



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.3237 of 2016

and

Crl.M.P. (MD)Nos.1641, 1642 & 7683 of 2016

Saikrishnan

... Petitioner/Accused No.4

Vs.

1.The Inspector of Police,
District Crime Branch,
Tirunelveli District.
Crime No.16 of 2013

... 1st Respondent/Petitioner

2.Pathmaja

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.209 of 2015, on the file of the learned Judicial Magistrate No.1, Tirunelveli and quash the same, as against the petitioner.

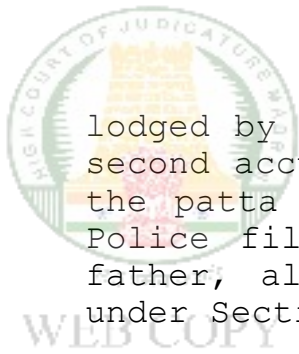
For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.T.Antony Arul Raj

For Respondents : Mr.A.Robinson,
Government Advocate (Crl. Side)
for R.1
Mr.N.Dilipkumar for R.2

ORDER

This petition is filed by the petitioner / fourth accused in C.C.No.209 of 2015 on the file of the learned Judicial Magistrate No.1, Tirunelveli, to quash the proceedings pending against him.

2. The respondent Police filed the final report that one Subbulakshmi Ammal, Grandmother of PW2, namely, Venkatraman, gave the property in S.Nos.26/2 and 26/3, in Keelaveeraragavapuram Village, by way of a Will. The same has been probated and the patta stands in the name of PW2. While so, the accused nos.1 & 2 with the help of the petitioner and his father / accused nos.4 & 3, respectively, created a forged death certificate of the said Subbulakshmi Ammal, produced the same before the Revenue Divisional Officer and transferred the patta in their favour. The complaint



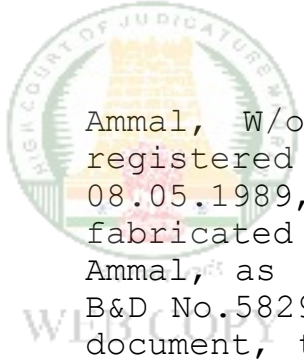
lodged by one Pathmaja, PW1 / wife of PW2 as against the first and second accused, namely, Viswalakshmi and Nandhakumar, in whose name the patta was transferred. After the investigation, the respondent Police filed the final report as against this petitioner and his father, along with the first and second accused, for the offence under Sections 120(b), 465, 466, 468 & 471 IPC.

3. Mr.G.Prabhu Rajadurai, learned Counsel for the petitioner / fourth accused would submit that it is in fact, (late) Subbulakshmi Ammal is the Great Grandmother of the petitioner and she executed a registered settlement deed in the year 1957 and thereafter, she died on 03.05.1989. By virtue of this settlement deed, the petitioner's father / third accused is the absolute owner of the properties in respect of 'D' Schedule in the settlement deed and those properties are located in Tirunelveli District. But, in contra to the same, the suit properties were alienated by one Venkatraman, the husband of the defacto complainant in favour of one Little Flower Convent in the year 2006. Therefore, this petitioner has lodged a complaint as against the husband of the defacto complainant in the year 2011 before the District Crime Branch, Tirunelveli District and the same was registered in Crime No.63 of 2011, on 20.12.2011, under Sections 465, 467, 468, 471, 420 & 120(b) IPC.

4. According to the learned Counsel, pursuant to the registration of this case, the sale deed executed by the said Venkatraman was also cancelled on 05.06.2012. For having registered the case against Venkatraman, his wife / defacto complainant has foisted this false complaint against the petitioner and his father and even while lodging the complaint in the year 2013, there was no allegation or averment made in the First Information Report as against this petitioner. But, in order to wreck vengeance, implicated this petitioner also as an accused along with the other accused. Based on a statement recorded under Section 161(3) Cr.P.C., from one of the witnesses that ten years prior to the occurrence, this petitioner and his father gave a forged certificate and based on this flimsy statement, the petitioner has been roped-in as an accused in the final report. Excepting this statement, the statements of the other witnesses in the final report do not constitute any offence as against this petitioner. However, the learned Magistrate has taken cognizance of the final report in whole and issued summons to the petitioner. Therefore, he prays for interference.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that there are enough materials available, particularly, the statement recorded under Section 161(3) Cr.P.C., to demonstrate the role of this petitioner in the commission of offence. Therefore, he prays for dismissal.

6. Mr.N.Dilip Kumar, learned Counsel for the second respondent / defacto complainant would submit that Tmt.Subbulakshmi



Ammal, W/o Balakrishnan Naidu, died on 03.05.1989. Her death is registered with the Corporation of Madras in Registration No.41, on 08.05.1989, in B&D No.39841/1985. But the accused persons have fabricated and forged a Death Certificate for the said Subbulakshmi Ammal, as if she died on 16.08.1989 and the same was registered in B&D No.58294/2000 on 24.08.1989. On the strength of this fabricated document, the accused nos.1 & 2 had mutated the revenue records in respect of the properties of the said Subbulakshmi Ammal in their favour. During the course of the investigation, the respondent Police have found that this petitioner and his father are instrumental in fabricating and forging the said Death Certificate and in this regard, the statement recorded from an independent witness under Section 161(3) Cr.P.C., is very much available. The learned Counsel has also produced the fabricated death certificate as well as the original death certificate in his typed set of papers and demonstrated the manner in which the offence has been committed.

7. Mr.N.Dilip Kumar would submit that whoever makes any false document or part of a document with an intent to cause any damage or any injury to any person or to support any claim or title is said to have committed forgery, as defined under Section 464 IPC and whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly as per Section 24 IPC. Therefore, according to the learned Counsel, there are enough evidence that this petitioner and his father are the beneficiaries in the said forgery of death certificate, through which, an attempt has been made to change the title in the names of accused nos.1 & 2.

8. With regard to the contention of the petitioner that this case has been instituted to wreck vengeance for having filed a complaint as against the defacto complainant's husband is not correct, since the main allegation in the said complaint as against the defacto complainant's husband was that he forged the signatures in Document No.271/1981. During the investigation, the investigation agency referred the document to the Forensic Expert and after obtaining the scientific evidence, they found that the signatures disputed by the petitioner were found to be genuine and the case was also closed as mistake of facts on 14.03.2013 itself. As against the same, the petitioner has not filed any appeal and therefore, the contention of the petitioner that in order to wreck vengeance he has been roped-in as an accused in the final report is not correct and hence, prays for dismissal.

9. He has also relied upon the decisions of the Hon'ble Supreme Court in **State of Punjab and others v. Inder Mohan Chopra and others**, reported in (2009) 3 SCC 497; in **G.S.Bansal v. Delhi Administration**, reported in AIR 1963 SC 1577; and in **Central Bureau of Investigation v. K.M.Sharan**, reported in (2008) 4 SCC 471.

10. This Court has paid it's anxious consideration to the rival submissions and also to the available materials.

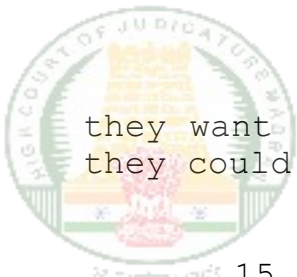


11. Tmt.Subbulakshmi Ammal, W/o.Balakrishnan Naidu died on 03.05.1989, in the address L-108, Plot No.555, 19th Street, Madras - 102 and a Certificate was issued by the Corporation of Madras in B&D No.39841/1995, dated 08.05.1989. Yet another death certificate of Subbulakshmi Ammal was also produced, as if the Certificate was issued by the Corporation of Chennai in B&D No.58294/2000, dated 10.01.2000, that she died on 16.08.1989 and she was residing at a different address. This death certificate dated 10.01.2000 is found to be a fake one, as per the report of the Commissioner, Chennai Corporation, dated 06.09.2011.

12. The case of the defacto complainant is that Subbulakshmi Ammal was the Great Grandmother of her husband and with regard to the properties in S.Nos.26/2 & 26/3 in Keelaveeraragavapuram Village, Tirunelveli District, she made a Will in favour of one Chandrabai and after the demise of Chandrabai, she transferred these properties to the mother-in-law of the defacto complaint, namely, Rajam @ Andal Ammal. The said Rajam @ Andal Ammal executed a Will in favour of her husband and the Will was also probated in favour of her husband. While so, by producing the forged death certificate, the accused nos.1 & 2 have obtained a patta in their favour and attempted to cause a wrongful loss to the defacto complainant.

13. The respondent Police, after investigation, has filed the final report, not only against the accused nos.1 & 2, but also against the petitioner / A4 and his father / A3, based on the statement recorded from one Rajasekaran, S/o.Kannan, under Section 161(3) Cr.P.C. The said Rajasekaran was examined by the Inspector of Police on 17.09.2014 and according to him, when he was doing some eatery business in front of Golden Beach, ten years ago, the third accused and this petitioner came to him, gave a death certificate and that certificate was collected by the accused nos.1 & 2, after ten days. This is the only material available as against this petitioner for implicating him as an accused. Apart from this statement, there is no other material collected by the prosecution to connect this petitioner for the commission of offence.

14. No doubt, a forged death certificate was created in the name of Corporation of Chennai and pursuant to the same, an attempt was also made to transfer the patta in the name of the first accused. The beneficiaries are the other accused, since they have attempted to effect transfer of patta. There is nothing on record to show that this petitioner has made a wrongful gain on the said forged document or that it is this petitioner, who has created the document, except the statement recorded from Rajasekaran under Section 161(3) Cr.P.C. This statement of Rajasekaran also appears to be flimsy that ten years prior to the examination, the petitioner and his father, who intended to give the forged document to the first accused, went to the Golden Beach and handed over the document to him, for the purpose of handing it over to the accused nos.1 & 2. The investigation agency has not collected any materials showing the nexus between the petitioner and the said Rajeswaran, as if at all



they want to hand over the forged certificate to the other accused, they could have very well handed it over to them straight away.

15. If the case is at the stage of FIR and if there are any *prima facie* materials available, then there is every justification in having the petitioner in the list of accused persons, since the case would be at the stage of investigation and only during the investigation, the respondent Police would collect the materials implicating them. But, in the case on hand, the investigation has already been completed by the respondent Police and final report has also been filed. In the final report, the statement recorded under Section 161(3) Cr.P.C., from one Rajasekaran is shown as the only material connecting this petitioner to the commission of offence and the said statement of Rajasekaran, in the opinion of this Court, appears to be flimsy. Except this statement, there is no other material connecting this petitioner to the commission of offence. To be noted, the petitioner is not arrayed as an accused in the First Information Report and no averment is made as against him in the complaint. Based on the statement of Rajasekaran alone, he was implicated in the charge sheet. Based on such vague statement, without any supporting evidence, any witness can rope-in anybody as an accused and if such prosecution is allowed to proceed further against them, it would lead to roping-in any number of persons as accused, which ultimately lead them to undergo the ordeal of trial.

16. The Hon'ble Supreme Court, in the case of **Sharda Prasad Sinha (Dr) v. State of Bihar**, reported in **(1977) 1 SCC 505** has held as follows:

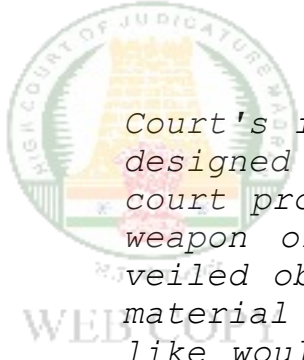
"2. It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence."

17. In the case of **State of Karnataka v. L. Muniswamy**, reported in **(1977) 2 SCC 699**, the Hon'ble Supreme Court has held as follows:

"7. ... Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or other wise to secure the ends of justice."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High



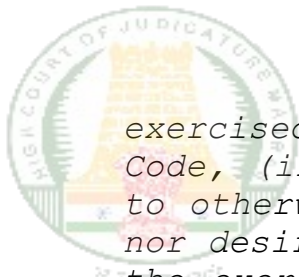
Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

18. The Hon'ble Supreme Court, in the case of **Bhaskar Chatteraj v. State of West Bengal**, reported in **1991 SCC (Cri) 1077**, has held as follows:

"3. ...We carefully and meticulously went through the entire reports as well as the statements of the witnesses recorded under Section 161 of the Criminal Procedure Code during the course of the investigation and on perusal of the records, we are satisfied that there is no material connecting the appellant with the alleged offence of criminal trespass. The learned counsel appearing on behalf of the respondent is not able to satisfy us showing any material that would justify the implication of the appellant with the offence for which he now stands charged. In our considered opinion, no conviction can be recorded on the mere vague allegations, that too made only in the petition dated November 15, 1985 and as such the entire proceedings as against this appellant is only an abuse of the process of the court. In view of the above circumstances, we quash the charge framed as against this appellant under Section 448 IPC. Before parting with the judgment, we make it clear that we are not expressing any opinion on the merits of the case of the other accused and the court trying the case shall not be influenced by any of the observations made in this judgment or by this order quashing of the charge under Section 448 IPC in respect of this appellant. In the result, we set aside the impugned order of the High Court and quash the entire proceedings as against this appellant."

19. In the case of **Minu Kumari v. State of Bihar**, reported in **(2006) 4 SCC 359**, the Hon'ble Supreme Court has held as follows:

"19. The section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be



exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

20. In view of the foregoing discussions, this Court is of the considered opinion that this is a rarest of rare case where the interference of this Court under Section 482 Cr.P.C. is warranted, since allowing the prosecution to proceed further as regards this petitioner would be an abuse of process of the law. If the petitioner is allowed to undergo the ordeal of trial in the absence of any evidence connecting him to the commission of offence and that he has made any wrongful gain, it would amount to injustice.

21. Accordingly, the proceedings pending against the petitioner / fourth accused in C.C.No.209 of 205, on the file of the learned Judicial Magistrate No.1, Tirunelveli, is set aside and this Criminal Original Petition is allowed. Insofar as the other accused are concerned, the trial Court is directed to expedite the proceedings and conclude the same, on its own merits and in



accordance with law, as expeditiously as possible, uninfluenced by any of the observations made by this Court in this petition. Consequently, connected miscellaneous petitions are closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (AD-II)

/ /2020

Sub Assistant Registrar(CS)

gk

To

1.The Judicial Magistrate No.1,
Tirunelveli.

2.The Inspector of Police,
District Crime Branch,
Tirunelveli District.

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-56719[F] dated 26/03/2019)

Cr1.O.P. (MD)No.3237 of 2016

and

Cr1.M.P. (MD)Nos.1641, 1642 & 7683 of 2016

25.03.2019

VB (07.08.2020) 8P 4C