

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 09.07.2019

PRONOUNCING ORDERS ON 16.07.2019
CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Crl.OP Nos.10106 of 2019, 1881 of 2019 and 23752 of 2018
and
Crl.MP.Nos.16890 of 2018, 1166 of 2019, 13374 of 2018

Crl OP Nos.10106 of 2019 and 23752 of 2019

1. Shanmugam
2. Selvaraj
3. Murugan
4. Vengatesan
5. Srinivasan
6. Ms.Chitra
7. Ms.Vasanthi

.....Petitioners in Crl OP Nos.10106 of 2019
and 23752 of 2019

Vs.

1. The Inspector of Police,
Ariyalur Police Station,
Ariyalur. .. Respondent/Complainant
in Crl OP Nos.10106 of
2019 and 23752 of 2019

2. Krishnamoorthy ..Respondent/ Defacto complainant
in Crl OP Nos.10106 of
2019 and 23752 of 2019

Crl OP No.1881 of 2019

K.K.Krishnamoorthy
..Petitioner in Crl OP No.1881 of 2019

Vs.

1. The Inspector of Police,
Ariyalur Police Station,
Ariyalur.
2. Shanmugam
3. Selvaraj
4. Murugan

5. Venkatesan

6. Srinivasan

7. Ms.Chitra

8. Ms.Vasanthi

9. The Inspector of Police,
CBCID, Ariyalur

.. Respondents in Crl OP
No.1881 of 2019

Prayer in Crl OP No.10106 of 2019 : Criminal Original
Petition filed under Section 482 of Cr.PC to call for the
records in Crl MP No.2690 of 2018 in CC No.104 of 2018 on
the file of the learned Judicial Magistrate I, Ariyalur
for the alleged offences under Section 465, 467, 468 and
471 of the IPC which arose from Crime No.253 of 2017 of
Ariyalur Police Station and quash the same.

Prayer in Crl OP No.23752 of 2018 : Criminal Original
Petition filed under Section 482 of Cr.PC to call for the
records in Charge sheet in CC No.104 of 2018 on the file
of Judicial Magistrate I, Ariyalur and quash the same.

Prayer in Crl OP No.1881 of 2019 : Criminal Original
Petition filed under Section 482 of Cr.PC to set aside the
order passed in Crl MP No.2690 of 2018 dated 28.09.2018 on
the file of the Judicial Magistrate No.I, Ariyalur insofar
as transferring the investigations is concern and further
transfer the investigation from 1st respondent to 9th
respondent herein.

For Petitioners in Crl OP No.10106 of 2019 and 23752 of 2018 : Mr.B.Kumar
Senior Counsel for
Mrs.Usha Ramman

For Petitioner in Crl OP No.1881 of 2019 : Mr.P.Tamilvel

For 1st respondent in all Crl OPs : Mr.Mohammed Riyaz
Additional Public Prosecutor

For 2nd respondent in Crl OP Nos.10106 of 2019 and 23752 of 2018 : Mr.P.Tamilvel

COMMON ORDER

The Criminal Original Petition No.10106 of 2019 has been filed to call for the records in Crl MP No.2690 of 2018 in CC No.104 of 2018 on the file of the learned Judicial Magistrate I, Ariyalur for the alleged offences under Section 465, 467, 468 and 471 IPC in Crime No.253 of 2017 and quash the same.

2. The Criminal Original Petition No.23752 of 2018 has been filed to call for the records in Charge sheet in CC No.104 of 2018 on the file of Judicial Magistrate I, Ariyalur and quash the same.

3. The Criminal Original Petition No.1881 of 2019 has been filed to set aside the order passed in Crl MP No.2690 of 2018 dated 28.09.2018 on the file of the Judicial Magistrate No.I, Ariyalur and transfer the investigation pending on the file of 1st respondent to 9th respondent.

4. The case of the prosecution is that the family of Kalichettiyyar was running several businesses. He had six sons and one daughter. The defacto complainant is one of his son and A1 to A5 are his other sons. All of them were partners. He died on 28.12.1991. It is alleged that the accused persons created a forged and fabricated Release Deed dated 05.02.1992, as if the defacto complainant is relinquishing his rights in the business after receiving his share. This document was also produced before the sales tax authorities and the name of the defacto complainant was removed from the official records. This came to be known to the defacto complainant only at a later point of time. Based on the complaint given by him to the respondent police on 11.06.2017, an FIR came to be registered against all the accused persons for an offence under Section 465, 467, 468 and 471 IPC.

5. The respondent police investigated and filed a final report before the learned Judicial Magistrate I, Ariyalur and the same was taken on file in C.C.No.104 of 2018 and the Court below also took cognizance of the same against the accused persons. Crl OP No.23752 of 2018 has been filed by the accused persons challenging the proceedings pending before the Court below.

6. The defacto complainant filed a petition in Crl. MP No.2690 of 2018 before the Court below to order further investigation and to transfer the investigation to another agency. The Court below entertained the said petition and by an order dated 28.09.2018, ordered for further investigation under Section 173(8) of Cr.PC and directed the Deputy Superintendent of Police to supervise the investigation. This order is challenged by the accused persons in Crl OP No.10106 of 2019.

7. The Defacto Complainant has filed Crl.OP No.1881 of 2019 challenging the very same order passed by the Court below insofar as the Court below not transferring the further investigation to some other agency.

8. Mr.B.Kumar, learned Senior Counsel appearing on behalf of the petitioners in Crl OP No.23752 of 2018 and Crl OP No.10106 of 2019, made the following submissions :-

a. The crux of the allegation is that the Release Deed dated 05.02.1992 is a forged and fabricated document and the defacto complainant has not signed in the said document. The original of this Deed has not been seized by the respondent police and a copy of the document was sent for expert opinion and the expert has declined to give his opinion, since there was no contemporaneous signature of the defacto complainant available for comparison and that the signature cannot be compared with a photo copy of the document. Therefore, the prosecution has failed to collect any material to prove the allegation of forgery and that this ground by itself is enough to quash the proceedings.

b. The defacto complainant has given the complaint after nearly 24 years, alleging that the Release Deed is a forged document and that too after receiving his share. The Defacto complainant could not have claimed any relief before a Civil Court against the accused persons at this length of time, since his claim would have been hopelessly barred by limitation. Such a time barred claim is now sought to be given a criminal colour and a malicious criminal proceeding has been initiated by the defacto complainant, which amounts to abuse of process of Court.

c. The malafides is writ large, since the defacto complainant has gone to the extent of making the wives of the partners also as accused persons, without any basis.

d. The Court below has not applied its mind while taking cognizance and a rubber stamp order has been passed and that ground by itself is enough to quash the proceedings before the Court below.

e. The Court below after taking cognizance of the complaint, does not have the power or jurisdiction to order for further investigation under Section 173(8) of Cr.PC and the order passed by the Court below is in violation of the Judgement of the Hon'ble Supreme Court and the Full bench judgment of this Court.

f. A dispute which is purely civil in nature has been given a criminal colour and the entire proceedings is an abuse of process of Court.

g. The learned Senior counsel in order to substantiate his submissions has relied upon the following judgements :-

1. Thermax Limited and others Vs. K.M.Johny and

others] reported in (2011) 13 SCC 412.

ii. [Kishan Singh Vs. Gurpal Singh and others] reported in 2010 (8) SCC 775.

iii. [Prem Kumar Vs. State of Rajasthan] reported in 2016 SCC Online SC 923

iv. [Ammani Ammal Vs. Dhanalakshmi Bank Limited and others] reported in 2008 (1) CTC 816 (Mad)

v. [Narayana Reddiar Versus Rugmini Ammal] reported in 2001 Cri. LJ 81 (DB)

vi. [Rugmini Ammal Vs. Narayana Reddiar] reported in 2007 (12) SCC 611.

vii. [Ajay Kumar Parmar Vs. State of Rajasthan] reported in 2012 (12) SCC 406.

viii. [Pawan Kumar Sharma Vs. State of Uttranchal] in SLP (Crl) No.4701 of 2007.

ix. [Anil Kumar and others Vs. M.K.Ayappa and another] reported in 2013 (10) SCC 705.

x. [Chinnathambi @ Subramani Vs. The State Represented by the Inspector of Police, Vellakovil Police Station, Tirupur District] reported in 2017 SCC online Mad 670.

9. The learned counsel appearing on behalf of the defacto complainant submitted that the accused persons have cheated the defacto complainant by creating a forged Release Deed and have deprived his share in the business. The learned counsel further submitted that the defacto complainant came to know about this only in the year 2015, when he applied to the Commercial Tax Office seeking for information regarding sales tax registration of K.Kali Chettiyar and sons and to his shock, he came to know that his name has been removed from the firm. The illegal removal of the name of the defacto complainant became a subject matter of challenge before this Court in WP No.12949 of 2017 and this Court interfered with the order passed by the authorities by order dated 19.04.2017.

10. The learned counsel further submitted that the respondent police have not conducted the investigation in a proper manner and that is the reason why the defacto complainant had sought for further investigation by a different agency and the Court below while ordering for further investigation merely directed the Deputy Superintendent of Police to monitor the investigation without transferring it to a different agency. The learned counsel further submitted that the delay in filing the complaint cannot be put against the defacto complainant, since the defacto complainant came to know about the fraud played by the accused persons only at a later point of time and there was a plausible reason for the delay in giving the complaint. The learned counsel concluded his arguments by submitting that the forgery is apparent on the face of the record and it is clearly seen even with naked eye and therefore, the signature can be compared

even by the Court in exercise of its power under Section 73 of the Evidence Act.

11. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in [Vinay Thiyagi Vs. Irshad Ali @ Deepak and others] reported in 2013 4 SCC crl. 557 and the Judgement in [Chandra Babu @ Moses Vs. The State through Inspector of Police and others] in 2015 3 MLJ CrL 597.

12. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the investigating officer has recorded the statements of nearly seven witnesses. These statements along with the other materials collected during the investigation, are enough to frame charges against the accused persons. The learned counsel submitted that even a strong suspicion based on some material is enough to frame charges and whatever contentions are raised by the accused persons can be raised as a defence in the course of the proceedings and there is absolutely no ground to interfere with the proceedings at this stage.

13. This Court has carefully considered the submissions made on either side and the materials available on record.

14. The sum and substance of the allegation made by the defacto complainant is that he did not sign the Release Deed dated 05.02.1992 and his signature has been forged in the said document and he has been illegally kept away from the business by the accused persons and thereby, the accused persons have committed the offence of forgery and cheating.

15. Except for the statement recorded from the defacto complainant and his wife, no one else has spoken about the forgery of the signature in this case. LW3, who is the mother of the defacto complainant has categorically stated that she was one of the attesting witness in the Release Deed executed by the defacto complainant in the year 1992. She has not disputed her signature found in the Release Deed. LW.4, is an officer belonging to the Commercial Tax Department, who speaks about the firm being registered with the statutory authority and about the orders passed by this Court in the writ petition. These are the only materials that are available along with the final report.

16. It is also seen from records that a copy of the Release Deed was sent for expert opinion and the same was returned on the ground that the contemporaneous signature of the defacto complainant is not available and that the opinion cannot be given based on a photo copy of the

document. Therefore, the Court below which took cognizance of the final report did not have the advantage of any expert opinion to come to a prima facie conclusion that the document in question is a forged document.

17. The Release Deed is said to have been created in the year 1992. This has been questioned by the defacto complainant by giving a complaint only in the year 2017. Admittedly, the parties are siblings and it is unbelievable that the defacto complainant came to know about his removal from the partnership firm after nearly 24 years. This inordinate delay in giving the complaint has a very serious bearing on the criminal proceedings itself. The defacto complainant, had he attempted to prosecute his case before a Civil Court to claim for his share in the business, could not have even maintained a suit, since it would have been hopelessly barred by limitation. This aspect of the issue also has a very serious bearing in the pending criminal proceedings.

18. The Court below has taken cognizance of the complaint by merely affixing a "Rubber Stamp" as follows :-

" CC.No.104 /2018
Taken on file on 27-08-18
U/s. 465, 467, 468, 471 IPC
and posted to 17.09.2018
P.C.A used is on
JUDICIAL MAGISTRATE No.I
ARIYALUR
27.08.2018"

19. It has been repeatedly held that taking cognizance is a judicial act which requires application of mind and the Court must give some reasons for taking cognizance. Failing which, the cognizance itself becomes bad in the eye of law. Unfortunately in this case, the Court below has resorted to "Rubber Stamp" cognizance without assigning any reason.

20. The Hon'ble Supreme Court in [Pawan Kumar Sharma Vs. State of Uttaranchal] in CrI. Appeal No.1692 of 2007 (ASLP (CrI.) No.4701 of 2007, has dealt with this issue and the relevant portions of the judgment is extracted hereunder :

"In the State of Uttaranchal (now known as State of Uttarkhand) there exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on "rubber stamped" orders.

A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only

apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.

Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC.

In State of Karnataka and Anr. Vs. Pastor P. Raju (2006) 6 SCC 728, this Court has clearly made out a distinction between an order taking cognizance of an offence and an order of issuance of process stating:

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out."

21. The Hon'ble Supreme Court in [Sunil Bharti Mittal Vs. Central Bureau of Investigation] reported in 2015 4 SCC 609 has held as follows :-

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to

grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

22. It is clear from the above judgments that the Hon'ble Supreme Court has deprecated the practice of taking cognizance through "Rubber Stamp" orders. The Hon'ble Supreme Court has made it very clear that taking cognizance is a judicial act which requires application of mind. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a prima facie case against accused persons. Of course, the order need not contain detailed reasons.

23. In view of the above judgments, the cognizance taken by the Court below by means of a Rubber Stamped order is patently illegal and this Court has to necessarily interfere with the manner in which the cognizance was taken in this case.

24. The Hon'ble Supreme Court in the Judgment in [Kishan Singh Vs. Gural Singh and others] reported in 2010 (8) SCC 775 has held as follows :-

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging

the complaint is always fatal. [vide: Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors., (2008) 12 SCC 531).

25. The Hon'ble Supreme Court in the Judgment in [Thermax Limited and others Vs. K.M.Johny and others] reported in (2011) 13 SCC 412 has held as follows :-

20. In Suresh vs. Mahadevappa Shivappa Danannava & Anr., (2005) 3 SCC 670, this Court, on the ground of delay/laches in filing the complaint and the dispute relates to civil nature finding absence of ingredients of alleged offence of cheating under Section 420 IPC, set aside the order of the Magistrate and that of the High Court. In that case, the alleged agreement to sell was executed on 25.12.1988. A legal notice was issued to the appellant therein on 11.07.1996 calling upon him to execute the sale deed in respect of the premises in question. Thus, the complaint was submitted after a gap of 7= years of splendid silence from the date of the alleged agreement to sell i.e.

25.12.1988. The appellant therein responded to the legal notice dated 11.07.1996 by his reply dated 18.07.1996 through his lawyer specifically denying the alleged agreement and the payment of Rs 1,25,000/- as advance. Nothing was heard thereafter and the complainant after keeping quiet for nearly 3 years filed private complaint under Section 200 of the Code before the IVth Additional CMM, Bangalore on 17.05.1999. The Magistrate, on the same date, directed his office to register the case as PCR and referred the same to the local police for investigation and to submit a report as per Section 156(3) of the Code. A charge-sheet was filed on 04.08.2000 by the police against the appellant-Accused No. 1 only for offence under Section 420 IPC. The Magistrate took cognizance of the alleged offence under Section 190(1)(b) of the Code and issued summons to the accused-appellant therein. Aggrieved by the aforesaid process order dated 04.08.2000 passed by the Magistrate, the appellant-accused preferred the criminal revision which was dismissed by the High Court. The order of the High Court was under challenge in that appeal.

22. After finding that inasmuch as the police has given a clean chit to Accused Nos. 2-4, this Court concluded that the Magistrate ought not to have taken cognizance of the alleged offence against Accused No.1 and that the complaint has been made to harass him to come to terms by resorting to criminal process. Regarding the delay, this Court pointed out that the complaint was filed on 17.05.1999, after a lapse of 10= years and, therefore, the private complaint filed by respondent No.1 therein is not at all maintainable at this distance of time. It was further observed that it is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise and finding that the order of the Magistrate and of the High Court requiring Accused No.1/appellant therein to face trial would not be in the interest of justice, set aside the order of the High Court and of the Magistrate.

26. The above judgments make it clear that inordinate delay does have an impact in criminal proceedings. In this case, there is an inordinate delay of

24 years in giving the complaint. The Defacto complainant who could not have got any relief before a Civil Court in view of this delay, has virtually attempted to set in motion criminal proceedings and take his chance. In otherwords, what he will not be able to achieve in civil proceedings, is attempted to be achieved through criminal proceedings. The Criminal proceedings are tried to be used as a weapon in order to spite his own siblings and make them toe his line. The judgments cited supra makes it clear that this Court can interfere with such malicious criminal proceedings, in exercise of its powers under Section 482 of Cr.PC.

27. This Court in the Judgment in [Ammani Ammal Vs. Dhanalakshmi Bank Limited and others] reported in 2008 (1) CTC 816 (Mad) has categorically held as follows :-

35. Even though Section 73 of the Indian Evidence Act permits the Court to compare the disputed signature with that of the admitted signature, such signature can be compared only with admitted signatures available which are prior in point of time. The Debts Recovery Appellate Tribunal did not compare the signature with the admitted signature which were contemporaneous and therefore, the learned Senior Counsel appearing for the petitioner is right in his submission that there may be some difference in the signature of a person by lapse of time and as such, the petitioner was justified in objecting to the comparison of her signature in the disputed documents with that of her present signature.

28. It will also be relevant to rely upon the judgement of Kerala High Court in [Narayana Reddiar Versus Rugmini Ammal] reported in 2001 Cri. LJ 81 (DB) and the relevant portions are extracted hereunder :-

23. The allegation in the petition filed by the first respondent is that the petitioner has committed offences under Sections 463, 471, 475 and 476 of the Code of Criminal Procedure. In this context, it is pertinent to note that even Ext. R4(a) is only a photo copy. According to the first respondent, after he saw Ext. R4(a) he was convinced that the document was a forged one. Hence, he sent the document along with the other documents, which contained the admitted signatures of her husband to Kashyap. The report of Kashyap is produced as Ext. P-18. A perusal of Ext. P-18 will show that a final opinion has not been expressed by the expert. On the other hand, what was stated is that opinion has been given on the basis of the photo copies and reserved his right to confirm it by examination

of. the original disputed and admitted documents, before giving evidence in the Court. Thus, the handwriting expert himself has given the opinion that what he has considered is only the photo copies and only after confirmation by examining the undisputed admitted documents that evidence can be given in the Court. The above report was relied on by the learned single Judge. The learned single Judge also verified the admitted signatures with that of the disputed signatures. Thus, the learned single Judge took the view that the contention raised in the C.M.P. was correct and that Ext. R4(a) and other documents mentioned were forged by the appellant. We are of the view that so far as this aspect is concerned, the learned single Judge was wrong in holding that there is evidence to show that the documents were fabricated. The only evidence adduced before the learned single Judge was Ext. P18, the report of the handwriting expert.

24. As already stated, the handwriting expert has given his report stating that a final opinion can be given only after the original documents are produced. The learned single Judge compared with the signature on the photo copies and then came to the conclusion that there was prima facie proof of falsification. We are afraid that the learned single Judge was not correct in taking such a view. This is because the original of Ext. R4(a) and other documents which were now found to have been falsified, were not produced before the learned single Judge. Further, we are of the view that the mere comparison of the signatures, the Court cannot come to the prima facie conclusion of falsification. Hence, we are of the view that there is no evidence to show that Ext. R4(a) and other documents were forged. Further, we are of the view that so far as this case is concerned, the proceedings cannot be initiated under Section 340 of the Code of Criminal Procedure. There is no case that Ext. R4(a) and other documents were forged after they were produced in Court. In such circumstances, the question is whether the proceedings under Section 340 of the Code of Criminal Procedure can be initiated.

29. It will also be useful to rely upon the judgment of the Hon'ble Supreme Court in [Ajay Kumar Parmar Vs. State of Rajasthan] reported in 2012 (12) SCC 406. The relevant portion of the Judgment is extracted hereunder :-

24. Evidence of identity of handwriting

has been dealt with by three Sections of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') i.e. Sections 45, 47 and 73. Section 73 of the said Act provides for a comparison made by the Court with a writing sample given in its presence, or admitted, or proved to be the writing of the concerned person. (Vide: Ram Chandra & Anr. v. State of Uttar Pradesh, AIR 1957 SC 381; Ishwari Prasad Misra v. Mohammad Isa, AIR 1963 SC 1728; Shashi Kumar Banerjee & Ors. v. Subodh Kumar Banerjee, AIR 1964 SC 529; Fakhruddin v. The State of Madhya Pradesh, AIR 1967 SC 1326; and State of Maharashtra v. Sukhdeo Singh & Anr., AIR 1992 SC 2100).

25. In Murari Lal v. State of Madhya Pradesh, AIR 1981 SC 363, this Court, while dealing with the said issue, held that, in case there is no expert opinion to assist the court in respect of handwriting available, the court should seek guidance from some authoritative text-book and the courts own experience and knowledge, however even in the absence of the same, it should discharge its duty with or without expert, with or without any other evidence.

26. In A. Neelalohithadasan Nadar v. George Mascrene & Ors., 1994 Supp. (2) SCC 619, this Court considered a case involving an election dispute regarding whether certain voters had voted more than once. The comparison of their signatures on the counter foil of the electoral rolls with their admitted signatures was in issue. This Court held that in election matters when there is a need of expeditious disposal of the case, the Court takes upon itself the task of comparing signatures, and thus it may not be necessary to send the said signatures for comparison to a handwriting expert. While taking such a decision, reliance was placed by the Court, on its earlier judgments in State (Delhi Administration) v. Pali Ram, AIR 1979 SC 14; and Ram Pyarelal Shrivastava v. State of Bihar, AIR 1980 SC 1523.

27. In O. Bharathan v. K. Sudhakaran & Anr., AIR 1996 SC 1140, this Court considered a similar issue and held that the facts of a case will be relevant to decide where the Court will

exercise its power for comparing the signatures and where it will refer the matter to an expert. The observations of the Court are as follows:

"The learned Judge in our view was not right.....taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as Judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by the Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to the ultimately rendered." (See also: Lalit Popli v. Canara Bank & Ors., AIR 2003 SC 1795; Jagjit Singh v. State of Haryana & Ors., (2006) 11 SCC 1; Thiruvengada Pillai v. Navaneethammal, AIR 2008 SC 1541; and G. Someshwar Rao v. Samineni Nageshwar Rao & Anr., (2009) 14 SCC 677).

28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings upon the comparison made by it. However,

where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.

30. The above judgments make it abundantly clear that an expert opinion can never be obtained by seeking for a photo copy of a document. Even though, a Court is entitled to compare the signature under Section 73 of the Evidence Act, the Court must exercise prudence and caution, since the opinion formed by the Court can be susceptible to error and since the Court is not an expert in that field. It is also clear that signature must be compared only with a contemporaneous signature, since there is every possibility of the signature of a person varying by passage of time.

31. In this case, there are absolutely no materials to show that the Release Deed dated 05.02.1992 is a forged document, except for the ipsi dixit of the defacto complaint and his wife.

32. In view of all the above findings, this Court has absolutely no hesitation to interfere with the proceedings pending before the Court below, since the criminal proceeding is an abuse of process of Court and requires interference in exercise of its powers under Section 482 of Cr.PC.

33. The Court below after taking cognizance of the final report, has proceeded to pass an order directing for further investigation under Section 173(8) of Cr.PC. This order is patently illegal in view of the Judgement of this Court in [Chinnathambi @ Subramani Vs. The State Represented by the Inspector of Police, Vellakovil Police Station, Tirupur District] reported in 2017 2 CTC 241. The relevant portion of the judgment is extracted hereunder:

54. We sum up our conclusions as follows:-

(i) An order of the Magistrate taking cognizance of offences on a police report is a judicial order.

(ii) An order of a Magistrate ordering further investigation on receiving a police report is a non judicial order.

(iii) An order of a Magistrate accepting a negative police report after hearing the parties is a judicial order.

(iv) An order of a Magistrate recording the report of the police as "undetectable" is not a judicial order.

(v) The power of the Magistrate to permit the police to further investigate the case as provided under Section 173(8) of the Code is an independent power and the exercise of the said power shall not amount to varying, modifying, or cancelling the earlier order of the Magistrate on the report of the police, notwithstanding the fact whether the said earlier order is a judicial order or a non judicial order of the Magistrate.

(vi) For seeking permission for further investigation under Section 173(8) of Cr.P.C. by the police, the earlier order, either judicial or non judicial, passed by the Magistrate on the report of the police need not be challenged before the higher forum.

(vii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. after cognizance has been taken on the police report can be exercised by the Magistrate only on a request made by the investigating agency and not, at the instance of anyone other than the investigating agency or even suo motu. [vide judgment of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, 2017 (2) Scale 198].

(viii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. can be exercised by the Magistrate before accepting the negative police report thereby acting on the protest petition by the victim or the de facto complainant. [vide Kishan Lal v. Dharmendra Bafna and another, (2009) 7 SCC 685]

(ix) We clarify that anyone who is aggrieved by any order made by the Magistrate on a police report as aforesaid in sub-paragraphs (i) to (iv) hereinabove may approach the higher forum for remedy, if any.

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34. It is clear from para 54 (VII) in the above judgement that the power to grant permission for further investigation can be exercised only based on the request made by the investigating agency. It cannot be done either based on the petition filed by the defacto complainant or suo-motu by the Court, after the final report has been taken cognizance. This position of law has further been reiterated by the Hon'ble Supreme Court in its latest judgment in [Bikash Ranjan Rout Vs. The State through the Secretary for Home, Government of NCT of Delhi, Delhi]

reported in 2019 3 MLJ Crl 86 (sc). Therefore, this Court has no hesitation to interfere with the order passed by the Court below directing for further investigation.

35. The petition filed by the defacto complainant challenging the order passed by the Court below in not transferring the investigation to a different agency is also not maintainable in view of the fact that the very order passed by the Court below ordering for further investigation is bad and illegal.

36. In the result, the proceedings in CC No.104 of 2018, on the file of the learned Judicial Magistrate II, Ariyalur is hereby quashed. Similarly, the order passed by the Court below in Crl MP No.2690 of 2018 dated 28.09.2018 is also set aside. Accordingly, the Crl. OP No.23752 of 2018 is allowed, the Crl.OP No.10106 of 2019 is allowed and Crl OP No.1881 of 2019 is dismissed. Consequently, all the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate I,
Ariyalur
2. The Chief Judicial Magistrate ,Ariyalur
3. The Inspector of Police,
Ariyalur Police Station,
Ariyalur.
4. The Inspector of Police,CBCID, Ariyalur.
5. The Public Prosecutor,
High Court of Madras

+1cc to Mr.usharaman , Advocate SR.No.60892
+1cc to Mr.P.Tamilvel , Advocate SR.No.61376
+3ccs to Mr.P.Tamilvel , Advocate SR.No. 61412
Crl.OP Nos.10106 of 2019, 1881 of 2019 and 23752 of 2018
and
Crl.MP.Nos.16890 of 2018, 1166 of 2019, 13374 of 2018
A.SK(19/07/2019)