

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12141 of 2016 and
Crl.M.P.No.6235 of 2016

1.R.Vadivelamsamy
2.Smt.Jayanthi

... Petitioners

Vs.

1.State Rep. by Inspector of Police,
Kudimangalam Police Station,
Thirupur District.
(Crime No.460 of 2015).

2.V.Krishnaveni

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for all the records relating to the Crime No.460 of 2015 on the file of the 1st respondent herein and quash the same.

For Petitioners: Mr.A.Saranraj
For R1 : Mr.K.Prabakar,
Additional Public Prosecutor
For R2 : Mr.L.Liagat Ali

ORDER

This Criminal Original Petition has been filed to call for the records relating to the Crime No.460 of 2015 on the file of the 1st respondent herein and quash the same.

2.The 2nd respondent has filed a petition before the learned Judicial Magistrate No.II, Udumelpet, under Section 156(3) Cr.P.C., which was forwarded to the 1st respondent to conduct investigation. After enquiry, a case in Crime No.460 of 2015 came to be registered against the petitioners, for offence under Sections 420 and 423 IPC.

3.The case is that the husband of the 2nd respondent Venkatachalam passed away on 22.07.2013, prior to that, the petitioners as well, the 2nd respondent and others were living as joint family. The husband of the 2nd respondent during his life time, had not partitioned his property and left any will.

Taking advantage of the same, the petitioners forged the signature of the 2nd respondent's husband and created documents and took away the property. On 05.02.1994, the 2nd respondent purchased property in document No.4078/1994, in which, her husband name is spelt as C.Venkitachalam and signed as C.Venkatachalam. The thumb impression found in the document seems to be in variance with the document No.4357 of 2012, dated 19.06.2012. In this document photographs of Venkatachalam is affixed as well his finger print is also found. This document is the original document. Hence, the petitioners created forged document in No.4078/1994, using the same, cheated the 2nd respondent.

4.The learned counsel for the petitioners submitted that the petitioners are brother and sister-in-law of Venkatachalam (late), who is the husband of the 2nd respondent. The said Venkatachalam died on 22.07.2013, before that he sold six acres of land to the 1st petitioner by way of registered document No.4078 of 1994. Thereafter, the said Venkatachalam along with his mother Mylathal released their rights in the family property by way of released document No.4357 of 2012 on 19.06.2012. He further submitted that the matrimonial life between the 2nd respondent and her husband Venkatachalam was not smooth, in fact the 2nd respondent lodged a complaint against the petitioners and her husband Venkatachalam for offence under Sections 498(A) and 307 IPC. In that case, the said Venkatachalam after full-fledged trial in S.C.No.49 of 1995, convicted by the Sessions Judge, Tirupur and sentenced to undergo 9 months Rigorous Imprisonment, against which, appeal was filed by the late Venkakatachalam in C.A.No.11 of 1996 before this Court, in which, this Court by judgment, dated 31.10.1996, modified the sentence to six months Simple Imprisonment.

5.The learned counsel for the petitioners further submitted that the 2nd respondent and her husband Venkatachalam were living separately from the year 1995, which is an admitted fact. Till his death, he was staying with his mother at Udumalpet, Tirupur District. The said Venkatachalam used to sign as C.Venkitachalam as well as C.Venkatachalam. This was interchanged by him according to his wish. This difference in the signature is now projected against the petitioners as though they have forged the signature of her husband Venkatachalam. Initially, the 2nd respondent lodged a complaint to the 1st respondent Police, which was not acted upon. Thereafter, she filed Crl.O.P.No.26745 of 2014 before this Court, in which this Court by order dated 25.09.2014, directed the 1st respondent to deal with the complaint in accordance with law. The 1st respondent Police found no case is made out against the petitioners and the complaint was a motivated one. Thereafter, the 2nd respondent filed a private complaint before the learned

Judicial Magistrate No.II, Udumalpet under Section 156(3) Cr.P.C, which was forwarded to the 1st respondent Police. On receipt of the same, a case in Crime No.460 of 2015 for offence under Section 420 and 423 IPC came to be registered by the 1st respondent. The FIR was transferred from the file of the 1st respondent to the District Crime Branch, Tirupur Land Grabbing Cell, against which the present quash petition.

6.Further, a civil suit in O.S.No.11 of 2015 was filed by the 2nd respondent before the learned Subordinate Judge, Udumalpet, seeking for partition and declaration, in which the above said two properties pertaining to document Nos.4098 of 1994 and 4357 of 2012 are mentioned. In the civil suit, there is no mention about forgery of documents by the petitioners. The civil suit in O.S.No.11 of 2015 came to be dismissed on 30.08.2018 for non-prosecution, against which no appeal filed by the 2nd respondent.

7.The primordial contention and the certain case of the petitioners is that it was Venkatachalam, who is the husband of the 2nd respondent executed sale deed in document No.4078 of 1994 in favour of the petitioners. Further, the said Venkatachalam had no cordial relationship with the 2nd respondent, the 2nd respondent had left matrimonial house during September 1993, till the death of her husband Venkatachalam on 22.07.2013, she did not join him.

8.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that according to the 2nd respondent, the signature found in the document No.4357 of 2012 is genuine and she admits the same and the signature found in the document No.4078 of 1994 is disputed. He further submitted that since interim stay was granted, the investigation could not be proceeded.

9.The learned counsel for the 2nd respondent submitted that the points raised by the petitioners are to be decided in the civil case, not in a criminal case and more particularly in a quash petition. The signature found in the document of the year 1994 is a forged one. The petitioners not only taken away the property of the 2nd respondent, they have also denied the properties which is lawfully entitled to her children. Further, the petitioners were obstructing the investigation by using muscle power, due to which, the earlier complaint of the 2nd respondent was not acted upon. Hence, the 2nd respondent approached this Court by way of Criminal Original Petition. Despite this Court giving positive direction, FIR was not registered. The 2nd respondent finding no other alternative, approached the learned Judicial Magistrate No.II, Udumalpet and filed a petition under Section 156(3) Cr.P.C. Thereafter, on

the direction of the learned Magistrate, FIR came to be registered against the petitioners. Immediately on registration of FIR, the petitioners have approached this Court and obtained stay in this case. Due to which, the investigation could not be carried out by the 1st respondent. As regards forgery committing, the document has to be studied by the forensic department. Hence, the investigation has to be continued.

10.The primary contention of the learned counsel for the 2nd respondent is that on 05.12.1994, the petitioners purchased a property from the husband of the 2nd respondent Venkatachalam through a registered sale deed in document No.4078 of 1994, in which the said Venkatachalam had conveyed the property on behalf of himself as well as his two minors Chandrasekar aged about 12 years and Bharathi aged about 8 years as guardian. In the sale deed, the husband of the 2nd respondent signed as C.Venkitachalam and the signatures in each page differs and varies. On 19.06.2012, a release deed was executed in document No.4357 of 2012, in which, photo and the left thumb impression of her late husband Venkatachalam is available which is genuine and admitted, the 2nd respondent does not dispute the same. The ration card as well as the other particulars given while executing the release deed. Now the 2nd respondent disputed the execution of document No.4078 of 1994 and the signature found of her husband as forged. In the release deed in document No.4357 of 2012, it is spelt as Venkatachalam, which is admitted to be correct. It is further contended that the 2nd respondent while executing a power of attorney in favour of one S.Jaganathan vide document No.56 of 2007, she mentions her name as Krishnaveni wife of Venkitachalam and in sale deed in document No.6061 of 2008, she signed as Krishnaveni wife of Venkatachalam. Thus, the husband of the 2nd respondent Venkatachalam was spelt both ways.

11.He further submitted the 2nd respondent filed a civil suit in O.S.No.11 of 2015 before the learned Subordinate Judge, Udumelpet, which was dismissed for default on 30.07.2018. In the civil suit, the 2nd respondent sought declaration, to declare the sale deed executed by her late husband C.Venkatachalam in favour of the 1st petitioner under document No.4078 of 1994 along with other properties, as invalid one and unenforceable in law and will not bind the 2nd respondent.

12.This Court considered the rival submissions and perused the materials available on record.

13.It was submitted by the learned counsel for the petitioners, the learned Additional Public Prosecutor and the learned counsel for the 2nd respondent that if the thumb impression of both the documents in No.4078/1994 (disputed

document) and in document No.4357/2012 (admitted document) are compared, the issue in this case could be resolved.

14.Considering the above submissions, this Court, by order, dated 04.09.2020, directed the Deputy Superintendent of Police (Finger Print), Single Digit Finger Print Bureau, Tiruppur District to visit the Sub Registrar Office, Udumelpet, verify the records and compare both the left thumb impression available in the register and other documents and to give report whether both finger prints tally or varies, by taking necessary photographs, examination of documents and conducting study.

15.As per the order, the Deputy Superintendent of Police (Finger Print), Single Digit Finger Print Bureau, Tiruppur District conducted examination and filed a report in C.No.1/Doc/SDFPD/TPR/2020 stating that the dispute left thumb impression marked as 'Q1' found against the name Venkadachalam available in the thumb impression register volume No.368, page No.60, dated 06.12.1994, relating to document No.4078 of 1994 of the Sub Registrar Office, Udumelpet and the dispute left thumb impression marked as 'Q2', though termed as dispute, the same is admitted as genuine by the defacto complainant, found against the name Venkadachalam found on the thumb impression register volume No.563, page No.146, dated 19.06.2012, relating to document No.4357 of 2012 of the Sub Registrar Office, Udumelpet and had given an opinion as follows:-

"Point No.1 is a termination of a ridge.
Point No.2 is a termination of a ridge above point No.1 with no ridges intervening.
Point No.3 is a termination of a ridge above and to the right of Point No.2 with no ridge intervening.
Point No.4 is a termination of a ridge and to the left point No.3 with one ridge intervening.
Point No.5 is a termination of a ridge below and to the left of point No.4 with no ridge intervening.
Point No.6 is a Bifurcation of a ridge and to the right of Point No.5 with no ridge intervening.
Point No.7 is a Bifurcation of ridge above and to the left of point No.6 with no ridge intervening.
Point No.8 is a termination of ridge above and to the left of point No.7 with no ridge intervening."

16.It is seen that the thumb impression found in document No.4078/1994 (Q1) (disputed document) and the document No.4357/2012 (Q2) (admitted document) are identical with each other and are made by one and the same finger of the same person i.e., the left thumb impression of Venkadachalam. Hence, it is conclusively proved that no forgery and cheating have been committed.

17.In view of the above, the continuation of the investigation would only be excise in futility. The allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the petitioners and the allegations are so absurd and inherently improbable and no sufficient ground for proceeding against the petitioners.

18.In the result, the impugned FIR in Crime No.460 of 2015 on the file of the 1st respondent Police is, hereby, quashed and the Criminal Original Petition is, accordingly, allowed. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Inspector of Police,
Kudimangalam Police Station,
Thirupur District.
- 2.The Public Prosecutor,
High Court Madras.

Cr1.O.P.No.12141 of 2016

MP (CO)
SP (20/01/2021)

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