



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P (MD) No.15231 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

Suyambu

... Petitioner/Accused No.4

Vs

1.The State represented by,
The Inspector of Police,
City Crime Branch,
Tirunelveli City.
(Crime No.31 of 2010)

... 1st Respondent/Complainant

2.G.Sundara Vel

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the entire records pertaining to the case in C.C.No.242 of 2013 on the file of the learned Judicial Magistrate No.1, Tirunelveli, Tirunelveli District and quash the same with regard to the petitioner.

For Petitioner : Mr.R.Anand

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.P.Samuel Gunasingh

ORDER

The petitioner is facing trial in C.C.No.242 of 2013 on the file of the Judicial Magistrate No.1, Tirunelveli as A4 for the offences under Sections 463, 464, 467, 468, 471, 420 r/w 120(B) of IPC.

2.The second respondent herein is the defacto complainant. To quash the same as far as the petitioner is concerned, this criminal original petition has been filed.

3.Heard the learned counsel on either side.

4.The property bearing Door No.47-A, N.G.O., 'B' Colony, Jawahar Nagar, Palayamkottai, stood in the name of one Thirumalai. He purchased the said property vide Document dated 16.07.1997. The said Thirumalai was blessed with three daughters namely Savithri, Sujatha and Vasanthi. Thirumalai passed away in the year 2000. His wife also died in the year 2001.



5.The case of the Vasanthi is that since Sujatha contracted a love marriage, she had relinquished her share in the property by executing a deed in the year 1997 itself. Thus, according to Vasanthi, after the demise of their parents, only Savithri and Vasanthi had 50% share in the property. But then, suppressing her share, the petitioner herein had purchased the entire property vide sale deed dated 28.02.2008. According to the defacto complainant, the petitioner is a party to the conspiracy who defrauded Vasanthi.

6.It is further alleged that in the year 2005, EB connection was changed in the name of Savithri by forging the signature of Vasanthi. After the petitioner purchased the property, the connection was cut off and to restore the same, a letter in the name of Thirumalai was submitted. Acting on the said letter, the connection was restored and subsequently, cut off.

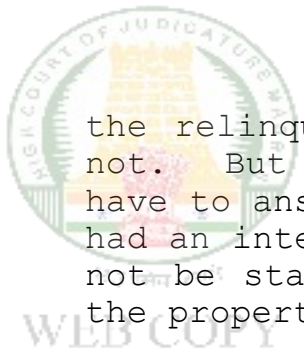
7.The case of the defacto complainant is that when Thirumalai had passed away in the year 2000, the letter submitted in his name for restoration of the electricity connection, is obviously a rank forgery. Therefore, setting forth these allegations, the defacto complainant lodged a complaint before the CCB, Tirunelveli City and Crime No.31 of 2010 was registered. The matter was investigated and final report was filed before the Judicial Magistrate No.1, Tirunelveli and cognizance of the offences under Sections 463, 464, 467, 468, 471, 420 r/w 120(B) of IPC was taken. The case was taken on file in C.C.No.242 of 2013.

8.The case against the petitioner is one of cheating, forgery and conspiracy.

9.The learned counsel appearing for the defacto complainant states that in as much as, one forged letter was given to the TNEB Authorities, after the purchase of the property by the petitioner, the only inference can be that it was he who was behind the lodging of the said letter seeking restoration of the electricity connection. He would also point out that all the contentions urged by the petitioner's counsel are rather factual in nature and that, therefore, the inherent powers of this Court cannot be invoked for quashing the impugned proceedings.

10.I carefully considered the rival contentions.

11.I went through the contents of the sale deed dated 28.02.2008, executed in favour of the petitioner herein. The executants of the documents are Savithri and Sujatha. The recitals of the sale deed are very clear that Thirumalai died leaving behind three daughters namely, Savithri, Sujatha and Vasanthi. The petitioner had not purchased the entire property. He had purchased only $\frac{2}{3}$ th undivided share in the property. The recitals of the sale deed clearly indicates that Vasanthi is having a definite share in the property. Of-course, the question is whether the execution of



the relinquish deed by Sujatha in the year 1997 was suppressed or not. But then, this is a charge which Sujatha and Savithri will have to answer. The petitioner is only a bonafide purchaser. If he had an intention to defraud Vasanthi, certainly, the sale deed would not be stating that Vasanthi is also having an undivided share in the property.

12.I hold that the materials relied on by the prosecution are absolutely insufficient to attract the charge of cheating.

13.As rightly pointed out by the learned counsel appearing for the defacto complainant, forged letters have been submitted to the TNEB Authorities for restoring the electricity connection. The forgery was done on two occasions. First time, it was in the year 2005. The signature of Vasanthi had been affixed in the request letter. But then, that was before the purchase of 2/3rd share in the property by the petitioner herein. Therefore, the petitioner herein cannot be called upon to answer the charge of forgery in respect of the letter given to the EB Authority in the year 2005. It is true that in the year 2010, another forged letter was submitted in the name of Thirumalai. But then, it is seen from the statement of the defacto complainant himself that the connection was changed from the name of Thirumalai to that of Savithri in the year 2005 itself. After the petitioner came to know that there were too many issues, it was the petitioner who wrote a letter to the EB Authority seeking disconnection. If the petitioner wanted to derive some advantage, he would not have requested the EB Authority to effect disconnection. Therefore, the question arises whether the petitioner would have possibly sought restoration of the electricity connection in the name of Thirumalai.

14.I called upon the learned counsel appearing for the respondent as to whether, there is any material in the form of statement of any EB Official linking the petitioner herein with giving of the forged letter. There is not even a single material to connect the petitioner with the submission of the forged letter given in the year 2010. That apart, when the connection had been changed in the name of Savithri in the year 2005 itself, the question of giving a letter in the name of Thirumalai does not arise at all. Even in the sale deed executed in favour of the petitioner in the year 2008, it has been mentioned that Thirumalai is no more. Therefore, it is simply impossible that the petitioner could have given a letter in the name of Thirumalai.

15.The petitioner's counsel comes out with a hypothesis. In the year 2010, Vasanthi had filed a partition suit. In the partition suit, Vasanthi claims possession of the property in question. Of-course, as rightly pointed out by the defacto complainant, the petitioner also claims possession of the property. Therefore, when both the parties are claiming possession over the property, any one of them could have given a letter seeking restoration of electricity supply.



16. Since there is no material to link the petitioner with giving of the said forged letter, I am of the view that the continuance of the impugned prosecution against the petitioner is only an abuse of legal process. In this view of the matter, the impugned proceedings stand quashed as far as the petitioner is concerned. It is made clear that there are prima facie materials to show that the forged letters were given to the EB Authorities on two occasions. Therefore, the prosecution will have to definitely continue as against the other accused.

17. With these observations, this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
City Crime Branch,
Tirunelveli City.

2. The Judicial Magistrate No.1,
Tirunelveli, Tirunelveli District.

+1 CC to Mr.R. ANAND, Advocate (SR-102753[F] dated 29/11/2019)

Cr1.O.P(MD)No.15231 of 2015
and
M.P. (MD)Nos.1 and 2 of 2015
27.11.2019

VB(01.06.2020) 4P 4C