

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5819 of 2020

C.Kumar,
S/o.Late P.Chockalingam,
No.1-4, Rohini Garden,
Raja Annamalaipuram,
Chennai - 600 028.

...Petitioner/Sole Accused

Vs.

1. The State rep by
The Inspector of Police,
E.5 - Foreshore Estate Police Station,
Chennai - 600 028.

...1st Respondent

2. K.K.Manivasuki
W/o. Muthusamy,
No.195, Kacheri Road,
Mylapore,
Chennai - 600 004.

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceeding in C.C.No.2506 of 2014 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.K.Raja

For Respondents

For R1 : Mr.S.Karthikeyan

Additional Public Prosecutor

For R2 : No appearance.

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ORDER

This petition has been filed to quash the proceeding in C.C.No.2506 of 2014 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai, thereby taken cognizance for the offences under Sections 468 and 420 of IPC, as against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the petitioner is a sole accused in C.C.No.2506 of 2014 for the offences under Sections 468 and 420 of IPC. The second respondent/defacto complainant along with one K.K.Anbazhagan had filed a Testamentary Original Suit in T.O.S.No.7 of 2007, before this Court to succeed the estate of deceased Parameshwari. In the said suit, the petitioner succeeded by the judgment and decree dated 20.04.2017 and as such he is entitled to succeed the entire estate of deceased Parameswari. Aggrieved by the same the second respondent filed an appeal suit in O.S.A.No.322 of 2017, before this court and the same was also dismissed by the judgment dated 21.12.2018. Therefore, the entire allegations made in the complaint has been resolved by the Judgment of the Hon'ble Division Bench of this Court in O.S.A.No.322 of 2017. Further the legal right of the petitioner in respect of the disputed property has been settled and the question of grabbing the property, for which manipulating the records viz., legal heirship certificate does not arise. Therefore, he sought for quashment of the entire proceedings.

3. The learned Additional Public Prosecutor appearing for the first respondent would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.90 of 2007, for the offences under Sections 468 and 420 of IPC and filed final report. The trial Court has taken cognizance in C.C.No.2506 of 2014 for the offences under Section 468 and 420 of IPC as against the petitioner. Though summon served to the second respondent, even till today she did not return to the trial Court for her evidence, as such the case is pending from the year 2014.

4. Heard Mr.K.Raja, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent. Though notice has been served and name printed in the cause list, the second respondent did not appear either in person or through counsel.

5. The petitioner is the sole accused in C.C.No.2506 of 2014 charged for the offences under Sections 468 & 420 of IPC, on the complaint lodged by the second respondent herein. The second respondent lodged complaint alleging that her sister Parameshwari got married with one Rathnavelu and they have no issues. Her husband died on 19.12.1992. While being so, her distant relative viz., the petitioner herein on the strength of forged documents as if he is the only legal heir of deceased thrown out the second respondent/defacto complainant from the disputed property by henchmen. Hence the charge.

6. On perusal of records, it is seen that in respect of the very same property, which was alleged in the charge sheet, the second respondent filed a suit in T.O.S.No.7 of 2017 before this Court and the said suit was decreed in favour of the petitioner and this Court declared that the petitioner is entitled to succeed the entire estate of deceased Parameshwari by the judgment and decree dated 20.04.2017. Aggrieved by the same, the second respondent filed an appeal in O.S.A.No.322 of 2017 and the same was also dismissed by the judgment and decree dated 21.12.2018 and confirmed the entitlement of the succession of entire estate of deceased Parameshwari in favour of the petitioner. The relevant portion of the judgment is extracted hereunder as follows :-

"27. Further, as per Section 218 of the Indian Succession Act, the Rule of distribution of the Estate, if the deceased female died intestate, is applicable in the case of such deceased, who would be entitled to whole or any part of such Estate of the deceased. The Administration of the Estate of the deceased, may be granted to any person, according to the Rules of distribution of the Estate. In the instant case, as observed earlier, since it is a case of female Hindu dying intestate, as per Section 15(1)(b) of the Hindu Succession Act, the first defendant being the brother's son of the husband of the deceased, would be the proper person to succeed to the Estate of the deceased. However, the brother and sister of the deceased, by relying upon paragraph 8 of the affidavit filed in O.P., mention that the properties would devolve upon Class-I heirs, failing which on Class-II heirs of the deceased own heirs, i.e. based on the concept of the male dying intestate. The said submission is not legally sustainable, since this is not a case where the properties are left by a male dying intestate. Therefore, we are of the opinion that the plaintiffs are not entitled for grant of Letters of Administration in their favour being the brother and sister of the deceased Parameshwari. Considering all the above aspects, the learned Single Judge has dismissed the T.O.S., with which we do not find any infirmity or illegality.

28. Hence, the O.S.A is dismissed. No costs. Consequently, C.M.Ps. are closed."

7. Therefore, the allegation as alleged by the second respondent now answered by the Hon'ble Division Bench of this Court in O.S.A.No.322 of 2017 and declared that the legal heir certificate produced by the petitioner issued by the concerned authorities is genuine one. Therefore, the question of grabbing the property by the petitioner did not arise, since he is the only legal heir of deceased Parameshwari and he succeeded the

estate of deceased Parameshwari. After dismissal of the appeal filed by the second respondent, she did not even present before the trial Court for her evidence and only because of her absent, the trial is pending from the year 2014. It shows that the second respondent left the case after dismissal of her appeal in O.S.A.No.322 of 2017. Further the entire proceedings pending against the petitioner is nothing but clear abuse of process of law and it cannot be sustained further as against the petitioner.

8. With the above observations, this Criminal Original Petition stands allowed and the proceeding in C.C.No.2506 of 2014 on the file of the 23rd Metropolitan Magistrate Court, Saidapet, Chennai, is hereby quashed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The 23rd Metropolitan Magistrate,
Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Inspector of Police,
E.5 - Foreshore Estate Police Station,
Chennai - 600 028.
4. The Public Prosecutor,
Madras High Court,
Chennai.

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NR(CO)
KKV/28/10/2020