



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 26/11/2019

PRESENT

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**CRL OP (MD) No.13961 of 2016
and
Crl MP (MD) No.6518 of 2016**

1.V.R.Rajendran

2.Anitha

3.Kanmani

4.R.Veerappan

5.P.L.Ramanathan

6.R.Rajendran ... Petitioners /Accused Nos.1 to 6

Vs.

1.The State, rep.by
The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.76 of 2011) ...1st respondent/Complainant

2.Ashwanth Kanna ...2nd respondent/defacto complainant

Prayer : This criminal original petition is filed under Section 482 of the Criminal Procedure Code, to call for the charge sheet as made in C.C No.298 of 2016 on the file of the learned Judicial Magistrate No.II, Dindigul District and quash the same as illegal and devoid of merits.

For Petitioners : Mr.M.Jegadeesh Pandian

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

Mr.G.Prabhu Rajadurai
for J.Anand Kumar for R2



ORDER :

The petitioners are facing trial in C.C No.298 of 2016 on the file of the learned Judicial Magistrate No.II, Dindigul for the offences under Sections 120 B, 406, 420, 466, 471 and 506(i) of IPC. The defacto complainant is the second respondent herein. The case of the defacto complainant is that power of attorney was executed in favour of the first petitioner herein V.R.Rajendran by the defacto complainant and his father. In the said power of attorney dated 02.03.2009, not only the defacto complainant but his father K.Suthakar and his mother Sutharani have also signed as principals. The specific allegation of the defacto complainant is that based on the said general power of attorney, the first petitioner herein had executed sale documents in favour of the other petitioners. The first petitioner had claimed that he had paid a sum of Rs.60.00 lakhs on two occasions. He also produced receipts dated 15.05.2009 and 17.05.2010 which show that the defacto complainant as well as his father have accepted the said sum of Rs.60.00 lakhs from the first petitioner. The specific allegation of the defacto complainant is that the receipts are forged ones. The defacto complainant specifically states that the signatures attributed to him and that of his father are not actually theirs. The defacto complainant with this complaint, moved the District Crime Branch, Dindigul District. Crime No.76 of 2011 was registered. Investigation was taken up and final report was filed. Cognizance of the offences was taken in C.C No.298 of 2016. To quash the same, this criminal original petition has been filed.

2.Heard the learned counsel on either side.

3.One of the receipts is dated 17.05.2010. The learned Government Counsel produced unimpeachable material before me to show that on said date, the defacto complainant was not even present in India. He was abroad and his employer has clearly certified that the defacto complainant was away on the high seas during the relevant time. His passport entries also indicates that on 17.05.2010, the defacto complainant was not even present in India. Thus, there is prima facie material to indicate that the receipt dated 17.05.2010 relied on by the first petitioner herein is a forged document. The first petitioner herein after securing power of attorney from the defacto complainant and two others, had executed deeds of sale in favour of the other petitioners herein. Thereafter, the entire land has been plotted out and sold in favour of third parties. If the petitioners 2 to 6 had retained the lands without alienation, I would have taken an indulgent view by recording their undertaking that they would not make any further alienation and that they would abide by the outcome of the civil proceedings initiated by the defacto complainant. But, in this case, the petitioners 2 to 6 had already sold the lands in favour of third parties.



4.The first petitioner is a power agent. He is a real estate business man. When a real estate business man takes power of attorney from the land owner, he would execute a sale deed in favour of third parties. But, in this case, the first petitioner had executed sale deeds in favour of his own family members which shows that he wanted to exhaust the the power of attorney. Therefore, the conduct of the petitioners 2 to 6 prima facie leads me to come to the conclusion that they are also parties to the conspiracy hatched by the first petitioner. Therefore, I am of the view that this is not a case in which the inherent powers of this Court under Section 482 of Cr.Pc should be invoked to quash the impugned proceedings.

5.The learned counsel appearing for the defacto complainant points out that the receipt dated 17.05.2009 ought to have been referred for the opinion of the handwriting expert as to whether the signature attributed to the defacto complainant and his father are genuine or not. For the reasons best known, it has not been done sofar. At this stage, the learned Government Counsel on instructions from the first respondent gives an undertaking that they would move the trial court as early as possible by filing an application under Section 173(8) of Cr.Pc seeking leave to conduct further investigation. Since allegations of forgery have been made out, the learned Trial Judge shall allow the application that is proposed to be filed by the prosecution. Since expert opinion has not been obtained in respect of either of the receipts, both of them will have to be sent for expert opinion.

6.At this stage, the learned counsel for the petitioners submitted that there is absolutely no basis for invoking Section 420, 466, 471 of IPC against the petitioners 2 to 6. I find some force in the said contention. Therefore, after further investigation, the learned trial Judge will also have a re-look at the charges and alter the same.

7.Taking note of the facts and circumstances of the case, the personal appearance of the petitioners 2 to 6 is dispensed with before the trial court. The learned trial Judge shall not insist their personal appearance unless it is necessary or imperative. Of course, they will have to be represented by their counsel. It is reiterated that the observations made in this order are only for the purpose of giving disposal to this O.P and that they will not have any bearing on the merits of the matter.



8.The criminal original petition stands dismissed.
Consequently, connected miscellaneous petition is also stands dismissed.

WEB COPY

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To,

1. The Judicial Magistrate No.II, Dindigul.

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

copy to
The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J. ANANDKUMAR, Advocate (SR-101783[F]

+1 CC to M/s.M. JEYADEESH PANDIAN, Advocate (SR-102193[F]

CRL OP (MD) No.13961 of 2016

and

Cr1 MP (MD) No.6518 of 2016

Date : 26/11/2019

SV2 (CO)

TR(13.01.2020) 4P 6C