

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.08.2020

Pronounced On : 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.14634 of 2017
and Crl.MP.No.9272 of 2017

1. A.Sampath Kumar,

2. Manimegalai,

... Petitioners/Accused

Versus

1. The State represented by its
The Inspector of Police,
Central Crime Branch,
Salem.
Crime No.5 of 2016

2. P.Malar Selvi,

... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.5 of 2016 on the file of the Inspector of Police, Central Crime Branch, Salem/1st respondent and quash the same.

For Petitioners : Mr.R.Karthikeyan

For R1 : Mr.K.Prabakar

Additional Public Prosecutor

For R2 : Mr.Rajkumar Pandian

Mr.N.Raja Senthoo Pandian

O R D E R

The petitioners are the accused in Crime No.5 of 2016 for the offence under Sections 468, 471, 473 and 506 (ii) of IPC has filed this quash petition.

2. The gist of the case is that the defacto complainant, Malarselvi had lodged a complaint against the petitioners. Based on the said complaint a case was registered. According to the complaint, the second respondent/defacto complainant was living with her family in the property in Survey No.66/9C2 B1, measuring an extent of 22,890 sq.ft situated at Alagapuram, Salem, of his father in law Late Balakrishnan. This property

was inherited by Late Balakrishnan, and after his demise it got devolved to the second respondent's husband, the second respondent's husband inherited the said property and thereafter her husband executed a settlement deed dated 10.01.2012 in favour of the second respondent. It was found that the first petitioner who was working under her father in law created a forged settlement deed dated 03.12.1987, as if late Balakrishnan has settled the property in favour of the first petitioner and using the said forged document the first petitioner sent some rowdy elements asking the 2nd respondent to compromise the same. Further, the second petitioner claims that the second respondent father in law by oral Dhana Settlement has given the said property. Further, they had filed Civil Suit in O.S.No.560 of 2015, before the Sub-Court, Salem seeking declaration for declaring title of the settlement deed. The first petitioner, who was working under the 2nd respondent father in law taking advantage of the situation, created forged document using the same had threatened the second respondent and her family members. Thereafter, the complaint was lodged by the second respondent to the Deputy commissioner of Police and later to the Commissioner of Police on 02.03.2016 and since no action was taken on the complaint she filed complaint under Section 156 (3) of Cr.P.C before the Judicial Magistrate No.5, Salem, who forwarded the complaint directing the first respondent to register the same. Thereafter, a case came to be registered.

3. The learned counsel for the petitioner primary contention is on three grounds while filing the petition under Section 156 (3) of Cr.P.C before the Judicial Magistrate, the second respondent has not filed any affidavit in support of her complaint which is mandatory as per the direction of the Apex Court in the case of Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others reported in (2015) 6 Supreme Court Cases 287. (ii) Further, he submitted that the petitioners had filed Civil Suit before the Sub-Court, Salem on 28.10.2015 and on 01.12.2015 the defacto complainant and her husband had entered appearance in the said Civil Suit. After coming to know about the suit the second respondent has filed a complaint on 02.03.2016 which would clearly show that as a counter blast to the Civil Suit above complaint was lodged. (iii) In the complaint to the Judicial Magistrate the second respondent had not mentioned about the pendency of the Civil Suit. If the pendency of the Civil Suit mentioned, the Judicial Magistrate would not have entertained the petition filed by the petitioner under Section 156(3) of Cr.P.C.

4. The learned counsel for the petitioner further submitted that the disputed settlement deed dated 03.12.1987 is a document which has been filed before the Civil Suit. Only after the finding of the Civil Court the genuineness or otherwise of the

document could be found. In view of the same the registration of an FIR and further proceedings would amount to prejudging the issue which is pending before the Civil Court.

5. The learned counsel for the petitioner submitted Late Balakrishnan executed settlement deed dated 03.12.1987 in favour of the first petitioner and the first petitioner became absolute owner of the said property and he is in possession of the property. In the Civil Suit the second respondent has not let in evidence to show that she is in possession of the said property. Further the genuineness of the settlement deed has to be gone into the Civil Suit. Therefore, the continuation of investigation by the first respondent is unsustainable. In support of his contention he relied upon the case of A.P.Thirumalaisamy Vs. Tmt. Bangarammal and Others reported in 1999 (1) MWN (cr.) 156 and prayed for quashing of the FIR in Crime No.5 of 2016.

6. The learned counsel for the second respondent/defacto complainant submitted that the petitioner is working under her father in law, late Balakrishnan, a property at Alagapuram Village, Salem Taluk, belongs to her father in law. On 11.02.2011, Late Balakrishnan and her daughter Neela released the said property in favour of B.V.S.Mani to the husband of the second respondent, the same is registered as Document No.1287 of 2011. Thereafter, the second respondent's husband settled a portion of the property to the second respondent on 10.01.2012 by a registered Document No.500 of 2012 and as such all the revenue records maintained in her name and she is also paying the property tax. The second respondent's father in law Balakrishnan died on 05.04.2015. During the life time of Balakrishnan, the petitioners had not made any claim through Dhana Settlement in respect of the said property and there was no disclosure of the alleged un-registered settlement deed said to have been executed in the year 1987. After the demise of Balakrishnan, the petitioner created a forged document in order to grab the property. Therefore the second respondent lodged a complaint to the Commissioner of Police on 02.03.2016 and since no action was taken, she filed a complaint before the Judicial Magistrate No.V, Salem under Section 156(3) of Cr.P.C and based on the direction given by the Judicial Magistrate, the first respondent registered the case.

7. The learned counsel for the second respondent would further submit that the petitioners are taking shelter under the Civil Suit, O.S.No.560 of 2015 pending before the Sub-Court, Salem by presenting forged settlement deed dated 03.12.1987 before the Civil Court. Further the petitioners plea is that an affidavit was not filed while filing the complaint before the Magistrate Court, following the case of Priyanka Srivastava

cited supra. Filing of affidavit is only a directive and not a mandatory condition, further only in a case of false complaint, to take action against the concerned persons, such affidavit is required. In the present case the forgery of the document is clearly proved, for the simple reason, admittedly the first petitioner is not a family member of the Late Balakrishnan, he was working under Late Balakrishnan and he is a stranger, third person. No settlement can be made to stranger, third party. A comparison of the admitted and available writings and signature of the Late Balakrishnan forms in the settlement deed dated 03.12.1987 would prove that the signature of Balakrishnan found in settlement document dated 03.12.1987 are grossly dissimilar and forged one. He further submitted that the petitioner filed the forged un-registered document before the Second Additional Sub-Court, Salem. He further submitted that the Apex Court has clearly held that criminal case cannot be quashed only on the ground that the allegations made therein appear to be of civil in nature. If the ingredients of the offence against the accused are made out in the complaint, the criminal proceeding shall not be interdicted. The learned counsel would also submit that the existence of the said un-registered settlement deed was not relied during the life time of Late Balakrishnan, he died on 05.04.2015 and after 27 years from the date of alleged execution (03.12.1987) the first petitioner discloses the existence of the said settlement deed by way of Civil Suit filed on 28.10.2015 in O.S.No.560 of 2016. The 2nd petitioner has filed a suit in O.S.No.575 of 2015 before the Second Additional Sub-Court claiming relief over the property on the ground of adverse possession. Therefore it is clearly seen that both the petitioners/ A1 and A2 created forged documents and by using the forged document are claiming title over the property. Due to the pendency of the above petition, investigation is stalled and hence prayed for dismissal of the quash petition.

8. The Additional Public Prosecutor submitted that in this case the petitioners were working under Late Balakrishnan and the property in dispute has been inherited by Late Balakrishnan. The petitioners are claiming right over the said property claiming that Late Balakrishnan executed a settlement deed dated 03.12.1987, in favour of the first petitioner. This settlement had not been revealed for 27 years from the date of alleged execution. The said Balakrishnan passed away on 05.04.2015 before that he executed settlement deed in favour of his son along with his daughter on 11.02.2011 by way of registered document No.1287 of 2011. Thereafter, the second respondent's husband has settled the portion of the property in favour of the second respondent on 10.01.2012 vide settlement deed in Document No.500 of 2012. The petitioners never disclosed about the alleged settlement deed dated 03.12.1987 till 05.04.2015. Only after the death of Balakrishnan suit is filed in the Civil Court

in O.S.No.560 of 2016 during October 2016. The second respondent has filed suit in O.S.No.575 of 2015 claiming relief over the property under the pretext of adverse possession. The Respondent Police on registration of the complaint against the petitioner initiated investigation. During the investigation it was found that the forged document were filed as document in OS.No.560 of 2015 before the Sub-Court, Salem when the Investigation Officer was taking steps to receive the document and sent the same to forensic study, the petitioner had filed this Original Petition due to which the investigation in this case got stalled.

9. From the materials so far collected from the investigation, it is seen that the petitioners are only an employee of Late Balakrishnan, who created forged document and using the same has claiming the right over the property of Late Balakrishnan. The second respondent/defacto complainant is the daughter in law of the Late Balakrishnan. This is a case of clear forgery and prayed for dismissal of the quash petition.

10. Considering the submissions and the materials, it is not in dispute that the property was inherited by Late Balakrishnan. It is claim of the petitioner that the property was settled in their favour on 03.12.1987. This Settlement is an un-registered settlement which was not disclosed till the death of Balakrishnan on 05.04.2015. Earlier to the demise of the Balakrishnan he had dealt with the same property by way of settlement deed in favour of the second respondent husband's B.V.S.Mani on 11.02.2011 by registered document No.1287 of 2011. After the demise of Late Balakrishnan what steps were taken by the second respondent to take possession of the property the petitioners herein filed a Civil Suit in O.S.No.560 of 2016 before the Sub-Court, Salem. The prayer in the Civil Suit is to declare null and void the settlement deed executed by Late Balakrishnan in favour of the second respondent's husband vide Document No. 1287 of 2011 and also to declare title over the property to the first petitioner as per the settlement dated 03.12.1987.

11.The petitioners are making claim after 27 years after the execution of the un-registered settlement deed dated 03.12.1987. During the life time of Balakrishnan no such claim was made by the petitioners. The second respondent/defacto complainant is not disputing the filing of Civil Suit by the petitioner in O.S.No.560 of 2015 and the second respondent has filed a Suit in O.S.No.575 of 2015 filing of civil suits will not be bar to proceed with the investigation in Crime No. 5 of 2015.

12.On the facts and materials of the case, this Court finds that there are materials to show that the petitioners claim of right over the property based on the settlement deed on

03.12.1987 is not sustainable. The case is at the initial stage pending from the year 2015. I had an occasion to deal with a similar situation in the case of State, rep by K.Mariyappan Vs. V.P.R.Raja reported in 2019 2 LW (Crl) 571, in which it is held that for the purpose of the investigation, the Investigating Officer can have access to the documents even if it is in custody of the civil Court. The documents can be send to the Forensic Department. In view of the same this Court finds that the contention of the petitioners are unsustainable. Hence, this Court dismisses the quash petition.

13. Considering that the FIR is pending from the year 2015, the Investigating Officer shall take effective steps to complete the investigation within stipulated time and file final report before the concerned Court. The Deputy Commissioner of Police, Central Crime Branch, Salem tp monitor the investigation.

14. With the above observation, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Deputy Commissioner of Police,
Central Crime Branch, Salem.
2. The Inspector of Police,
Central Crime Branch, Salem.
3. The Additional Public Prosecutor,
High Court, Madras.

Pre-delivery Order in
Crl.O.P.No.14634 of 2017
and Crl.MP.No.9272 of 2017

MG(CO)
RV(23/09/2020)