

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1034 of 2018

T.S.Balasubramaniam

.. Petitioner

.Vs.

1. State rep. by
Sub Inspector of Police,
CCBII, Team I
Egmore, Chennai-600 008.
(Crime No.177 of 2007)

2. P.Kabali
3. T.D.Saravanan
4. S.Pushpavalli

.. Respondents

Prayer:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 25.01.2018 made in Crl.M.P.No.1011 of 2017 in Crl.A.No.36 of 2015 on the file of the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu.

For Petitioner : Mr.R.Thiagarajan

For Respondents: Mr.R.Surya Prakash
Government Advocate (Crl.Side) for R1

Mr.T.Easwaradhas for RR3 & 4

O R D E R

This Criminal Revision has been filed to set aside the order dated 25.01.2018 made in Crl.M.P.No.1011 of 2017 in Crl.A.No.36 of 2015 on the file of the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu.

2. The first respondent police registered the case against the respondents 2 to 4 based on the complaint given by the

revision petitioner. After registering the case in Crime No.177 of 2007 for the offences under Sections 466, 467, 468 r/w 471, 120(b) r/w 109 and 420 IPC, the first respondent police investigated the matter and laid charge sheet in C.C.No.328 of 2012 before the learned Judicial Magistrate, Alandur.

3. Before the trial Court, the prosecution examined 13 witnesses and marked 19 exhibits. None were examined on the side of the defence no exhibits were marked.

4. After trial, the learned Magistrate acquitted the accused on 22.07.2013, as against the said judgment, the complainant preferred the appeal in Crl.A.No.36 of 2015 before the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu. Subsequently, the complainant filed a petition in Crl.M.P.No.1011 of 2017 seeking to receive additional documents. The learned Sessions Judge dismissed the petition on 25.01.2018. As against the said order, the present revision has been filed before this Court.

5. The learned counsel appearing for the revision petitioner would submit that the main case is that after purchasing the property, Ex.P2-Power of Attorney was impersonated and forged the documents and therefore, the subsequent sale based on the forged Power of Attorney is not valid. The father of the revision petitioner/defacto complainant was working as Professor in Annamalai University and he has not in a habit to sign any document in Tamil, which also shows that the alleged Power of Attorney was not executed by his father. The learned Sessions Judge failed to consider the said fact and dismissed the petition.

6. Heard the learned counsel appearing for the Revision petitioner, the learned Government Advocate (Crl.Side) for the first respondent, the learned counsel for the respondents 3 and 4 and also perused the materials on record.

7. The main allegation of the revision petitioner against the respondents 2 to 4 is that A1 & A2 are friends, A3 & A4 are husband and wife, who are residing in the same area. The revision petitioner is a post graduate Engineer and he had worked with Indian Space Research Organization and retired from his service in the year 1998. The main contention is that Ex.P2-Power of Attorney is forged one. The petitioner has also filed O.S.No.311 of 2001 for permanent injunction and the same is also pending. The learned Sessions Judge, while dismissing the petition in Crl.M.P.No.1011 of 2017, has given the finding that there is no valid reason and the petitioner/complainant has not produced any valid documents before the trial Court. Admittedly, the civil suit is pending between the parties and

the petitioner is having opportunity to establish the forgery for questioning the validity of the sale deed executed after the death of his father before the Civil Court. The petitioner has stated that he can very well establish the civil case, which is pending before the Competent Court.

8. The learned counsel for the petitioner would submit that there is no limitation for Section 391 Cr.P.C and the Order XLI Rule 27 CPC for production of evidence is different from Section 391 Cr.P.C. These documents are absolutely necessary to decide the case, since he could not produce those documents in earlier occasion and the documents also submitted before the Investigation Officer is rejected earlier. Therefore, he has filed to receive additional documents and to hear the appeal. This Case has been filed on police report and the documents produced by the petitioner is only based on the collected materials by the first respondent police. After trial, the learned Magistrate came to the conclusion that the prosecution has not established its case before the trial Court and therefore, acquitted the accused. As against the said judgment, the complainant preferred the appeal before the Sessions Court. During the pendency of the appeal, he had filed the petition under Section 391 Cr.P.C to receive the additional documents. The crux of the matter is that the petitioner wanted to establish the Power of Attorney-Ex.P2, which is stated to have been executed by his father, is a forged one. In order to prove the forgery, it is necessary to compare the thumb impression of the signatory with the admitted thumb impression by way of producing the additional documents. The main contention raised is that the signature found in the Power of Attorney is in Tamil and the petitioner's father never put a signature in Tamil as he was working as Professor in Annamalai University. Since the petitioner has filed the suit for declaration, the learned Sessions Judge stated that it can very well established before the Civil Court. After establishing the Power of Attorney is forged one, they can very well file the criminal case.

9. This Court is also of the view that the petitioner challenged the Power of Attorney and it is only a documentary evidence, the petitioner can very well establish as to whether the Power of Attorney is forged or genuine before the Civil Court. If any case instituted on police report, trial court proceed the case based on the charge sheet, statements recorded from the witnesses and materials collected during the investigation by the police. Courts below can decide the case with available materials before it, the petitioner very well assist the prosecution. The Appellate Court shall decide the appeal without any influence from the observation made by this Court.

10. This Court does not find any merit in this revision.
Accordingly, this Criminal Revision Case shall stand dismissed.
KMI

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge of
Kancheepuram District,
Chengalpattu.

2.The Sub Inspector of Police,
CCBII, Team I
Egmore, Chennai-600 008.

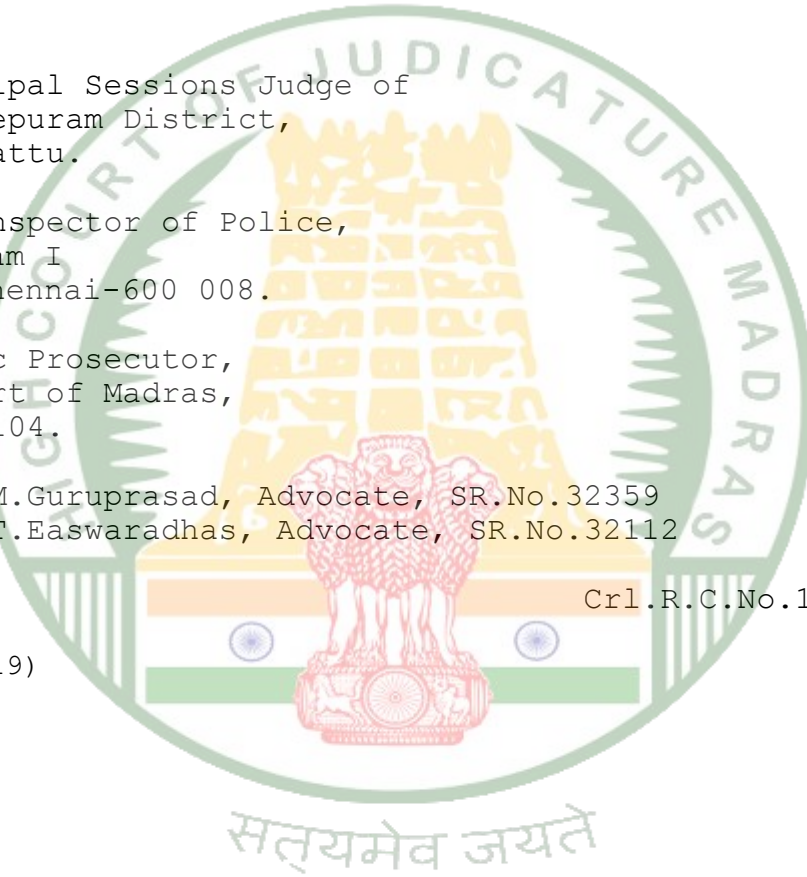
3.The Public Prosecutor,
High Court of Madras,
Chennai-104.

+1cc to Mr.M.Guruprasad, Advocate, SR.No.32359

+1cc to Mr.T.Easwaradhas, Advocate, SR.No.32112

Cr1.R.C.No.1034 of 2018

Kak(15/10/2019)



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