



BAIL SLIP

The Appellant/ Accused 1) Avudaiyappan, Male S/o.Chidambaram servai, 2) Sundarsingh, Male, aged 59, S/o.Bahadoor Singh were directed to be released on bail as per the order of this court dated 13/12/2013 in MP(MD)No.2 & 3 of 2013 in Crl.A(MD)No.365 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.A(MD).No.365 of 2013

and

CRL.RC.(MD)Nos.140 and 171 of 2014

1.Avudaiyappan

2.Sundarsingh

.. Appellants/Respondents 1 & 3/Accused 1&3

Vs.

1.Kalyani

... Respondent/Appellant/Defacto Complainant

2.State Rep.by its

Sub Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.

(Crime No.84 of 1999) .. Respondent/Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C, to call for the records relating to the order in Criminal Appeal No.8 of 2011, dated 06.11.2013 on the file of the learned Fast Track Court, Pudukkottai (Additional Sessions Judge) which reverse the order of acquittal dated 05.04.2010 in C.C.No.466 of 2003 by the learned District Munsif cum Judicial Magistrate at Thirumayam and set aside the same by acquitting the appellants.

For Appellants : Mr.P.Ganapathi Subramanian

For R2

: Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

CRL.R.C. (MD) .No.140 of 2014 :

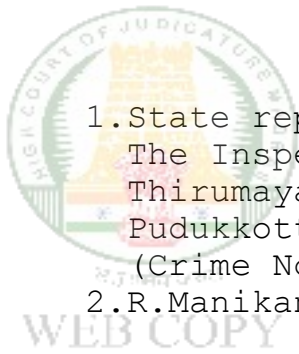
Kalyani (Died)

Elangovan

.. Petitioner

(Bring on the record as per order of this court dated 19.12.2019 in Crl.M.P(MD)No.11228 of 2019 in Crl.R.C.(MD)No.140 of 2014)

Vs.



1.State rep by,
The Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.
(Crime No.84 of 1999) .. Respondent/Respondent/Complainant
2.R.Manikandan .. Respondent/Respondent/Accused No.2

PRAYER: Criminal Revision has been filed under Section 397(1) r/w 401 of Cr.P.C and Section 11(4) of Probation of Offenders Act, to call for the records in Crl.A.No.8 of 2011 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Pudukkottai, Pudukkottai District, dated 31.10.2011 /06.11.2013 and set aside the order releasing the 2nd respondent under Section 4 of Probation of Offenders Act and consequently, direct further investigation as prayed for by the appellant therein.

For Petitioner : Mr.A.Thiruvadi Kumar
For R1 : Mr. K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

CRL.R.C. (MD) .No.171 of 2014 :

Kalyani (Died)
Elangovan .. Petitioner

(Bring on the record as per order of this court dated 19.12.2019 in Crl.M.P(MD)No.11225 of 2019 in Crl.R.C.(MD)No.171 of 2014)

Vs.

1.State rep by,
The Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.
(Crime No.84 of 1999) .. Respondent/Respondent/Complainant

2.C.Aavudaiappan
3.B.Sundar Singh .. Respondents/Respondents/Accused 1 & 3

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in Crl.A.No.8 of 2011 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Pudukkottai, Pudukkottai District, dated 31.10.2011 / 06.11.2013 and direct further investigation as prayed for by the appellant therein.

For Petitioner : Mr.A.Thiruvadi Kumar
For R1 : Mr. K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

**JUDGMENT**

The Criminal Appeal has been filed as against the order dated 06.11.2013 passed by the learned Additional Sessions Judge (Fast Track Court), Pudukkottai in Criminal Appeal No.8 of 2011, which reverse the order of acquittal dated 05.04.2010 in C.C.No.466 of 2003 on the file of the learned District Munsif cum Judicial Magistrate at Thirumayam and set aside the same by acquitting the appellants.

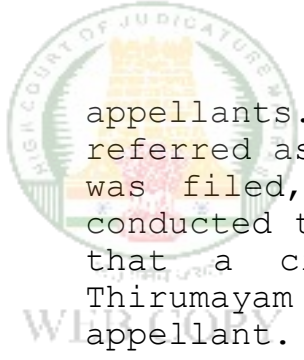
2. The case of the prosecution is that 0.81.0 ares (2 acres) of land were assigned in favour of Kalyani /1st respondent herein in Thirumayam village S.No.854/15 and she sold the said land to one Dhiraviyam. When she applied for patta transfer, it came to light that A1 with the aid of A2 and A3 had already forged a sale deed for the said land in his favour and effected patta transfer in his favour. Due to which, a case was registered in Crime No.84 of 1999 for the offence punishable under Sections 419, 465, 467, 468, 471 r/w 109 IPC as against the A1/first appellant and Sections 419, 465 r/w 109 IPC as against the A3/second appellant and A2. After completion of investigation, the respondent police filed a charge sheet before the learned District Munsif cum Judicial Magistrate, Thirumayam and the case was taken on file in C.C.No.466 of 2003.

3. In order to prove the case of the prosecution, on the side of the prosecution 9 witnesses were examined and 5 documents were marked. On the side of the accused, no document was marked and no witness was examined.

4. The learned trial Judge, after completion of trial and considering the oral and documentary evidence and upon hearing both sides, acquitted the accused. Aggrieved over the Judgment and conviction, the defacto complainant/1st respondent herein filed an appeal in Crl.A.No.8 of 2011 before the learned Additional District and Sessions Judge, (Fast Track Court) Pudukkotti and the same was allowed by the learned Judge. Aggrieved over the same, the appellants preferred this present criminal appeal.

5. The contention of the learned counsel for the appellants is that the defacto complainant had not deposed anything against the appellants. Further, admitted that she has got only the photostat copy of the documents and she had not produced any original documents before the Revenue Authorities to prove her title.

6. He submitted that the evidence of P.W.2, who is the husband of P.W.1 had not stated anything against the appellants. P.W.3, who purchased the property from P.W.1 and when PW3 approached the Revenue Authorities to transfer the patta, P.W.3 came to know that the revenue records and the documents were in favour of the



appellants. Hence, a complaint came to be lodged, the case was referred as civil in nature. Thereafter, a case under Section 156(3) was filed, which was forwarded to the 2nd respondent police who conducted the investigation and filed charge sheet. It is submitted that a civil case is given criminal color. P.W.4/Tahsildar, Thirumayam stated about the patta stands in the name of the first appellant.

7.The learned counsel for the appellants further submitted that P.W.5 is the Photographer took photographs Ex.P.2 and Ex.P.3 and the thump impression of P.W.1. P.W.6 is the Inspector of Finger Print Bureau found the thump impression does not tally with the thump impression found in the Registrar Office. But, admits that the thump impression, which is found in the Registrar Office does not mention whether it is left or right thump impression.

8.P.W.8 is the Sub-Inspector of Police who registered the complaint and thereafter, investigation was taken over by P.W.7. The Sub-Registrar/PW9 is the witness from the Registration Department, in his evidence he stated that only during 2005, the procedure of both buyer and seller to appear before the Registrar for registration of documents came into force.

9.The contention of the learned counsel for the defacto complainant/1st respondent is that the appellants committed the offence of impersonation and created a sale deed in their favour and thereafter, on the strength of the forged documents, revenue records were transferred in his name and enjoying the property. He further submitted that the lower Appellate Court had given a finding merely on assumption and presumption not based on the evidence, assumed that the Finger Print available in the Registration Office would be only left thump impression and hence Ex.P.2 and Ex.P.3 did not tally. Further, the lower Appellate Court without giving any reason of perversity, reversed the judgment of acquittal, which is not permissible in law and hence prayed for set aside the conviction and allowing this appeal.

10.The learned Government Advocate (Criminal Side) submitted that 20 years prior the land in dispute was assigned to the defacto complainant/1st respondent and she was in possession and enjoyment of the property. On 11.02.1998, she had sold the property to P.W.3 and based on the documents, had approached the Revenue Authorities. Thereafter, PW3 was informed that the patta stands in the name of the first appellant, the appellants had purchased the property from P.W.1 during 1997 by way of document No.1616 of 1997. Hence, patta was transferred in the name of the appellants only when PW3 approached for transfer of patta. Later P.W.1 and P.W.2 came to know about the impersonation and forgery committed by the appellants. The first appellant being an Ex-President of the village, powerful with men and money had committed the offence. With great difficulty, P.W.1 had given a complaint to the Tashildar, Police and others, but no action was taken. Later, P.W.1 filed a complaint, before the Magistrate under Section 156 (3) IPC.



Thereafter, FIR came to be registered, after completion of investigation charge sheet was filed.

11.The learned counsel for the 1st respondent in addition to the submission of learned Government Advocate submitted that the 1st respondent, Ex-Panchayat President armed with money and muscle power having access to the revenue records, taking advantage of the respondents weakness and meekness have created forged documents and knowingly using forged documents had changed the patta in his name. With great difficulty running from pillar to post and with great perseverance, this case came to be registered and appellants were prosecuted.

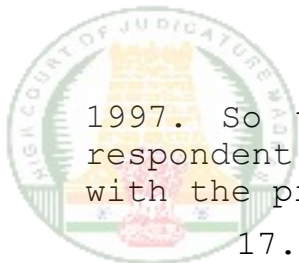
12.Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) for the respondent police and also learned counsel for the first respondent.

13.It is seen that P.W.1 and P.W.2 are uneducated rustic villagers. P.W.3 purchased the property from P.W.1 in the year 1997 when he applied for change of patta to his name, PW3 came to know about the impersonation cheating committed by the first appellant in connivance with the other two accused. P.W.4/Thasildar speaks about the patta, chitta and revenue records originally stood in the name of appellants. P.W.5/Photographer, Finger Print Bureau took photographs of the thump impression of P.W.1 compared with finger print available in the Registration Department. P.W.6 / Forensic Expert found the thump impression of P.W.1 does not tally with the finger print impression available in the Registration Department. Hence the impersonation and registering the property of PW1 in the name of appellant was proved. The lower Appellate Court considering all these aspects convicted the appellants.

14.The learned Government Advocate (Criminal Side) appearing for the second respondent submitted that this case was registered on the direction of learned Magistrate in Crime No.84 of 1999. Thereafter, P.W.8 took up the investigation and further P.W.7 conducted the further investigation. P.W.1 to P.W.3 have clearly deposed that P.W.1 is owner of the land. Further, prior to change of patta in the name of first appellant, the property and patta were in the name of PW1. The property was never conveyed by PW1 to the first appellant.

15.During the pendency of the appeal, the appellants had filed a suit in O.S.No.47 of 2002, which is pending on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam. The 1st respondent herein is defacto complainant is the defendant in the suit. The document No.1616 of 1997, dated 10.12.1997 is the disputed document. Now both the appellants and the 1st Respondent have come to an understanding to settle their dispute and issues, which is predominantly civil in nature.

16.Hence, a plea was made by the appellants that they are willing to withdraw the suit in O.S.No.47 of 2002 and to file a cancellation document to cancel the sale deed in document No.1616 of



1997. So that the encumbrance created are removed and the first respondent enjoys the property without any encumbrance and to deal with the property unencumbered.

17. Pursuant to the understanding, the legal heirs of P.W.1 filed an affidavit and undertook to withdraw the civil suit in O.S.No.78 of 2011 filed by P.W.1. As per undertaking, O.S.No.47 of 2002 filed by the appellants is withdrawn by the appellants and the appellants have also cancelled the sale deed, document No.1616 of 1997 by way of cancellation deed No.355 of 2020 (containing 11 pages) in Sub-Registrar Office, Thirumayam. The copy of the same has been produced before this Court and handed over to the 1st Respondent.

18. This Court finds, there is no subsisting claim between the appellants and the 1st respondent. The dispute between the appellant and the first respondent predominantly of a civil flavour, settled, the document executed is a private document and the encumbrance and impediment to the property cancelled and removed. The appellant undertook not to stake any claim over the property in any manner. The first respondent to enjoy and deal with property as per their wish. In view of the compromise, this Court is inclined to allow the appeal, setting aside the conviction of the appellants in C.A.No.8 of 2011, dated 06.11.2013. In view of the same, nothing survives for adjudication of Crl.R.C(MD).Nos.140 & 171 of 2014 filed by the 1st respondent.

19. Accordingly, the Criminal Appeal is allowed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

1. The Additional Sessions Judge,
Fast Track Court, Pudukkottai.

2. The Principal Sessions Judge, Pudukkottai

3. The District Munsif cum Judicial Magistrate,
Thirumayam.

4. The Chief Judicial Magistrate, Pudukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



5.The Sub Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.

6.The Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

8.The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. Mr.P.Ganapathi Subramanian, Advocate Sr.No.8596

+1cc to Mr.A.Thiruvadi Kumar, Advocate Sr.No.8702

CRL.A(MD) .No.365 of 2013
and

CRL.RC. (MD) Nos.140 and 171 of 2014
25.02.2020

VB (17.06.2020) 7P 12C