or not', this Court has made an attempt and directed the Investigating Officer to find out the true fact. However, by an affidavit filed by one R.Marie Christian Alias Paul, the

Inspector of Police, Karaikal, it appears that the file pertaining to this communication dated 25.01.2012 is not traceable. The record indicates that the power of attorney documents executed by Vinotha in favour of her husband Ramu @ Radhakrishnan/A.1 is genuine and accepted. Later, on 14.07.2011, Vinotha has cancelled the power of attorney deeds, executed on 28.12.2001 and 16.11.2004. As a Sub Registrar, if really, the petitioner has bonafidely acted, he should have either kept all the three documents pending or ought to have registered all the three documents. Surprisingly, he has registered two documents but, kept the third document pending. Now, he produces a document and takes umbrage under the order allegedly passed by the District registrar. In the 161 Cr.P.C., statement, the said registrars (Baskaran) has not whispered anything about this order. The file pertaining to this order also reported to be 'not traceable'.

16.The learned counsel for the petitioner would rely upon the judgment of this Court rendered in Sakthivel vs. State represented by the Inspector of Police (Crl.O.P.(MD) No.10767 of 2014 dated 19.09.2018) wherein, this Court referring Section 52 of the Registration Act, and Rule 55 of the Registration Rules, has held that the registering authority is bound to register the documents presented and he cannot refused the registration except the circumstances mentioned under Rule 55 of the Registration Rules. It is stated in the above judgment that, the Registrar is bound to register the document presented with due stamp duty levied and he has no mandate to verify the title and ownership of the person who alienates the property.

17.It is also observed in the order of this Court in S.Annamalai vs. State through Deputy Superintendent of Police (Crl.O.P.(MD) No.1500 of 2013 dated 06.02.2018) that, the Sub Registrar is only having duty to register the document until the objection is raised by some other party.

18.In the facts and circumstances of this case, there is prima facie material to show that when the documents were presented for registration on 20.12.2011 by the first accused claiming as power of attorney of the defacto complainant Vinotha, the petitioner herein was fully aware of the fact that Vinotha has registered two cancellation deeds cancelling the power of attorney executed by her in favour of the first accused on earlier dates namely 28.12.2001 and 16.11.2004. The bona fide of the petitioner becomes doubtful since, out of three documents, the petitioner has allowed two documents to be registered and kept one document pending.

19.From the 161 Cr.P.C., statement of Baskaran, the then District registrars and Chandrasekar, the then Upper Divisional Clerk of Sub registrars Office, Neravy, it appears that Vinotha/

the defacto complainant was making repeated representations and objections. Even the petitioner, concedes that she made objection when the third document was about to be registered, therefore, he kept the registration pending assigning P.72 of 2011 but he has failed to exercise same discretion for the other two documents.

20.The order of the District Registrar dated 25.01.2012 which is now relied by the petitioner does not indicate that the objector Vinotha/the defacto complainant was afforded an opportunity before passing the order in the appeal directing this petitioner to register the third document. The very genuineness of the order dated 25.01.2012 purported to be issued by the District Registrar is also not certain.

21.In the said circumstances, there is no material to show that the act of the petitioner herein registering the three documents presented by A.1 claiming himself as power of attorney of Vinotha does not have the trappings of bonafideness. Even if the District Registrar has passed an order directing the petitioner herein to register the documents, despite objection made by Vinotha/the defacto complainant, it will not exonerate the petitioner herein in registering the other two documents. If the prosecution could prove the said communication emanated from the District Registrar, they can array Baskaran, the then District Registrar also as additional accused in this case.

22.As far as the protection given under Section 197 Cr.P.C., the appointment order circulated by the petitioner herein issued by the Secretary to Government does not say that his removal from service can be done only with the sanction from the Government.

23.For the said purpose, Section 197 Cr.P.C., is extracted below:-

> "197. Prosecution of Judges and public servants.
> (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union,

of the Central Government;
(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: [1] Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.”

24.The protection of Judges and public servants not removable save by sanction of Government from malicious prosecution is not for all act and not for all public servants. It is only if they are accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty and by public servant who is not removable from service save by sanction of Government. Therefore, the satisfaction of twin condition is essential to invoke the protection under Section 197 Cr.P.C.

25.The final report against the petitioner herein is for alleged offence under Sections 167 and 120(B) I.P.C. No doubt, the petitioner herein is a 'public servant' and the allegation against him is that, while discharging his duty as Sub Registrar, he has registered documents presented by a person who is not competent to present it or execute it. He has registered the documents despite the objection made by the defacto complainant, the original title holder of the property who has revoked the power of attorney executed in favour of A.1. However, he is not a public servant not removable save by or with the sanction of the government. His appointment is only by the Secretary of the concerned Department. Therefore, the contention raised by the petitioner herein that his act of registering the three sale deeds presented by A.1 is protected under Section 197 Cr.P.C., despite the objection made by the defacto complainant is in the course of discharge of his duty prima facie not sustainable and therefore, he is liable to face the prosecution and prove his innocence.

26.In the result, the three Criminal Original Petitions are dismissed. The Investigating Officer is directed to probe into the genuineness or otherwise of the communication dated 25.01.2012 alleged to have been sent by the then District Registrar, Baskaran which has emanated from his office. It is open for the respondent to make further investigation and include any person as additional accused if material available.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Judicial Magistrate No.2,
Karaikal.

2.The Public Prosecutor (Puducherry)
High Court, Chennai.

3.The Criminal Section,
High Court, Madras.

+1cc to Mr.R.Saravanan, Advocate, S.R.No.32670

Crl.O.P.Nos.27197 to 27199 of 2015

NA(CO)

RRS(17/06/2019)