

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.12.2020

Pronounced On: 30.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl. R.C.No.1434 of 2017

and

Crl.M.P.Nos. 14188 and 14189 of 2017

1. T.S. Selvakumar

2. T.S. Pasupathy

..Petitioner

Vs.

State Rep by
The Inspector of Police,
Central Crime Branch,
Team 19
Vepery, Chennai.746 of 2008)

..Respondent

Prayer: This Criminal Revision petition is filed U/s 397 and 401 of Cr.P.C to set aside the order passed in Crl.M.P.No.4816 of 2012 dated 31.07.2017 in C.C.No.5123 of 2010 pending trial on the file of III Metropolitan Magistrate Court, George Town, Chennai and discharge the accused from the above case.

For Petitioner : Mr.R. Rajarathinam for Mr.S.Sundaresan

For Respondent : Mr. K. Madhan

Government Advocate(Crl side)

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ORDER

This petition has been filed against the order of learned III Metropolitan Magistrate George town, Chennai in Criminal M.P.No.4816 of 2012 in C.C.No. 5123 of 2010.

2. This Criminal M.P.No.4816 of 2012 was filed by the petitioners who are accused Nos.4 and 5 in C.C.No.5123 of 2010 under section 239 of Cr.P.C for discharging them from the case.

It is seen from the averments made in the petition that a case has been registered against the petitioners along with seven others for the alleged offences under sections 419, 420, 465, 467, 468 and 471 read with 109 and 120(b) of I.P.C and a final report has been filed. The allegations against the petitioners is that the petitioners have joined with other accused and family members who are legal heirs of late T.N.Subramaniam and executed a release deed in favour of one of their family members T.N.S. Ravi kumar. On the strength of the release deed, the first accused T.N.S. Ravi Kumar had executed several documents and encumbered the property of the defacto complainant who is alleged to have purchased the property from the legal heirs of late Palaniandi Pillai through power agent S. UdayKumar.

3. The petitioners submitted that they are only the signatories of the release deed dated 22.08.2005. When other persons, who are similarly placed like petitioners, were shown as witnesses, the petitioners have been arrayed as accused. The petitioners along with others have executed documents like cancellation of release deed and deed of declaration in favour of the defacto complainant on the direction of the police. The District Registrar, Administration by an order dated 08.05.2012 had up held the registered documents of the year 2005 and set aside the subsequent documents executed by the defacto complainant. The documents filed along with the final report have lost its credentials. There is no evidence to show that the petitioners have anything to do with the alleged offences. Therefore the petitioners have to be discharged from the case.

4. The respondent filed a detailed counter and the sum and substance of the counter is that the property involved in this case, along with other properties were allotted to parties in a compromise entered in a civil suit in C.S. No 7 of 1959 dated 24.12.1993 by this Court. The father of the first petitioner T.N. Subramania Mudaliar, was one of the tenants in the premises situated in Door No.512 Mint Street and he has entrusted with the work of collecting rent from other tenants and paying to the owner. T.N.Subramaniam died on 04.08.1988 leaving behind, the family members. Tmt.S.Sagundala(wife), V.Rani(Daughter) and sons T.S.Selvakumar, T.N.S.Ravikumar, T.S. Harikumar, T.S.Sampath Kumar, T.S.Pasupathy and T.S.Sivakumar. A notice was sent by special Tahsildar in the name of T.N.Subramaniam to Door No.512 Mint Street, for which the wife of T.N. Subramania Mudaliar sent a reply stating that they are only tenants and the owners are E.Koteeswaran, S. Rajamaniammal and K. Kamalammal and requested that the demand notice to be sent to the above property owners. On 03.04.1999 S.Sakundala and other legal heirs of T.N.Subramaniam had reported to the Assistant Revenue Officer, Zone-2, Corporation of Chennai and informed that as per the

final order of High Court in C.S.No.7 of 1959 dated 24.12.1999 Door No.512, Mint Street was divided into 3 subdivisions and allotted to 1. E.Koteeswarai and others, 2. S.Rajamaniammal and others and 3.N. Kamalammal and others. Seperate assessments have been made in favour of these persons in respect of Door No. 512 Mint street T.N.Subramaniam was only a tenant of this property and he was never the owner of Door No.512 Mint Street. Therefore, they requested the mistake to be rectified by cancelling the assessment in the name of T.N.Subramaniam in respect of Door No.511. The first accused T.N.S.Ravikumar made the legal heirs of the deceased T.N. Subramaniam to execute a bogus release deed by making false representation that the piece and parcel of land shops and sheds in premises bearing Door No.511 Mint street originally belonged to one Kuppusamy Mudaliar and he gave the property to his son-in-law T.N.Subramaniam Mudaliar as sreedhana at the time of marriage of her daughter Sakunthala. Mrs.Malathi @ Koteeswari and Hari Kumar, legal heirs of the deceased Subramaniam Mudaliyar did not turn up and sign the release deed. But A2 impersonated Malathi @ Koteeswari and A3 had impersonated Harikumar and signed the release deed. Based on this bogus release deed, A1 T.N.S. Ravikumar had executed several documents and encumbered the property of the defacto complainant. The investigation discloses that A1 to A9 have joined together and entered into criminal conspiracy, created bogus documents and grabbed the land of the defacto complainant. Subsequently, Sagunthala, Vijayalakshmi, V. Rani, T.S. Selvakumar, T.S. Sambathkumar, Sivakumar formed a group of one party and Manimegalai, Malathi @ Koteeswari, S.Kumatha @ manjula, Nagalingam, T.S.Hari Kumar formed a group as second party and executed the cancellation of release deed on 07.09.2009. The release deed was executed at the inducement and misrepresentation of first accused T.N.S. Ravikumar A2 and A3 have impersonated as Malathi Alias Koteeswari and T.N.S. Hari Kumar respectively. The investigation report discloses A1 to A5 had conspired among themselves and created bogus release deed. Therefore, they arrayed as accused. The other executants of the bogus release deed acted upon the false representation of A1, T.N.S.Ravikumar. Therefore, they are not included as accused in this case, but shown as witnesses. The accused persons have also given voluntary confessional statement admitting to their guilt and there are several materials to presume that they are accused under the provisions aforesaid. Therefore, the respondent prayed for the dismissal of this petition.

5. On considering the materials placed before the trial court, the trial court passed a common order in CrI.M.P.4916 of 2012 and other Criminal M.P's filed by other accused for discharge and dismissed all the petitions on the ground that there are prima facie materials available to show that there are grounds to presume that the accused committed the offences

alleged against them and in this view of the matter dismissed all the petitions. Against the said dismissal orders, the petitioners have filed this Revision petition.

6. The point for consideration in this petition is whether there is illegality or impropriety or incorrectness in the order passed by the learned Judicial Magistrate while dismissing the discharge petition filed in Criminal M.P.No.4816 of 2002.

7. The learned counsel for the petitioner submitted that the main grievance of the petitioner is that when all the other similarly placed persons like the petitioners have been shown as witnesses, it is not proper to show the petitioners as accused instead of witnesses. There are materials to show that the release deed had been executed at the instance of the first accused. The release deed was executed by the brothers and sisters of the first accused along with their mother. Even in the counter, it is alleged that the first accused T.N.S.Ravikumar made the other legal heirs of T.N.Subramanian to execute the release deed by falsely representing that the property in Door No.511, Mint Street originally belonged to Kuppusamy Mudaliyar and he had given the said land to his son-in-law T.N.Subramaniam Mudaliyar at the time of marriage with his daughter Sakunthala.

8. It is seen from the order of the trial court order that Manimegalai, Malathi @ Koteeswari, Kumatha@ Manjula, Nagalingam, T.S.Harikumar, T.S.Pasupathi have not signed the release deed and their signatures were forged and they do not know the contents of the said release deed. It is further discussed that investigation reveals that Sakuntala, Vijayalakshmi, V. Rani, T.S.Selvakumar, T.B.Sampathkumar, T.S.Sivakumar stated that they signed the release deed at the instance of T.N.S.Sivakumar, due to misrepresentation and false assurance given by him. Therefore, all of them executed the cancellation of release deed to rectify the mistake. They have also executed the deed of declaration. Statement of Sakunthala was also extracted in the order passed by the Trial Court. It is seen from this statement that the release deed dated 22.08.2008 was executed as requested by Ravi Kumar and he got the release deed by making false representation. It is also clear from this statement that after knowing about the mistake, they executed the cancellation of release deed on 03.09.2009 and executed the deed of declaration in favour of the defacto complainant on 27.09.2009. The deed of declaration is also placed for the perusal of this Court. It is made clear in the deed of declaration that Al T.N.S.Ravikumar misrepresented to the other parties with regard to the title of the property and made them to execute the release deed. Subsequently on coming to

know about the mis representation, the legal heirs of T.N.S.Subramanian executed cancellation of release deed and executed deed of declaration in favour of the defacto complainant.

9. Perusal of the materials placed before this Court shows that the release deed was executed on the basis of false representation made by the first accused. Subsequently they executed cancellation of release deed, deed of declaration in favour of the defacto complainant to nullify the release deed. In fact, the defacto complainant undertook to withdraw civil and criminal proceedings against the accused. The petitioners before this Court, who are A4 and A5 before the lower Court, are also similarly placed like their brothers and sisters who have executed the release deed, cancellation of release deed and deed of declaration. Therefore, the submissions of the learned counsel for the petitioner that when the other similarly placed persons like the petitioners had been shown as witnesses, it is not just and fair that the petitioners had been shown as accused has force in it, especially when the defacto complainant undertook to withdraw the criminal case in deed of declaration. It is also seen from the counter that several litigations are pending between the parties with regard to the alleged right title and interest in the property. The issues relate to right title and interest have to be decided by a competent civil Court. Available materials shows that A1 is the main accused in this case. A2 and A3 have impersonated Malathy (A) Kotesswari and Hari Kumar respectively.

10. As already stated, the petitioners and other accused executed the release deed at the instance of A1, T.N.S.Ravi Kumar and on coming to know about the real facts they executed cancellation of release deed and deed of declaration in favour of the defacto complainant. It is also the case of the prosecution that the release deed was executed on the basis of false representation made on the 1st accused T.N.S.Ravi Kumar. No other additional or special role or criminal act was specifically attributed against the petitioner than the role attributed to other accused, who are shown as witness now. Therefore, this Court is of the considered view that the petitioner should also be given the same benefit which was given to other accused, who are shown as witnesses now. In this view of the matter, the order of the learned Judicial Magistrate in CrI.M.P.No.4816 of 2012 in C.C.No.5123 of 2010 is set aside and this Criminal Revision petition is allowed.

9. In the result this petition is allowed. The petitioners are discharged from prosecution in C.C.No.5123 of 2010 pending on the file of III Metropolitan Magistrate Court, George Town, Chennai. Consequently, the connected miscellaneous petitions are

closed. This case is of the year 2010, the learned Judicial Magistrate is directed to dispose the case within 3 months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1. The III Metropolitan Magistrate Court,
George Town, Chennai.
2. The Inspector of Police,
State of Tamilnadu,
Central Crime Branch,
Team 19,
Vepery,
Chennai.
3. The Chief Metropolitan Magistrate,
Egmore,
Chennai - 8.
4. The Public Prosecutor,
High Court,
Chennai - 104.

CrI. R.C.No.1434 of 2017
and
CrI.M.P.Nos. 14188 and 14189 of 2017

CO (NRL)
BDL/19/01/2021

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