BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.24450 of 2015

Dr.K.Thanappan ... Petitioner/Accused No.1

Vs.

1. The Inspector of Police,
   Land Grabbing Special Cell,
   District Crime Branch,
   Nagercoil,
   Kanyakumari District. ... First Respondent/Complainant

2. Swami Kannupillai ... Second Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to the final report of Calender Case in C.C.No.121 of 2015 on the file of the Judicial Magistrate No.1, Nagercoil and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.J.Barathan,
for M/s.T.R.Jeyapalam.

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side).

For R-2 : M/s.J.Anandhavalli

O R D E R

The petitioner is figuring as the first accused in C.C.No.121 of 2015 on the file of the Judicial Magistrate No.I, Nagercoil, for the offences under Sections 406, 419, 420, 465, 466, 467, 468, 471 r/w.34 of I.P.C.

2. The defacto complainant in this case is the second respondent herein. The second respondent is associated with one Vellala Educational Trust. According to him, the executive committee of the trust in its resolution dated 09.09.2011 resolved to purchase a piece of land measuring 17¾ cents situated adjacent to KNSK

College of Engineering running by the trust. The resolution clearly states that if it is not possible to purchase the land by way of sale deed, atleast the enjoyment right should be obtained by paying suitable consideration. The specific allegation made by the defacto complainant is that the petitioner herein who was the then Secretary of the trust was mandated with the task of obtaining legal opinion and completing all the formalities. Admittedly, the land stood in the name of one Nagammal. The petitioner is alleged to have entered into a conspiracy with the other accused, particularly, accused No.4 Somu. Pursuant to the said conspiracy, the third accused Bagavathy committed impersonation and executed a sale deed on 30.03.2012 in favour of accused No.2 Sornappan. On 10.05.2012 Sornappan represented by accused No.4 Somu executed a sale deed in favour of the trust for a sum of Rs.10,46,004/-. A sum of Rs.11,20,000/- was paid by way of cheque to accused No.4 Somu.

3. The allegation of the defacto complainant is that the person actually having the title has not conveyed the land to the trust. The petitioner as the Secretary of the trust had misappropriated the amount in question by connivance with the other accused, particularly, accused No.4 Somu. The complaint lodged by the defacto complainant was registered as Crime No.20 of 2015 by the Inspector of Police, Land Grabbing Special Cell, Nagercoil. It was investigated and final report was filed against the petitioner and five others for the offences under Sections 406, 419, 420, 465, 466, 467, 468, 471 r/w.34 of I.P.C. Cognizance of the offences was taken. The case was taken on file in C.C.No.121 of 2015. To quash the same, this criminal original petition came to be filed.

4. It is to be noted that the first accused alone had filed the quash petition and the other remaining accused have not come before this Court.

5. As already narrated, the first accused herein has been implicated because he was the Secretary of the trust. The second accused has been implicated, since it was in his name and favour, sale deed dated 30.03.2012 was executed. Even though Nagammal is described to be the vendor in the sale deed dated 30.03.2012 executed in favour of Sornappan, the third accused Bagavathy had impersonated Nagammal. The entire sale consideration was paid by the trust directly to the fourth accused Somu. The fifth accused Nagarajan is said to be the brain behind the crime herein and Sornappan is said to be his man. Nagarajan and the sixth accused Arulraja attested the sale deed dated 30.03.2012.

6. The learned counsel appearing for the petitioner reiterated the contentions setout in the memorandum of grounds and wanted this Court to quash the impugned proceedings as far as he is concerned.

7. Per contra the learned counsel appearing for the defacto complainant submitted that the resolution dated 09.09.2011 had tasked the petitioner with the responsibility of purchasing the property from the true owner. In the subsequent resolution dated 30.09.2011, it was resolved that the petitioner as the General Secretary of the trust must obtain legal opinion and if there was any difficulty in procuring the sale deed, atleast enjoyment right must be obtained. That itself implied that there was some doubt regarding the availability of the actual owner. The learned counsel appearing for the defacto complainant pointed out that the resolutions were passed in September 2011 and if Nagammal was actually available, the sale deed could have been directly obtained from her in favour of the trust and there was no need to have the document executed in the name of Sornappan in the first instance. The fact that the execution of the sale deed in favour of Sornappan is dated 30.03.2012 and the conveyance by Sornappan in favour of the trust within the short time (ie.) on 10.05.2012 itself indicates that there was something cloudy vitiating the entire transaction. Her further contention is that if really Sornappan was the title holder, the question of paying accused No.4 Somu does not arise.

8. The learned counsel appearing for the defacto complainant also placed reliance on the recent decision of the Hon'ble Supreme Court reported in CDJ 2019 SC 855(Chilakamarthi Venkateswarlu and Another V. State of Andhra Pradesh and Another)which is held as follows:-

> "12. The plenary inherent jurisdiction of the Court under Section 482 of Code of Criminal Procedure may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.
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> 13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice.
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> 14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.
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> 15. In exercising jurisdiction under Section 482, it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground

for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in Zandu Pharmaceutical Works Ltd., and Ors. V. Mohd. Sharful Haque and Anr. MANU/SC/0932/2004: (2005) 1 SCC 122.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W.Palanitkar and Ors. V. State of Bihar and Anr. MANU/SC/0672/2001: (2002) 1 SCC 241. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision."

The learned counsel appearing for the defacto complainant submitted that this is not a case in which the inherent powers of this Court are to be exercised. She prayed for dismissal of the criminal original petition.

9. The learned Government Advocate(Crl. Side) supported the stand taken by the learned counsel appearing for the defacto complainant.

10. I carefully considered the rival contentions and perused the materials on record.

11. It is not in dispute that the persons at the helm of affairs of the trust wanted the property in question. In fact they went to the extent of resolving that if the sale deed could not be obtained and the property could not be purchased as such, at least the enjoyment right must be procured. Two resolutions, one dated 09.09.2011 and the other dated 30.09.2011 were passed by the executive committee. In the resolution dated 30.09.2011, the defacto complainant is also one of the signatories. It is not as if the petitioner did something behind the back of the other persons associated with the said resolutions. The petitioner was the General Secretary of the trust during the relevant time, obviously he could

not have taken any unilateral decision. Of course the committee tasked the petitioner with the work of procuring the land for the benefit of the institution. It is seen from the materials on record that the petitioner had associated the other office bearers also, while finalising the transactions. For instance, the cheques drawn in favour accused No.4 Somu were placed for consideration before the committee on 01.06.2012 and the committee endorsed the payment of a sum of Rs.12,08,000/- in favour of accused No.4 Somu. When the decision to hand over the said amount in favour of Somu was taken by the committee directors, it would not be fair to single out the petitioner herein for prosecution. It is relevant to note that the defacto complainant was a party to the resolution dated 01.06.2012. His name is figuring at serial No.20 in the said minutes of the said meeting.

12. The First Information Report in question was lodged on 25.02.2015; even prior to that the defacto complainant has filed O.S.No.185 of 2014 against the trust and others seeking discharge of the petitioner and two others from the Directorship. He also wanted passing of permanent injunction restraining the petitioner from participating in any Board meeting.

13. It is obvious that there was no love lost between the petitioner and the defacto complainant. There appears to be considerable force in the contentions of the petitioner's counsel that the inclusion of the petitioner's name in the list of accused appears to be more out of spite and *mala fides*.

14. However there is considerable force in the contention of the defacto complainant's counsel that the sale deed dated 30.03.2012 executed in favour of accused No.2 Sornappan is vitiated by impersonation and forgery. Though the sale deed is standing in the name of Nagammal, the said Nagammal is not traceable. The materials furnished by the prosecution *prima facie* indicate that the third accused Bagavathy had impersonated Nagammal. Thus, there is a case for continuance of the prosecution. But then, the only question that arises for my consideration in this case is whether the petitioner should continue to figure as an accused. The petitioner's counsel states that the petitioner is willing to depose as a prosecution witness and state everything that are reflected by the records and which are within his knowledge.

15. This undertaking given by the petitioner's counsel on instructions is placed on record. As already pointed out, the petitioner has not taken any decision on his own. The decision to procure the land in question was taken by the entire committee to which not only the petitioner but also the defacto complainant was also a party. Likewise the decision to make payment directly to Somu was also taken only by committee. It is also seen that the land has been handed over to the trust and buildings have also been

constructed. The petitioner's counsel states that when the defacto complainant raised the issue, the petitioner had suggested that the entire transaction can be nullified. In fact accused No.4 Somu was also ready to cancel the transaction dated 10.05.2012 and return the money to the trust. But one of the members of the trust had filed an injunction suit for preventing the return of the property.

16. Therefore, continuing the prosecution as against the petitioner is clearly an abuse of legal process. The impugned prosecution stands quashed as far as the petitioner is concerned. The criminal original petition stands allowed. It is made clear that the impugned proceedings will go on against the other accused.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

1. The Judicial Magistrate No.1,
   Nagercoil.

2. The Inspector of Police,
   Land Grabbing Special Cell,
   District Crime Branch,
   Nagercoil, Kanyakumari District.

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

+1 CC to M/s.J.ANANDAVALLI, Advocate (SR-4379[F] dated 03/02/2020)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-4494[F] dated 03/02/2020)

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