

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2020
PRONOUNCED ON : 03.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.15821 / 2016 and Crl.M.P.Nos.7749 /2016 & 15467 / 2017

1 S. Nirmala Samuvel

2 S. Rathileela Samuvel

Petitioners

vs.

1 E. Dinesh Kumar

2 G.K. Bharathi

Respondents

(R2 impleaded as per order dated 30.11.2020 in
Crl.M.P. No.6589/2020 in Crl.O.P. No.15821/ 2016

Criminal Original Petition filed under Section 482 Cr.P.C.
seeking to call for the records in C.C. No.31 of 2016 on the
file of the Judicial Magistrate Court No.I, Gobichettipalayam
and quash the same.

For petitioners

Mr. E.C. Ramesh

For R1

Mrs. B. Fathima Sulthana

For R2

Party-in-person

ORDER

Dinesh Kumar (complainant) launched a prosecution in C.C.
No.31 of 2016 by way of a private complaint in the Court of the
Judicial Magistrate No.I, Gobichettipalayam, against Nirmala
Samuvel (A.1), Rathileela Samuvel (A.2), Prabhu Kumar (A.3) and
Thillai Chidambaram (A.4) for the alleged offences under
Sections 120-B read with Sections 415, 468 and 422 IPC, for
quashing which, Nirmala Samuvel (A.1) and Rathileela Samuvel
(A.2) have filed the instant criminal original petition.

2 Heard Mr. E.C. Ramesh, learned counsel for the
petitioners and Mrs. B. Fathima Sulthana, learned counsel for
the first respondent.

3 Since there were some allegations made in the body of
this criminal original petition, against one G.K. Bharathi, a
former District Judge and a practising lawyer, the petition in
Crl.M.P. No.6589 of 2020 filed by the said Bharathi, seeking to

implead him as second respondent in this criminal original petition was allowed on 30.11.2020 and he was also heard.

4 A reading of the complaint shows that in the year 2014, Nirmala Samuvel (A.1) and Rathileela Samuvel (A.2) made certain representations to Dinesh Kumar (complainant) and lured him into becoming a partner in Nirmal Transports which was having transport contracts with Ramco Cements.

5 According to Dinesh Kumar (complainant), he invested monies in the firm from time to time, but, the accused did not give him proper accounts and had siphoned off the monies received from Ramco Cements. This is the sum and substance of the allegation in the private complaint.

6 G.K. Bharathi, who appeared in person, refuted the allegations made against him in the quash application and submitted that the Nirmala Samuvel (A.1) had cheated Dinesh Kumar (complainant), who is his son-in-law.

7 However, the learned counsel for Nirmala Samuvel (A.1) brought to the notice of this Court, a general power of attorney dated 20.06.2014 that was executed by Rathileela Samuvel (A.2) in favour of G.K. Bharathi, which was registered as Document No.2027 of 2014 in the office of the Registrar, Gobichettipalayam, authorising G.K. Bharathi to deal with the property measuring 3,780 sq. ft. in Veerapandi Village, in any manner, including mortgaging it or selling it.

8 Thus, it is limpid that Dinesh Kumar (complainant) is none other than the son-in-law of G.K. Bharathi, in whose favour, Rathileela Samuvel (A.2) had executed a promissory note with full power of alienation. Dinesh Kumar (complainant), in his complaint, has suppressed this fact. In fact, in the affidavit sworn to by G.K. Bharathi, he has stated as follows:

"11. For the redemption of property, for mobilisation of funds, the 2nd respondent herein has executed General Power of Attorney in my favour on 20.06.2014 and also on 11.09.2015 while I tried my level best known from various other banks for the development of the property or selling the property, to clear the dues of the creditors whom have sparingly advanced funds for the redemption of their properties, the 2nd respondent has cancelled the General Power of Attorney executed in my favour and there were lot of civil and criminal litigations before several courts in our area. The second respondent has realized that the ulterior motive of the 1st respondent mother have obstructed the compromise and ultimately, sold her

properties, cleared part of the dues and also reserved for the future betterment. This agonized the 1st respondent her mother has opposed the sale by tooth to nail that is why the second respondent cancelled the general power of attorney executed in favour of her mother on 15.07.2019, she hereby visited my native place, negotiated with the buyers, fixed the sale and sold her property on 26.09.2020, cleared the dues and also brought more than one crore of rupees for her future betterment at my instance."

9 Thus, from the above averments, it is very clear that the dispute is essentially civil in nature and instead of filing a civil suit for rendition of accounts, the present criminal complaint has been filed. It is made clear that this Court is not going into the allegations and counter allegations traded by the parties as they are not germane to the issue at hand. G.K. Bharathi prayed that he may be given some more time to produce records against Nirmala Samuvel (A.1), but, this Court, having heard him in extenso, declined his request for adjournment, because, it was clear to this Court that Dinesh Kumar (complainant), the son-in-law of Bharathi, has suppressed a very vital information in the complaint as stated above and the complaint averments themselves show that a criminal colour has been given to a simple partnership dispute.

In the result, this criminal original petition is allowed and the prosecution in C.C. No.31 of 2016 on the file of the Judicial Magistrate Court No.I, Gobichettipalayam is quashed. Connected Crl.M.Ps. stand closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Judicial Magistrate No.I
Gobichettipalayam

2.The Chief Judicial Magistrate,
Erode

WEB COPY

3 The Public Prosecutor
Madras High Court
Chennai 600 104

+2cc to Mr.A.B.Fathima Sulthana, Advocate, S.R.No.39411
+2cc to Mr.G.K.Bharathi, Advocate, S.R.No.39291
+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.38910

Cr1.O.P. No. 15821 of 2016

SSI (CO)
KKV/06/01/2021



WEB COPY