



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.09.2019

PRONOUNCED ON : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)Nos.10683 and 10099 of 2019

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in Crl.O.P.(MD)No.10683 of 2019

1.S.Mohamed Mubarack

2.S.Raja Mohammed

... Petitioners /Accused 11 and 12

Vs.

1.State represented

The Inspector of Police,
SPE/CBI/SCB,
Chennai.

Crime No Rc.8 of 2014]. ...1st Respondent/Complainant

2.Mohammed Mushthafa

...2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code to call for the records relating to the proceedings in S.C.No.91 of 2016 before the learned I Additional District and Sessions Judge, Madurai and may quash the same in respect of the petitioners/accused No.11 and 12.

For Petitioners

: Mr.R.Vivekanandhan,
for M/s.B.Nambiselvan

For Respondent
No.1

: Mr.N.Nagendran
Spl. Public Prosecutor for CBI

in Crl.O.P.(MD)No.10099 of 2019

1.Mahendra Varman @ Mahendran

... Petitioner /Accused 10

Vs.

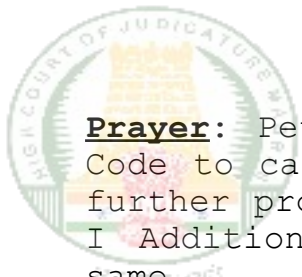
1.Deputy Superintendant of Police,
C.B.I,
Special Crime Branch,
Rajaji Bhavan,
Besant Nagar,
Chennai.

...1st Respondent/Complainant

[FIR No.RC.08/S/2014/CBI/SCB/Chennai]

2.Mohammed Mushthafa

...2nd Respondent/Defacto
Complainant



Prayer: Petition filed under Section 482 of the Criminal Procedure Code to call for the records from the lower court to quash all the further proceedings in S.C.No.91 of 2016 pending on the file of the I Additional District and Sessions Judge, Madurai and quash the same.

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For Petitioner	: Mr.T.Gopalan
For Respondent	: Mr.N.Nagendran
No.1	Spl. Public Prosecutor for CBI

COMMON ORDER

The petition in Crl.O.P(MD)No.10683 of 2019 has been filed by accused Nos.11 and 12 in S.C.No.91 of 2016 on the file of the I Additional District and Sessions Judge, Madurai and Crl.O.P(MD) No.10099 of 2019 has been filed by accused No.10 in S.C.No.91 of 2016 on the file of the I Additional District and Sessions Judge, Madurai, for quashing the proceedings in S.C.No.91 of 2016.

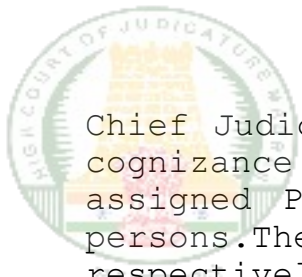
2.Since both these Criminal Original Petitions are arising out of the proceedings pending in S.C.No.91 of 2016, both these original petitions are disposed of by way of this common order.

3.The case of the prosecution is that one Jammal Mohammed (deceased) was the Managing Trustee of M/S.K.M.Allavudin Rowther Trust, Madurai. The said trust owns various properties, including a property measuring to an extent of 1.64 acres of land, located near New jail road, Madurai, which was taken care of by one Mokkamya Thevar and after his demise, the said property was under the control of his legal heirs including one G.Ganesan (A9)/ son-in-law of Mokka Maya Thevar.

4.During the year 2010, the above said G.Ganesan (A9) in collusion with (A10), by way of illegal means, alleged to have created fabricated documents. However, the deceased had obtained an order from RDO, Madurai and reverted the tenancy rights of the above said property.

5.The learned Counsel for the petitioners submits based on a complaint lodged by the the second respondent dated 03.09.2014, originally a case in Crime No.901 of 2014 has been registered by D-1, Thallakulam Police Station, Maudrai in connection with missing and murder of one Jamal Mohamemed. As per the order of this Court in Crl.O.P(MD)No.17168 of 2014, the case in Crime No.901 of 2014 has been transferred to the file of the 1st respondent CBI and the same was registered in Crime No.RC.No.8 of 2014 on 31.10.2014 against 14 persons for the alleged offence under Sections 102(B), 420, 364, 347, 386, 302, 467, 468, 471 and 201 IPC.

6.It is further submitted that after completion of the investigation in Crime No.8 of 2014, the 1st respondent CBI had laid the final report under Section 173(2) of CrPC before the learned



Chief Judicial Magistrate, Madurai, who in turn on 28.01.2016, took cognizance over the final report filed by the 1st respondent, assigned PRC No.1 of 2016 and issued summons to all the accused persons. The petitioners are arrayed as accused Nos.11, 12 and 10 respectively.

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7. In pursuance of the summons issued by the learned Chief Judicial Magistrate, Madurai in PRC.No.1 of 2016, all the accused persons appeared before the Court. The case was committed to the learned District and Sessions Court, Madurai and was taken on file in S.C.No.91 of 2016, before the I Additional District and Sessions Court, Madurai and is now pending for framing charges. As against the same, the present criminal original petitions have been filed.

8. The learned Counsel for the petitioner in Crl.O.P(MD) No.10099 of 2019 has raised the following grounds in support his petition:

(i) The case of the prosecution is that one Jamal Mohammed was kidnapped by Sidhiq, Sankar, Marimuthu, Bala @ Karumbalai Bala, Dinakaran, Pratab Singh, Mohammed Hanifa, Bala @ Munichalai Bala, Poongodi on 31.08.2014 at Kattrangudi, Virudhunagar District. The said Jammal Mohammed was murdered at Kodaikanal between 02.09.2014 and 03.09.2014 about midnight by Mohammed Sidhiq, Sankar, Marimuthu, Karumbalai Bala @ Balamurugan and Pratab Singh.

(ii) In fact this petitioner's name was included in the confession statement, which was made in the Police Station and this petitioner was arrayed as accused No.11 initially. After the case was transferred to CBI, the petitioner was arrayed as accused No.10 by CBI.

(iii) The Inspector of Police, Tallakulam developed enmity against this petitioner, since on 05.09.2014, when this petitioner went to the Police Station to know the condition of his client one Ganesan, who was taken by the Inspector of Police, Tallakulam in respect of a 'man missing' case. There arose a wordy quarrel between them. Therefore, in order to take revenge, this petitioner has been roped in this case by the said Inspector of Police, Tallakulam.

(iv) The wife of the deceased and others filed a petition before this Court for transferring this case to CBI, wherein this Court by order dated 31.10.2014 transferred the case to CBI.

(iv) The charge as against this petitioner is that during the year 2013, this petitioner along with other accused prepared a fake and false Trust Resolution (D-49) and his brother S.Raja Mohammed (A12) and the earlier payment of Rs.65 Lakh received from the purchasers was shared by this petitioner and Ganesan (A9). The said Trust Resolution is signed by Mohammed Sidhiq (A1) through Mubarak (A11). There is no evidence for payment of such amount by three purchasers. The purchaser Palanivelu has stated that he has not given money to this petitioner.

In the document Ex.D-53 recovered by CBI from the purchaser Palanivel, who is also a witness (LW98) shows that the payment was made to various persons and not to



this petitioner.

(v) CBI has only relied on the call details of the accused persons during the relevant time. But there is no audio material with regard to the conversation available.

(vi) There is no charge made out against this petitioner under Section 302 IPC and therefore, the charge under Section 302 is liable to be quashed against this petitioner.

(vii) CBI has not produced any material to prove the meeting of minds between Sidhiq (A1) and this petitioner (A10) to make out a charge under Section 120(B) IPC. Further this petitioner has been charged with the offence under Section 420 IPC. To attract an offence under Section 420 IPC, the ingredients of cheating and dishonestly inducing the delivery of property should be available. However, CBI has not produced any material to show that this petitioner has cheated any one. Therefore, the charge under Section 420 IPC is not sustainable.

(viii) There is no evidence or material made out against this petition under Sections 420, 468 and 471 IPC, since Kumba Subramanian (LW10) himself admitted in his statement that he prepared the trust resolution deed and in his statement, he has never stated about any involvement of this petitioner in preparation of trust resolution. Further, LW9 in his statement clearly stated that this petitioner along with another Advocate Sundara Vadivel has given only legal advice to Ganesan (A9).

(ix) It is submitted that this petitioner never did any mistake, illegal activities or give illegal advice to anybody from his enrollment in the year 2001.

(x) There is no legally acceptable material produced by the prosecution to frame charge against this petitioner and the prosecution without proper appreciation acted mechanically. Therefore, the learned Counsel prayed for quashment of all further proceedings in S.C.No.91 of 2016 on the file of the learned I Additional District and Sessions Judge, Madurai.

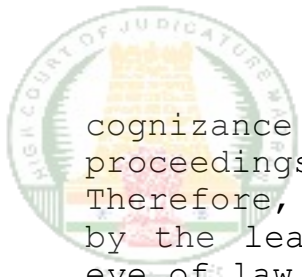
9.The learned Counsel for the petitioners in CrI.O.P(MD) No.10683 of 2019 has raised the following grounds in support of this petition:

(i)The charge sheet filed by the first respondent as against these petitioners are illegal, incorrect and improper.

(ii)The allegations in the charge sheet do not make out any prima facie case against the petitioners.

(iii) The respondent Police failed to verify the veracity of the complaint, registered the same and also filed final a report against the petitioners without any material available on record.

(iv) The cognizance taken by the trial Court is bad in law. The respondent Police in their final report filed under Section 173 (2) of CrPC, laid a specific charge under Section 120(B) r/w 467 IPC as against these petitioners. It is further submitted that the learned Chief Judicial Magistrate, while taking cognizance over the final report submitted by the respondent Police, passed an order of



cognizance in a mechanical manner and committed the entire proceedings to the learned Sessions Judge under Section 209 CrPC. Therefore, the petitioners are prejudiced by the procedure adopted by the learned Chief Judicial Magistrate, as it is not-est in the eye of law.

(v) The act of the petitioners is limited only to creation of forged documents without an intention to commit any further crime. Therefore, the petitioners cannot be tried in a joint trial in respect of commission of murder.

(vi) There is no material on record to show that the petitioners/accused shared a similar knowledge with that of the other accused persons so as to commit the murder of the deceased. It is the well settled position of law that after the object of the conspiracy is achieved, the knowledge as to subsequent acts cannot be inferred or assumed to be the act done during the period of conspiracy.

(vii) Therefore, the learned Counsel prayed that the charges levelled against these petitioners/accused persons be quashed.

10. Per contra, the learned Special Public Prosecutor has made his reply in respect of Crl.O.P(MD)No.10683 of 2019 as follows:

(i) Accused Nos.9 and 10 had entered into a conspiracy with accused No.14 and prepared a forged trust deed documents with the help of these petitioners and forcibly got executed sale deed for 20 cents of land in favour of purchasers for consideration and also got power of attorney in favour of accused No.9 for 1.44 acres of the land belonging to K.M.Allavudin Rowther Trust and in pursuance of the criminal conspiracy the aforesaid accused had conspired with accused Nos.1 to 5, 7 and 8 for abducting the deceased through accused No.6. The deceased was abducted, illegally confined in the office of accused No.1 on 01.09.2014 and got the land properties in favour of accused No.9 and two others under threat and coercion and the deceased was taken by accused Nos.1 to 5 to Kodaikanal and murdered him during midnight of 02.03.2014 and threw the body on the hill slopes. Further, they had also destroyed the belongings of the deceased including demand draft.

(ii) There are materials to show the nexus between the accused No.1 and these petitioners. The call details during the relevant point of time establish that these accused were in contact.

(iii) The signatures found in the trust resolution deed are proved to be forged one by the document expert's examination. Therefore, the involvement of these petitioners are established and therefore, they are rightly charged under Sections 120(b) and 467 IPC.

(iv) The learned Chief Judicial Magistrate, Madurai while taking cognizance over the final report, passed an order or cognizance as per the law, but not in a mechanical manner and there is no prejudice caused to these petitioners in this regard.



(v) Further, the learned Special Public Prosecutor appearing for CBI submitted that the petitioner in CrI.O.P(MD)No.10099 of 2019/accused No.10 is the mastermind in the criminal conspiracy for kidnapping the deceased under criminal intimidation of being put to fear of death to transfer the land of 1.64 acres at Rs.10,72,15,880/- [guideline value] and Rs.22,12,93,560/- [market value] and murdering the deceased and disposing of the body.

(vi) The General power of attorney reveals that accused No.10 had facilitated an oblique for co-accused No.9, the caretaker of the land of 4.64 Acres, which was to be grabbed in the criminal conspiracy.

(vii) There are evidence to show the *inter se* communication / contact among all the accused through out the period of criminal conspiracy immediately before, during and after the abduction and murder of the deceased. The call details between the mobile No.9444392725 belonging to accused No.10 and the mobile No.9442029025 belonging to accused No.1 for the relevant period were collected, which clearly establishes the nexus between this petitioner and the accused.

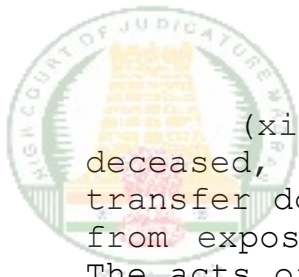
(viii) During the period of enquiry, this petitioner (A10) absconded and he was arrested by the respondent on 25.11.2014 from him. CBI had seized some of the incriminating documents from him, namely, Document No.47, which contains copies of FIR in Crime No.901 of 2014 Tallakulam Police Station and the statement of the co-accused recorded under Section 161 CrPC. The possession of these documents establish that this petitioner was keeping a track on the progress of the investigation.

(ix) Copies of declaration deed between Ganesan and Jamal Mohammed, rental agreement between Jamal Mohammed and Shanmugaraja dated 12.11.2010, plaint in O.S.No.462 of 2006 between Chellammal and Gurusamy and others, patta dated 26.10.1987, general power of deed [Doc. No.1081/2006], Injunction order dated 29.09.2005, issued by the District Munsif, plaint copy, injunction petition and injunction order in O.S.No.608 of 2005. The possession of these documents would show that this petitioner is having interest in the disputed land for the last ten years and the solve motive for the murder of the deceased.

(x) During the CBI investigation, since no incriminating material could be collected as against Abbas @ Karadi Abbas, he was not charge sheeted and this fact has been mentioned in the charge sheet.

(xi) This petitioner noticed that all the efforts to grab the land through civil Court proceedings ended in vain, in collusion with co-accused Ganesan hatched a criminal conspiracy to coercively obtain the signatures of the deceased under fear of death for transferring the disputed land.

(xii) There is a specific evidence to show that it was this petitioner in collusion with G.Ganesan/accused No.9, had jointly criminally intimidated the deceased in connection with the disputed land.



(xiii) In that criminal conspiracy, accused No.1 kidnapped the deceased, illegally confined him, coerced him to sign the property transfer documents under fear of death and killed him to prevent him from exposing the crime of the accused including this petitioner. The acts of the petitioner will squarely fall under Sections 120(b), 420, 467, 468, 471, 364, 347, 386 and 392 IPC.

(xiv) The petitioner has not set out any fact or reason except some minor omissions in the statement of the witnesses that the charges against him are so improbable to discharge him from the instant case. Those minor omission in any way does not affect the case of the prosecution and this petition has been filed to protract the trial proceedings.

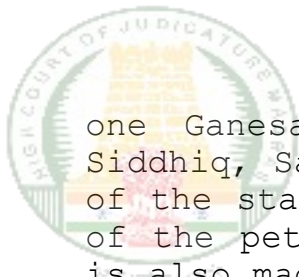
(xv) The CBI has duly filed the final report as against the petitioner, only after examining his role in the light of the facts and circumstances during the investigation. Therefore, the learned Additional Public Prosecutor prayed for dismissal of these petitions

11. Heard Mr.R.Vivekananan, learned Counsel for petitioner in Crl.O.P(MD)Nos.10683, Mr.T.K.Gopalan, learned Counsel for the petitioner in Crl.O.P(MD)No.10099 of 2019 and Mr.N.Nagendran, learned Special Public Prosecutor for respondent CBI.

12. This is a case, where there are charges that the deceased was kidnapped, illegally confined, under threat and coercion signatures were obtained from him for transferring a property, which belongs to a trust and finally, the deceased was killed and the body was thrown from a hill and the belongings of the deceased were also destroyed.

13. A perusal of the records reveal that the investigation of this case was transferred to CBI vide order dated 20.1.2014 passed in Crl.O.P(MD)No.17168 of 2014. The signatures found in the trust resolution deed proved to be forged one by accused Nos.11 and 12. Further, the call details of the petitioners during the relevant point of time also reveal that there were several communication between these petitioners and the accused No.1. There are several witnesses for examination and a large number of documents are also produced.

14. The statements of S.Arockiyam [LW8], a friend of Palanivel, the purchaser of the disputed land; Palanisamy [LW9], land broker for the disputed land; and K.V.Subramani [LW10], Document Writer, would disclose that the documents were prepared in the Office of the petitioners and it would strength the prosecution case. Certain recoveries were also made from the accused persons, in the presence of LWs.68 & 70 and a search was also conducted in the residence of the petitioners on 25.11.2014, where a bunch of loose sheets containing photostat of un-certified copies of First Information Report in Crime No.901 of 2014 of Tallakulam Police Station and the statements recorded under Section 161(3) Cr.P.C of



one Ganesan, Marimuthu, Pratheep Singh, Mohamed Hanifa, Mohamed Siddhiq, Sankar Abbas, Karadi Abbas were recovered. The availability of the statements recorded under Section 161(3) Cr.P.C in the house of the petitioners, when the investigation is in the crucial stage is also made as one of the incriminating material by the prosecution as against the petitioners. It is also the case of the CBI that the accused were absconding for a long time and after strenuous efforts, they were apprehended.

15.Apart from these incriminating materials, the learned Special Public Prosecutor for CBI has also narrated several incriminating materials which is available as against the petitioners and can be decided only by way of adducing evidence before the trial Court.

16.Of course, the petitioners have raised very many grounds in their respective petitions that they are in no way connected with the commission of the offence. Though several grounds are raised by the petitioners, the grounds are not sufficient to quash the proceedings pending against them in S.C.No.91 of 2016, on the file of the I Additional District and Sessions Judge, Madurai.

17.The case involves serious charges against these petitioners. A murder has taken place following abduction and wrongful confinement. This Court, under Section 482 Cr.P.C cannot conduct a roving enquiry, as to the grounds raised in these petitions. The grounds raised by the petitioners are a matter for trial, by adducing evidence before the trial Court and it cannot be appreciated before this Court at this stage. Therefore, granting liberty to the petitioners to raise all these grounds before the trial Court, the criminal original petitions are dismissed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.I Additional District and Sessions Judge,
Madurai.

2.The Inspector of Police,
SPE/CBI/SCB, Chennai.

Crl.O.P. (MD)Nos.10683 and 10099 of 2019
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AP (27.07.2020) 8P-3C

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