

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1539 and 1542 of 2012

Crl.R.C.No.1539 of 2012

G.Shanthi ..Petitioner/Respondent/Complainant

.Vs.

Kumar Murugesh ..Respondent/Respondent/Accused No.5.

Criminal Revision Petition filed under Sections 397 read with 401 of the Code of Criminal Procedure against the order of discharge under Section 245(1) Cr.P.C dated 08.10.2012 made in Crl.M.P.No.6092 of 2012 in C.C.No.144 of 2012 on the file of Judicial Magistrate No.III, Erode and prays to set aside the same.

Crl.R.C.No.1542 of 2012

G.Shanthi ..Petitioner/Respondent/Complainant

Vs.

1.K.K.Rajendran
2.K.Manohar

..Respondent/Respondent/Accused No.3 & 4

Criminal Revision Petition filed under Sections 397 read with 401 of the Code of Criminal Procedure against the order of discharge under Section 245(1) Cr.P.C dated 08.10.2012 made in Crl.M.P.No.6073 of 2012 in C.C.No.144 of 2012 on the file of Judicial Magistrate No.III, Erode and prays to set aside the same.

For Petitioner : Mr.C.S.Saravanan

For Respondents : Mr.S.Jayakumar

COMMON ORDER

These Criminal Revisions have been preferred challenging the judgment and order dated 08.10.2012 passed by the Judicial Magistrate No.III, Erode in Crl.M.P.Nos.6092 and 6073 of 2012 in C.C.No.144 of 2012.

2. For the sake of convenience, the parties will be referred to by their name.

3. The deceased K.Ganesh, husband of Shanthi was the owner of a property measuring 5 acres and 63 cents and another measuring 18 acres in Kaliyanur Village, Pallipalayam, Namakkal District wherein he was running a dyeing factory. He died on 31.03.2006 leaving behind his heirs, Shanthi (widow), Karthik (Son) and Sathya Priya and Sudha Priya (daughters). The factory was being managed by T.S.V.Giri (A1). After the sudden demise of Ganesh, Shanthi took over the administration of the factory and found that there were lot of debts to be repaid to various creditors. It is alleged by her that Giri(A1), the manager of the Mill, who knew the entire facts, suggested to her to execute a release deed in favour of her son Karthik. Accordingly, on 22.05.2006, all the other heirs including Shanthi executed a release deed in favour of Karthik. It is Shanthi's further allegation that Giri (A1) suggested to her to approach K.K.Rajendran (A3), S.Kadhirvel (A6) and M.Subramani (A7) for help. When Shanthi approached them, they directed her to approach Kumar Murugesh (A5), who was then the Mayor of Erode Municipality. It is the grievance of Shanthi that a panchayat was held in December 2007 by Kumar Murugesh (A5) and in that panchayat it was decided that Karthik should execute a Power of Attorney in favour of Duraisamy (A2) and accordingly on 22.01.2007, Karthik executed a Power of Attorney in respect of the said properties in favour of Duraisamy (A2). Duraisamy (A2) is said to have executed two sale deeds on 22.01.2007 in favour of Rajendran (A3) and Manohar (A4) and two other sale deeds, both dated 29.01.2007 in favour of the same Rajendran (A3) and Manohar (A4). It is alleged by Shanthi that after getting the properties transferred, Rajendran (A3) and Manohar (A4) did not pay the sale consideration to her son Karthik and thus cheated him. On these allegations, Shanthi filed a private complaint in C.C.No.144 of 2012 before the Judicial Magistrate III, Erode against 10 accused. The complaint was taken on file and process was issued to the accused. On appearance of the accused, the pre-charge evidence was recorded by the Magistrate under Section 244 Cr.P.C in which Shanthi examined herself as PW1 and Karthik was examined as PW2. Thereafter, K.K.Rajendran (A3) and Manohar (A4) filed CrI.M.P.No.6073 of 2012 and Kumar Murugesh (A5) filed CrI.M.P.No.6092 of 2012 for discharging them from prosecution in which the trial Court by orders dated 08.10.2012 has discharged K.K.Rajendran (A3), Manohar (A4) and Kumar Murugesh (A5) from the prosecution challenging which Shanthi has filed the above two revision petitions.

4. Heard Mr.C.Saravanan, learned counsel counsel for petitioner and Mr.S.Jayakumar, learned counsel for respondents.

5. It is brought to the notice of this Court that even before lodging the private complaint, Karthik had filed a suit in O.S.No.37 of 2011 before the District Court, Namakkal for a declaration to declare the sales effected to K.K.Rajendran (A3) and Manohar (A4) as void and also for delivery of possession of the properties. The suit was contested by the defendants therein and by judgment and decree dated 07.02.2016, the prayer for declaration was negatived . Of course the judgment and decree of the trial Court will not have a binding effect on the criminal court, but in this case the fact remains that the Power of Attorney was executed by Karthik to Duraisamy (A2) and on the strength of the Power of Attorney, Duraisamy (A2) had sold the properties to K.K.Rajendran (A3) and Manohar (A4). The only allegations against A5 is that he had conducted a panchayat in which the aforesaid decision was taken. It is not the case of Shanthi that the accused had impersonated Karthik and had executed the sale deeds. It is her grievance that she had not received the consideration. She has allegedly cheated in the year 2007 and it is not known as to why she waited till 2012 to lodge the complaint especially after her son had filed a civil suit in O.S.No.37 of 2011.

6. In such view of the matter, this Court does not find any infirmity in the orders passed by the Court below discharging the accused. When once the principal accused have been discharged, no useful purpose will be served if the prosecution in C.C.No.144 of 2012 is kept pending qua the other accused. Therefore, by exercise of the powers under Section 482 Cr.P.C this Court hereby quashes the entire prosecution in C.C.No.144 of 2012 pending on the file of the Judicial Magistrate III, Erode against all the accused.

In the result, these Criminal Revision Petitions are dismissed, but the proceedings in C.C.No.144 of 2012 before Judicial Magistrate III, Erode stands quashed.

gpa

सत्यमेव जयते Sd/--

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.III, Erode

+1cc to Mr.s.Jeyakumar, Advocate, SR.No.82135

CrI.R.C.Nos.1539 and 1542 of 2012

Kak(05/11/2019)