

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1096 & 1097 of 2011

K.Thiruppathi .. Petitioner
in Crl.R.C.No.1096 of 2011

K.Rahamathulla .. Petitioner
in Crl.R.C.No.1097 of 2011

Vs.

State represented by
The Inspector of Police,
District Crime Branch,
Villupuram. ..Respondent
in both petitions

Criminal Revisions filed under Sections 397 and 401 of Cr.P.C., against the order dated 08.07.2011 in Crl.M.P.Nos.44 & 45 of 2011 respectively in C.C.No.452 of 2010 on the file of Judicial Magistrate Court, Sankarapuram, Villupuram District.

For Petitioner
in both petitions :Mr.D.Sadhasivan

For Respondent
in both petitions :Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the order dated 08.07.2011 passed in Crl.M.P.Nos.44 & 45 of 2011 respectively in C.C.No.452 of 2010 on the file of Judicial Magistrate Court, Sankarapuram, Villupuram District.

2 The brief facts leading to the filing of this criminal revision petition are as under:

2.1 On the complaint lodged by one Ramaswamy, the District Crime Branch, Villupuram, registered a case in Crime No.16 of 2010 on 28.04.2010, against Thiruppathi (A1), Kannan (A2), Loganathan (A3) and others and took up the investigation of the case.

2.2 It is the case of Ramaswamy (de facto complainant) that Thiruppathi (A1) is running a Computer Center near the office of the Sub-Registrar, Sankarapuram; he represented to him (de facto complainant) that he knows all the officials in the office of the Sub-Registrar and that he is a licenced document writer; the documents prepared and presented through him would be registered within two days by the Sub-Registrar; the de facto complainant purchased a property from one Rahamathulla; to prepare the sale deed, he approached Thiruppathi (A1); Thiruppathi (A1) prepared the sale deed and took the de facto complainant and his vendor to the Registrar's Office for registration; at the time of registration, Thiruppathi (A1) collected Rs.10,300/- towards stamp charges and registration fee from the de facto complainant; after the document was registered, Thiruppathi (A1) collected the receipt from the Sub-Registrar's Office saying that he will get the document in two days and give it to the de facto complainant; as assured, Thiruppathi (A1) did not hand over the original sale deed to the de facto complainant; after several days, Thiruppathi (A1) handed over the sale deed by saying that he had to pay a sum of Rs.6,068/- towards the stamp duty and balance amount was given as bribe to the officials; it came to the knowledge of the de facto complainant that Thiruppathi (A1) had duped a few others also with false promises and so, he verified the sale deed and thereafter, he took the sale deed to the Registrar Office and learnt that the deficit stamp duty was only Rs.488/-, but, in the sale deed, the same has been written as Rs.2,488/-; hence, he lodged a complaint to the Police.

2.3 In the complaint, de facto complainant has referred to the case of two persons viz., Nagarathinam, Chinnapponnu who were similarly cheated by Thiruppathi (A1). The police took up the investigation of the case and after completing the investigation, filed charge sheet in C.C.No.452 of 2010 before the Judicial Magistrate, Sankarapuram, Villupuram.

2.4 On the appearance of the accused, they were furnished with the copies of the relied upon documents under Section 207 Cr.P.C.

2.5 Thereafter, Thiruppathi (A1) and Rahamathulla (A2) filed Crl.M.P.Nos.44 & 45 of 2011 respectively in C.C.No.452 of 2010 under Section 239 Cr.P.C. for discharging them from prosecution which have been dismissed by the trial Court on

08.07.2011, aggrieved by which, they have filed the present revision petitions.

3 Heard Mr.D.Sadhasivan, learned counsel appearing for the revision petitioners/accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State/respondent.

4 The learned counsel appearing for the accused submitted that in the FIR, the name of Rahamathulla (A2) does not figure and the names of Kannan and Loganathan figure, but, these two names have been dropped in the final report and the name of Rahamathulla (A2) has been added and hence, the prosecution is vitiated. It is trite that the FIR is not an encyclopedia of the prosecution case. It is not necessary for the police to charge sheet all the persons named in the FIR. The accused cannot have any grievance on this aspect and if at all any one can have grievance, he can only be the de facto complainant.

5 On perusal of the records, it is seen that the involvement of Rahamathulla (A2) surfaced during investigation and therefore, he has been arraigned as A2. As regards Kannan and Loganathan whose names have not been included in the final report, they have been included in the memorandum of evidence as prosecution witnesses. Kannan and Loganathan were employees in the office of the Sub-Registrar, Sankarapuram. The investigation conducted by the police revealed that it was Thiruppathi (A1) and his assistant Rahamathulla (A2) who had obtained huge amounts from gullible villagers who came to them for help, by representing that bribes have to be given to the staff in the office of Sub-Registrar. In the final report filed by the police, three specific instances of cheating have been set out:

(a) In the case of Ramaswamy (de facto complainant), Thiruppathi (A1) and Rahamathulla (A2) prepared the sale deed in their computer center and corrected the entry in the original sale deed relating to stamp duty by adding the numeral 2 before 488 and made it to Rs.2,488/-.

(b) In the case of Nagarathinam, Thiruppathi (A1) and Rahamathulla (A2) prepared the sale deed in their computer center and corrected the entry from Rs.1,100/- to Rs.5,100/- in the original sale deed relating to stamp duty. They have collected an additional sum of Rs.4,000/- from the victim.

(c) In the case of Chinnapponnu, Thiruppathi (A1) and Rahamathulla (A2) prepared the sale deed in their computer center and corrected the entry from Rs.2,440/- to Rs.4,440/- in the original sale deed relating to stamp duty. They have collected an additional sum of Rs.2,000/- from the victim.

6 The learned counsel appearing for the accused contended that Rahamathulla (A2) was only an employee under Thiruppathi (A1) and there is no direct evidence to implicate him for the offence.

7 This Court perused the Section 161(3) Cr.P.C. statements of Ramaswamy, Nagarathinam, Chinnapponnu, Rahamathulla [this person should not be confused with his name sake Rahamathulla (A2)], Mani, Jayaraman, Allimuthu, Chinnathambi, Palani and found that the involvement of both Thiruppathi (A1) and Rahamathulla (A2) in the offences has been clearly set out.

8 The learned counsel appearing for the accused contended that Thiruppathi (A1) was a member of Communist Party and was involved in several agitations and therefore, he has been falsely implicated in this case. In support of this, Thiruppathi (A1) has filed about twenty six documents before the Trial Court. Those twenty six documents may throw light only on the character of Thiruppathi (A1) and that cannot be a ground for discharging him from the present prosecution.

9 It has been held by the Supreme Court that a strong suspicion is enough to frame charges *Palwinder Singh vs. Balwinder Singh & Others* (2008) 14 SCC 504). In this case there are overwhelming evidence against Thiruppathi (A1) and Rahamathulla (A2) which shows that they had misrepresented to the victims that Thiruppathi (A1) is an authorized document writer and have tampered with the entry relating to deficit stamp duty in the three sale deeds and have collected huge amounts from poor villagers and cheated them. Hence, these revision petitions deserve to be dismissed.

10 Thiruppathi (A1) and Rahamathulla (A2) are directed to appear before the Trial Court on or before 11.02.2019 in C.C.No.452 of 2010 and subject themselves to trial. If they do not appear before the Trial Court before 11.02.2019, the Trial Court may issue non-bailable warrant to secure their presence. In fact, the three original documents are still available in the Trial Court. The original sale deeds of the three victims should be returned to them immediately after taking photocopies of the same and certifying them. At the time of their examination as witnesses, the victims may be directed to bring the original sale deed and after perusing the same in the open Court, the certified photocopy can be marked as an exhibit and the originals returned to them.

11 For having been an unfortunate victim of the crime, the original sale deed of the victim cannot be retained by the Court indefinitely. The Trial Court is directed to proceed with the case in C.C.No.452 of 2010 and complete the same within six weeks from the date of receipt of a copy of this order. The accused shall cross-examine the witnesses on the day they are examined in chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab (2005) 3 SCC 220. If the accused adopt any dilatory tactics, they can be remanded to custody in the light of the law laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh (JT 2004 (4) SCC 319). If the accused abscond, a fresh FIR can be registered against them under Section 229-A IPC. The Deputy Registrar (Crl. Side), High Court of Madras, is directed to ensure that the original records reach the Trial Court before 11.02.2019.

12 In view of the aforesaid discussion, this Court does not find any infirmity in the order passed by the Trial Court warranting interference.

In the result, these two criminal revision petitions are dismissed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

nsd
To

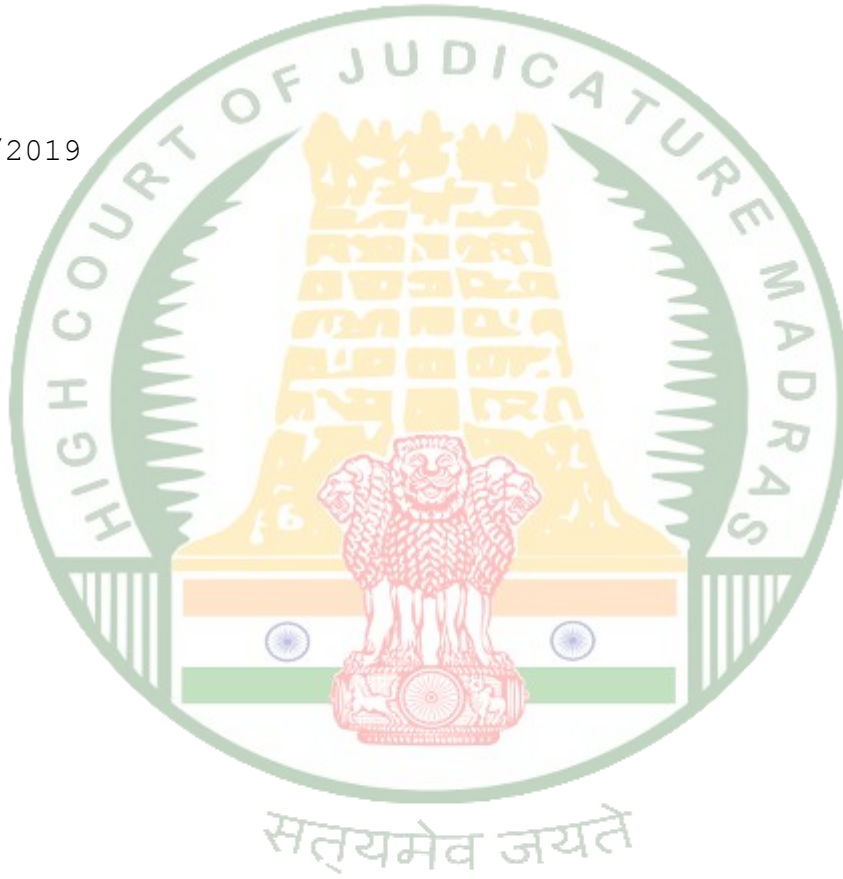
1. The Inspector of Police,
District Crime Branch,
Villupuram.
2. The Judicial Magistrate,
Sankarapuram,
Villupuram District.
3. The Deputy Registrar (Crl.Side),
Madras High Court,
Chennai - 104.(direction in Specific in Para No.10)

4. The Public Prosecutor,
Madras High Court,
Chennai - 104.

+2cc to Mr.D.Sadhasivan, Advocate sr.1200 & 1201

Cr1.R.C.Nos.1096 & 1097 of 2011

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srg 11/01/2019



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