

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1085 of 2011
and
M.P.Nos.1 and 2 of 2011

1.Saroja
2.Nirmala
3.Jayakodi
4.Bhaskar

.... Petitioners/Accused 1 to 4

-vs-

1.State by:
Inspector of Police,
J-1, Saidapet Police Station,
Chennai - 600 015. 1st Respondent/Complainant

2.Lilly 2nd Respondent/De facto
Complainant

PRAYER: Petition filed under Sections 397 and 401 of Cr.P.C.,
praying to call for records and set aside the order passed by
the learned IX Metropolitan Magistrate, Saidapet, Chennai, in
Crl.M.P.No.2844 of 2011, in C.C.No.583 of 2009 dated 16.06.2011.

For Petitioners : Mr.K.R.Ramesh Kumar

For R-1 : Mrs.S.Thankira,
Government Advocate (Crl.Side)

For R-2 : Mr.V.Pavel

WEB COPY
O R D E R

[Order of the Court was made by C.T.SELVAM, J]

This Court has reserved orders in this matter on 22.09.2017
and today, the matter is listed under the caption "for being
spoken to".

2. This Criminal Revision Case has been filed by the petitioners/accused 1 to 4 praying to set aside the order dated 16.06.2011 passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.2844 of 2011 in C.C.No.583 of 2009.

3. Learned counsel for the second respondent submits that the second respondent has demanded a change of Vakalat and as such, notice to the second respondent may be issued.

4. This Court is not inclined to accept such request. This Court would reproduce its earlier order dated 21.03.2018:

'The matter has been adjourned from time to time to probe the possibility of settlement of dispute between parties, who are immediate family members, i.e., second respondent/de facto complainant being daughter and sister of petitioners/accused. A settlement deed executed by one of the accused i.e., brother of second respondent in favour of second respondent registered as document No.5148 of 2017 at the Sub Registrar Office, Sriperumbudur, is produced.

2. Learned counsel for petitioners/accused submits that second respondent's complaint relates to her being deprived of share of property of value of Rs.80,000/- at the time of sale i.e., in 1999, when sale was effected for a total sum of Rs.4,32,000/-. Learned counsel submits that the property presently settled in favour of second respondent is of value Rs.7,39,500/-. Learned counsel submits that the fourth petitioner has purchased the property for Rs.10,00,000/-. A Demand Draft in a sum of Rs.50,000/- has also been produced by petitioners in favour of second respondent under Demand Draft No.981633 issued by Karnataka Bank Limited on 23.11.2017. Learned counsel submits that such Demand Draft has now expired. The original sale proceeds have been deposited in the bank account of the mother and the proceeds are not being used by any of the petitioners save the mother. Learned counsel submits that second respondent had knowledge of the sale deed and informing her inability to be present, had further instructed that the sale may be proceeded with. In ignorance of legal consequences, the sale deed has been executed using the services of another.

3. Learned counsel for second respondent/de facto complainant submits that as there is no settlement and second respondent is not willing to receive the settlement deed or the payment of Rs.50,000/-. Learned counsel submits that second respondent is not so willing to receive the same since the net sum offered

by petitioners is very low.

Recording the above position, this Court will revert to the position informed on 22.09.2017 i.e., orders reserved. Pending orders, the proceedings before the trial Court is stayed and the presence of petitioners before Court below is dispensed with.'

5. The present is a case where offence indeed does stand committed. This Court is of the view that the prosecution ought not to be permitted despite such position.

6. The contents of affidavit filed by the first petitioner Saroja is reproduced hereunder:-

'I, U.Saroja, Wife of (Late) Ulaga Vijaya Pandiyan, Christian, aged about 78 years, residing at Annai Illam, No.1/11, Solaiappan Street, Old Washermanpet, Chennai-21 and also at F-3, Hiranya Apartments, No.78, Greenways Road, Raja Annamalaipuram, Chennai-600 028, do hereby solemnly affirm and sincerely state as follows:

1) I submit that I am the 1st petitioner in the above Criminal Revision Case and the 2nd, 3rd Petitioners are my daughters, the 4th Petitioner is my Son and the 2nd Respondent/De facto Complainant is my daughter, as such I am well acquainted with the facts and circumstances of the case.

2) I submit that on a private complaint given by the 2nd Respondent/De facto Complainant before the Learned Judicial Magistrate No.II, Madurai, the same was forwarded u/s.156(3) Cr.P.C. to the District Crime Branch, Madurai and a case was registered in Crime No.5 of 2007 for alleged offences u/s.406, 420, 463, 464 IPC against myself and other petitioners. Subsequently, on the jurisdictional aspect, this case was transferred to the 1st Respondent herein and a new Crime No.408 of 2007 was assigned.

3) I submit that on completion of investigation the 1st Respondent herein had filed Final Report against myself and other Petitioners before the Learned IX Metropolitan Magistrate, Saidapet, Chennai and the same was taken on file and assigned C.C.No.583 of 2009 for offences u/s.419, 420, 467, 468, 471 r/w.120-B IPC.

4) The case of the prosecution is that on 23.05.1970 my husband had purchased a property measuring about 1440 sq.ft. situated in S.No.80 & 81, V.O.C. Nagar 2nd Street, West Saidapet, Chennai-15 from one Mrs.Vijayalakshmi through a

Sale Deed D.No.983 of 1970. My husband died on 25.03.1991 intestate leaving behind the surviving legal heirs of myself, the petitioners 2 to 4 and the 2nd Respondent/De facto Complainant.

5) Further case of the prosecution is that on 28.05.1999 myself along with other petitioners have sold the above mentioned property to one Mr.Mohammed Siraj vide D.No.635 of 1999 registered at Sub Registrar Office, Saidapet for a Sale Consideration of Rs.4,32,000/- The said transaction was not informed to the De facto Complainant and her signature was forged by Accused-5 (viz.) Chandra, who is my daughter-in-law. Hence the prosecution was initiated on the complaint said to have been given by my daughter Mrs.Lilly.

6) I submit that the sale proceeds of Rs.4,32,000/- was received from the purchaser and after payment of commission to the brokers and miscellaneous expenses. The entire sum of Rs.4,00,000/- was invested in Fixed Deposit in my name at Union Bank of India, Washermanpet Branch on 02.06.1999, there after periodically renewed FDR Nos.0276843, 0276844, 0276845 & 839998 (Each Rs.1 lakh) and I am availing interest to meet my domestic and day to day expenses, apart from this, my Son Baskaran is paying my monthly House Rent of Rs.8,000/- and also all my medical and domestic expenses. The deposit of amount in my name is mutually agreed between our family members including the 2nd Respondent/De facto Complainant. Since, I have no independent source of income to maintain myself, it was agreed between myself, my daughters and son, to sell the above mentioned property and to invest the sale proceeds into a Fixed Deposit and to meet my day to day requirements from and out of the interest earned.

7) I submit that for the best reasons known to her and to wreck vengeance on the domestic issues, she had filed a complaint and prosecuting me, my daughters and son. I further submit that my daughter-in-law Chandra, wife of my son Baskaran (4th Petitioner) died on 11.09.2008 even before the Final Report filed.

8) I submit that in order to give an amicable solution my son Baskaran 4th Petitioner herein is willing to compensate the loss of Rs.87,000/- (1/5th share) by offering his Self Earned Property of Government Approved Housing Site situated at Pondur Village, Sriperumbudur Taluk, during in the

year, 2014 market value was Rs.10,44,000/- (Rupees Ten Lakhs Fourty Four Thousand only) which is 12 times of the notional loss incurred by my younger daughter Mrs.Lilly and he is willing to execute Settlement Deed in her favour and also to bear the Registration, Stamp Duty and Miscellaneous Expenses, apart from that he is also willing to deposit a sum of Rs.50,000/- into her account.

The Schedule of the Property as follows:-

All that Piece and Parcel of Vacant House Site, bearing Plot No.83, measuring 1740 square feet, Layout Named as "Green Homes II", Approved No.D.T.C.P.No.166/2005, comprised in Survey No.409/1 & 409/8, situated at Old Village No.157, New Village No.40, Pondur Village, Sriperumbudur Taluk, Kancheepuram District, within the Registration District of Chengalpet and Sub Registration District of Sriperumbudur.

Bounded on the:

North by	:	30 Feet Road,
South by	:	Plot No.92,
East by	:	Vacant Land,
West by	:	Plot No.84

Measuring on the:

North	:	30'5" Feet,
South	:	27'5" Feet,
East	:	60 Feet,
West	:	60 Feet.

9) I submit that my Husband Ulaga Vijaya Pandian died on 25.03.1991, at that time my daughter Mrs.Lilly (Defacto Complainant) was not married and my son has taken all initiative to settle her marriage and performed her marriage on 28.08.1992, at the time of marriage I have given 50 Sovereigns of my Jewels to her and my son has also incurred lot of expenditure from and out of his earnings and savings in connection with her marriage.

10) I submit that my Son Baskaran had spent Maternity Expenses of the Defacto Complainant at the time of delivery of her Son and Daughter in the year, 1993 & 1997 respectively, apart from that he has also spent for her Thyroid Treatment at Appollo Hospital for a period of 2 years and also spent another Rs.50,000/- for her Thyroid Surgery in the year, 2003. I further submit that every month he has given Rs.1000 to her children for a period of 5 years.

11) I submit that the above said facts may not be relevant for the decision of the case, taking

into consideration of my age and the trauma undergoing because of the criminal prosecution instituted by my daughter, I pray this Hon'ble Court may be pleased to appreciate the above facts and circumstances and grant me relief sympathically.

In these circumstances, I therefore pray that this Hon'ble Court may be pleased to accept my affidavit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.'

7. The supporting affidavit of the fourth petitioner U.Baskaran is reproduced hereunder:-

'1. U.Baskaran, Son of (Late) Ulaga Vijaya Pandiyan, Hindu aged about 57 years, residing at F-3, Hiranya Apartments, No.78, Greenways Road Extn., Raja Annamalaipuram, Chennai - 600 028, do hereby solemnly and sincerely state as follows:-

1) I submit that I am the 4th petitioner in the above Criminal Revision Case and the 1st petitioner is my mother, 2nd & 3rd petitioners are my Sisters and the 2nd respondent/Defacto Complainant is my younger sister, as such I am well acquainted with the facts and circumstances of the case.

2) I submit that myself along with my mother and sisters facing criminal prosecution initiated by my younger sister Mrs.Lilly (Defact Complainant) before the learned IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.583 of 2009 for offences under Section 419, 420, 467, 468, 471 r/w.120-B I.P.C.

3) I submit that as suggested by my mother I am willing to compensate the notional loss of Rs.87,000/- (1/5th share during the year,1999) incurred by my sister Mrs.Lilly by offering my Self Earned Property of Govt.Approved Housing Site situated at Pondur Village, Sriperumbudur Taluk. The Market value of the property is Rs.10,44,000/- (Rupees Ten Lakhs Fourty Four Thousand Only) to execute a Settlement Deed in favour of my sister Mrs.Lilly and also I undertake to bear the Registration Expenses, Stamp Duty and other Miscellaneous Expenses in connection with the registration. Apart from this I am also willing to deposit a sum of Rs.50,000/- into her Bank Account.

The Schedule of the Property as follows:-

All that Piece and Parcel of Vacant House

Site, bearing Plot No.83, measuring 1740 square feet, Layout Named as "Green Homes II", Approved No.D.T.C.P.No.166/2005, comprised in Survey No.409/1 & 409/8, situated at Old Village No.157, New Village No.40, Pondur Village, Sriperumbudur Taluk, Kancheepuram District, within the Registration District of Chengalpet and Sub Registration District of Sriperumbudur

Bounded on the:

North by : 30 Feet Road,
South by : Plot No.92,
East by : Vacant Land,
West by : Plot No.84

Measuring on the :

North : 30'5" Feet,
South : 27'5" Feet,
East : 60 Feet,
West : 60 Feet.

4) I submit that I am swearing this affidavit as requested by my mother to give a quietus to this issue and to maintain harmony in the family life.

5) I submit that because of the criminal case instituted by my sister Mrs.Lilly, we are undergoing lot of mental agony in our family life. This initiation of criminal prosecution is to wreck vengeance on the domestic issues.

6) I undertake to comply the directions of this Hon'ble Court as deem fit and the circumstances of this case.

In these circumstances, I therefore pray that this Hon'ble Court may be pleased to accept my affidavit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.'

8. The memo filed by the petitioners is also reproduced hereunder:

'1. The petitioners submit that on a private complaint given by the second respondent/De facto Complainant before the Learned Judicial Magistrate No.II, Madurai, the same was forwarded u/s.156(3) Cr.P.C. to the District Crime Branch, Madurai and a case was registered in Crime No.5 of 2007 for alleged offences u/s.406, 420, 463, 464 IPC against the petitioners. Subsequently on the jurisdictional aspect, this case was transferred to the first respondent herein and a new Crime No.408 of 2007 was assigned. On completion of investigation final

report has been filed before this Hon'ble Court in C.C.No.583 of 2009 for an offence u/s.419, 420, 467, 468, 471 r/w. 120-B of IPC.

2. The Petitioners submit that on receipt of summon, all the accused had appeared and after receipt of copies u/s.207 Cr.P.C. they had filed a Petition u/s.239 Cr.P.C. before the learned IX Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.2844 of 2011 to discharge from the above said case and the same was dismissed on 16.06.2011. Aggrieved by the same, they preferred the Criminal Revision Case before the Hon'ble High Court, Madras in CrI.R.C.No.1085 of 2011 and the same is pending.

3. The Petitioners submit that in view of the undertaking given before this Hon'ble Court by the 1st Petitioner, the Settlement Deed executed by the 4th Petitioner (viz.) U.Baskaran in favour of the 2nd Respondent/De facto Complainant (viz.) M.Lilly, D.No.5148/2017, dt: 10.11.2017 registered at the office of Sub Registrar, Sriperumbudur, Demand Draft has been purchased in her name (viz.) M.Lilly, for Rs.50,000/- (Rupees Fifty Thousand only), bearing No.981633, dt: 23.11.2017, drawn on the Karnataka Bank Ltd., R.A.Puram Branch, Chennai.

4. The Petitioners submit that we herewith producing the same and this Hon'ble Court may be pleased to take cognizance of the compliance of the undertaking given by the 1st Petitioner, the same may be recorded and suitable orders may be passed.

In these circumstances, it is therefore pray that this Hon'ble Court may be pleased to record the compliance and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.'

9. First petitioner/mother of second respondent is now aged 80 years and this Court has seen her to be able to stand only with support of her children. Let us be found wrong in passing the following order through which we deny not the second respondent only her pound of flesh but also assure that she sheds not a drop of blood.

The Criminal Revision Case shall stand allowed. The order of learned IX Metropolitan Magistrate, Saidapet, Chennai, passed in CrI.M.P.No.2844 of 2011, in C.C.No.583 of 2009, dated 16.06.2011 shall stand set aside. The original Settlement Deed as also a sum of Rs.50,000/- [Rupees Fifty Thousand only] shall be placed in the custody of the IX Metropolitan Magistrate, Saidapet, Chennai. It is open to second respondent to receive

such Settlement Deed as also the said sum of Rs.50,000/- credited to the case under due application. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Jrl

To:

- 1.The IX Metropolitan Magistrate,
Saidapet, Chennai.
2. The Chief Metropolitan, Magistrate,
Egmore, Chennai.
- 3.The Inspector of Police,
J-1, Saidapet Police Station,
Chennai - 600 015.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Pavel, Advocate SR.No.4448

+1cc to Mr.K.R.Rameshkumar, Advocate SR.No.4489

Cr1.R.C.No.1085 of 2011

GP (CO)
GMY (26/02/2019)

सत्यमेव जयते

WEB COPY