



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2020

DELIVERED ON : 06.02.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.(MD) .No.7259 of 2016

and

CRL.M.P (MD) No.3681 of 2016

Ranjith .. Petitioner / Accused No.2

Vs.

Thangarathinam .. Respondent /Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for records relating to C.C.No.78 of 2016, on the file of the learned Judicial Magistrate No.II, Kulithalai and quash the same as illegal.

For Petitioner : Mr.V.Anand,
for Mr.P.T.Rameshraja

For Respondent : Mr.Niranjan S.Kumar

O R D E R

This Criminal Original Petition has been filed to quash the C.C.No.78 of 2016, on the file of the learned Judicial Magistrate No.II, Kulithalai.

2. The petitioner is arrayed as accused No.2 in C.C.No.78 of 2016, on the file of the learned Judicial Magistrate No.II, Kulithalai, against whom the respondent had filed a private complaint before the learned Judicial Magistrate No.II, Kulithalai, for the offence under Sections 166, 466, 474 r/w 34 IPC, therefore, the petitioner filed this quash petition.

3. The facts of the case are briefly stated hereunder:-

(i) The petitioner was employed a Thasildar during the relevant period. The respondent / Thangarathinam is the wife of one PaneerSelvam and their marriage had taken place on 09.03.1979, out of wedlock, they have been blessed with two children, namely, P.Vinothkumar and P.Sankari. Thereafter, due to some misunderstanding, they were living separately. They got divorce by judgment dated 08.08.1991 in H.M.O.P.No.41 of 1990, on the file of



the learned Subordinate Judge, Tiruchirapalli. After that, the son of the respondent was staying with his father/Pannerselvam and the daughter was staying with her mother/ Thangarathinam, respondent herein.

(ii) The said Vinothkumar married one Meena, out of wedlock, they have been blessed with two children, namely, Surya and Naren. On 02.01.2016, in a suspicious circumstance, Vinothkumar died and a Death Certificate was issued by the Kulithalai Municipality and his wife /Meena had applied for Legal Heirship Certificate. The respondent filed a Writ Petition (MD)No.3948 of 2016, seeking a copy of the legal heir certificate in respect of her son Vinothkumar. The same was closed on 25.02.2016, for the reason that the legal heir certificate, already issued on 12.01.2016. The petitioner/A2 in collusion with his officials issued the legal heir certificate on 12.01.2016 by omitting the respondent's name. Therefore, the respondent filed another W.P.(MD)No.4157 of 2016, for quashing the impugned legal heir certificate, dated 12.01.2016, made in Pa.Mu.A3/222/2016, issued by the petitioner herein and sought for inclusion of her name.

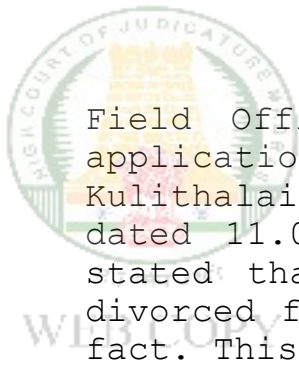
(iii) The respondent being a Clause - I legal heir, as defined under Section 8 of Hindu Succession Act, 2005 and she is also entitled for 1/4th share in the property of the deceased Vinothkumar. But, the petitioner, in connivance with A1, issued the legal heir certificate, dated 12.01.2016, by omitting her name. Hence, the respondent filed a private complaint against the said Meena and the petitioner/A2. The learned Judicial Magistrate had taken the case on file in C.C.No.78 of 2016, and issued summons to the parties, against which, this quash petition has been filed by the petitioner.

Submissions :

4. The learned counsel appearing on behalf of the petitioner made the following submissions:

4.1. that the issuance of legal heir certificate had been streamlined as per the guidelines made in W.P.(MD)No.14956/2013, dated 25.09.2013, wherein, it has been categorically stated that the Thasildars cannot refuse to issue legal heir certificate. Further, the Government of Tamil Nadu in Government Letter No.4534, Revenue Department, dated 28.11.1991 has framed rules for issuance of legal heir certificate, which has to be strictly followed.

4.2. that the said Meena/wife of late. Vinothkumar had presented a petition on 08.01.2016, seeking legal heir certificate on the demise of her husband/Vinothkumar. The said application was forwarded to the Revenue Inspector, Kulithalai, who is the



Field Officer for inspection, who caused verification of the application through the concerned Village Administrative Officer, Kulithalai. The Revenue Inspector, Kulithalai, has filed a report dated 11.01.2016 in N.Dis No.48 of 2016, wherein, it has been stated that the respondent/mother-in-law of the said Meena got divorced from her husband/ Paneerselvam, which is not a disputed fact. This fact is not mentioned in the complaint.

4.3. that the said Paneerselvam expired on 20.04.2015 and his legal heir certificate in Dis.No.A7/3344/2015, dated 15.05.2015, it has been mentioned that the said Vinoth Kumar and one Sankari are the legal heirs. Since in the death certificate of Paneerselvam, the name of the respondent was found, the Revenue Inspector re-commended to obtain legal opinion from the Government Pleader. The Government Pleader, District Munsif Court, Kulithalai had given his opinion, the relevant paragraph No.10, is hereby extracted hereunder.

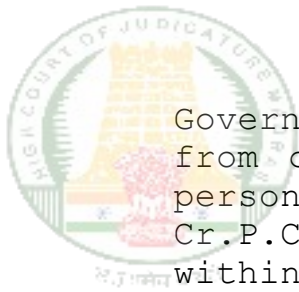
"10.In the absence of answer to some question of law involved, there were many impediment in including her as legal heir of deceased Vinoth Kumar which can be cured only by the Court and Legal heir ship certificate to Tmt.Meena and her Minor children may issued subject to the terms and conditions of the department after getting indemnity Bond and without prejudice to the subsequent order of the Honourable Court."

4.4. that a representation, dated 09.01.2016, given by the respondent, received by the office on 13.02.2016 and a copy of the same had been produced. Further, the petitioner has been falsely implicated, and caught in the cross fire on the rivalry between the respondent against the said Meena/wife of late Vinothkumar with regard to inheritance and sharing of the properties, wealth of Paneerselvam with an ulterior motive. It is also submitted that during the pendency of this Criminal Original Petition, by order dated 28.04.2016, the respondent's name was included as legal heir and a legal heir certificate issued to the effect. Hence, he prayed to allow this petition.

4.5. In support of his contention he has relied upon the following judgments :

(a) The case of R.Prabhakaran Vs. Ravisankar and another, in Crl.O.P(MD)No.18394 of 2012, wherein this Court has held as follows:

"4. It is true that the trial Court cannot take cognizance under Section 166 I.P.C., unless sanction under Section 197 of Cr.P.C, is obtained. Section 197 of Cr.P.C., is applicable only to those public servants who are removable by the Government. In this case, the petitioner herein is only an Inspector of Police. He can be removed from office by an authority subordinate to

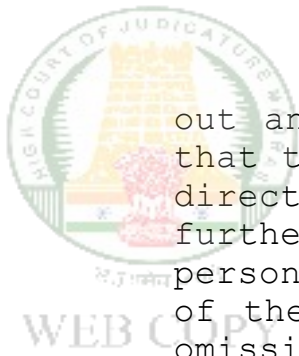


Government. For him, the authority competent to remove from office would be the Deputy Inspector General. If a person is removable only by the Government, Section 197 of Cr.P.C., will apply. Since the petitioner does not fall within the rank referred to under Section 197 of Cr.P.C., the contention of the learned counsel for the petitioner is liable to be rejected. Though this case involves Section 166 of I.P.C., the aforesaid decision of the Hon'ble Apex Court is inapplicable. However, it is seen that the petitioner herein had ultimately complied with the direction issued by the learned Judicial Magistrate, Sankarankoil. There is only a nominal delay of five days in registering the First Information Report. Inasmuch as the petitioner has finally complied with the order passed by the learned Magistrate, this Court is of the view that allowing the impugned proceedings to be kept pending against the petitioner would only cause needless hardship to him. Therefore, to secure the ends of justice, the impugned proceedings in Cr.M.P.No.7794 of 2012 pending on the file of the learned Judicial Magistrate, Sankarankoil, are quashed."

(b) The case of Bihar State Electricity Board and another Vs. Nan Kishore Tamakhuwal, reported in 1989 Supreme Court Cases (Cri) 179, wherein the Honourable Supreme Court has held as follows:

"6.It is apparent that offence under this section will be made out if contravention of the provisions of this Act or rules made thereunder is proved and further if it is established that without reasonable cause supply of energy is discontinued. A perusal of the complaint show that what was mentioned was that the power supply has been interrupted on a number of occasions because of wilful failure and so far as the duties which are made the basis of the offence, the allegation was that electricity was not being supplied knowingly and intentionally to cause wrongful loss and damage to the concern. It is, therefore, clear that no facts have been specifically stated to constitute offence under Section 42(b) of the Act. Section 166 of the Indian Penal Code read thus:

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. To make

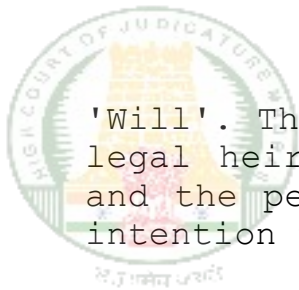


out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of the law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant. A perusal of the complaint does not disclose any particular act or omission of any of the officers of the Board because it is not disputed that the officers of the Board will be public servants within the meaning of definition of the term in the Indian Penal Code."

5. The learned counsel appearing on behalf of the respondent made the following submissions:

5.1. The learned counsel for the respondent had opposed to this petition stating that on 09.01.2016, the respondent sent a representation to the revenue officials, wherein, she had appealed that the Meena, wife of late.Vinothkumar had excluded the name of the respondent, in obtaining the legal heir certificate. Despite the fact that the respondent being Clause-I legal heir, according to the Hindu Succession Act, her name was deliberately omitted by the petitioner. The petitioner failed to furnish a copy of the legal heir certificate and therefore, she was constrained to file a W.P.No.(MD)No.3948 of 2016, seeking a writ of mandamus seeking a copy of legal heir certificate. Thereafter, a legal heir certificate was furnished to her, during the pendency of the writ proceedings. Further, the death of her son/Vinothkumar itself is on a suspicious manner, against which, she had made a representation and a case in Crime No.81 of 2016 came to be registered.

5.2. that the said Meena is having a illegal affair with one Saravanan, who is a habitual offender, against whom several criminal cases are pending. The said Saravanan had assaulted one Manoharan, for which, a case in Crime No.780 of 2016, dated 15.11.2016 is pending on the file of the Kulithalai Police Station, Karur and another case in Crime No.838 of 2016, dated 18.12.2016, has been registered by the same police. The motive for the assault is to grab the properties of the respondent's husband Late.Paneer selvam and her son Late.Vinothkumar, depriving the respondent and her daughter/Sankari from inheriting the same. The said Meena had gone to the extent of colluding with one K.Soundrapandian, who had filed the suit before the learned District Munsif, Kulithalai, wherein, wild allegations are made against the respondent questioning the paternity of her daughter/Sankari. Thus the said Meena would go to any extent by making false allegations and by creating false documents in collusion with Saravanan and others to deprive the respondent and her daughter Sankari from rightful inheritance to the estate of Paneer selvam and Vinothkumar. They have also now created a forged



'Will'. Thus the act of omitting the name of the respondent in the legal heir certificate, is in conformity of their illegal design and the petitioner having knowledge about the same sharing common intention with Meena (A1) had issued the legal heir certificate.

5.3. that the way in which, the entire process of application is that the representation was given by the respondent on 06.01.2016, enquiry was conducted on 11.01.2016, opinion obtained on 12.01.2016 and the legal heir certificate was issued on 12.01.2016, this would go to show that the collusion of the petitioner. The petitioner herein had colluded with the said Meena in issuance of the legal heir certificate by willfully omitting the name of the respondent. Therefore, he had opposed this quash petition.

5.4. In support of his contention, he has relied upon the following judgments:

(a) K.Subramanian Vs.K.Rajendran and others, reported in (2008) 1 MLJ (Crl) 1006, wherein this Court has held as follows:

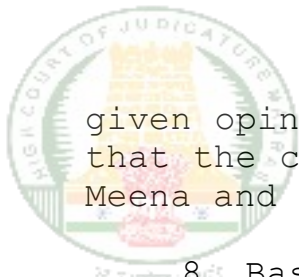
"12. In view of the above said two decisions, if the petitioner is able to establish that there was an order to act against the first respondent herein and he acted only in discharge of the official duty, then it is for the trial Court to decide the issue and come to the conclusion whether it is possible to proceed against the petitioner without any sanction."

(b) The case of Suseela vs. State rep. The Inspector of Police, District Crime Branch, Erode and another, in Crl.OP(MD) No.8840 of 2014, wherein this Court has held as follows:

"7.The Honourable Supreme Court in Bajanlal Vs.State of Haryana, [AIR 1992 SC 604] has clearly laid down the parameters for quashing an FIR. In this case, prima facie, there appears to be an undue haste in the issuance of legal heirship certificate and only a thorough probe will unravel the truth."

6. This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

7.It is seen that the application for legal heir certificate has been received on 06.01.2016 and thereafter, a report was called from the officials, namely, the Revenue Inspector, who had conducted a field inspection and submitted a report. The Village Administrative Officer had also given a report and based on their report, the case was forwarded to the Government Pleader, Kulithalai for getting an opinion. The Government Pleader, District Munsif Court, Kulithalai, perused all the documents and



given opinion about issuance of the legal heir certificate stating that the contention of the respondent to be addressed and the said Meena and her minor children may be issued with legal notice.

8. Based on field inspection report and the legal opinion, the petitioner had issued the legal heir certificate and no malafide intention, impediment and criminality to be attached to the same and the issuance of the legal heir certificate has been done, during and in the course of his official work. Further, now as per the order of this Court, the respondent's name had been included in the legal heir certificate. The rival parties, if they have any dispute or any counter claim, they have only to approach the competent Civil Court.

9. This Court finds that the petitioner had issued a legal heir certificate as per the law and the procedure adopted in his usual course of official work.

10. In view of the same, this Criminal Original Petition is allowed and C.C.No.78 of 2016, on the file of the learned Judicial Magistrate No.II, Kulithalai, is quashed in respect of the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

11. Inclusion of respondent Thangarathinam, as legal heir of Vinothkumar made in pursuant to the order of this Court, dated 28.04.2016 in Cr.M.P.No.3681 of 2016, shall be in force until and otherwise the issue is adjudicated and decided by a competent civil Court.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

das

To

1.The Judicial Magistrate No.II, Kulithalai.

+1 CC to M/s.NARAAJAN S.KUMAR, Advocate SR-4969[F]

+1 CC to M/s.P.T.RAMESH RAJA, Advocate SR-4961[F]

CRL.O.P.(MD).No.7259 of 2016
and CRL.M.P(MD)No.3681 of 2016
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