**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Orders Reserved on	10.07.2020
Orders Pronounced on	17.07.2020

WEB COPY

CORAM:**THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN**

CRL OP(MD)No.13522 of 2018

and

CRL MP(MD)Nos.6089 of 2018

V.Ramanathan ...Petitioner / Accused No.1

Vs.

1.State through it's
The Inspector of Police,
Avaniyapuram Police Station,
Madurai - 12
Crime No.311 of 2007 ... Respondent / Complainant

2.V.Chithambaram ... Respondent / Defacto
Complainant

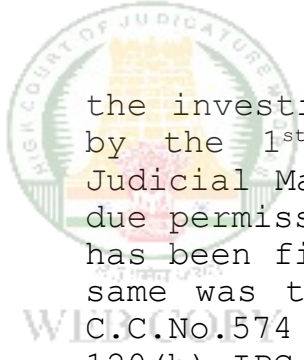
PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the entire records of the case pending in C.C.No.574 of 2016, on the file of the Judicial Magistrate Court No.6, Madurai, Madurai District and quash the same as illegal.

For Petitioner : Mr.R.Babu Jaganath

For Respondent-1 : Mr.S.Chandrasekar
Additional Public Prosecutor**O R D E R**

This Criminal Original Petition has been filed seeking the relief to call for the records in C.C.No.574 of 2016, pending on the file of the learned Judicial Magistrate No.6, Madurai, and quash the same as illegal.

2. The petitioner herein is the accused and the 2nd respondent herein is the defacto complainant in the above referred case. On 10.07.2007, as per the order passed by this Court in Crl.O.P(MD) No.4894 of 2007, dated 14.06.2007, a case has been registered against the petitioner, by the first respondent Police, for the offence under Sections 417, 420, 465, 468, 471 r/w 120(b) of IPC. Since registration of the case, the 1st respondent herein completed



the investigation. Based on the report [Action dropped) submitted by the 1st respondent, the FIR has been closed by the learned Judicial Magistrate No.6 in RCS No.2499 of 2013. Thereafter, after due permission, further investigation was conducted and charge sheet has been filed in the year of 2016. On receipt of charge sheet, the same was taken on file by the learned Judicial Magistrate No.6 in C.C.No.574 of 2016, under Sections 416, 417, 420, 465, 468, 471 r/w 120(b) IPC. As of now, the said case was pending for examination of the witnesses.

3. Mr.R.Babu Jaganath, the learned counsel appearing for the petitioner would submit that in respect to the dispute between the 2nd respondent and the petitioner already a civil suit has been filed in O.S.No.276 of 2005 in which, the 2nd respondent was added as defendant. The said suit was filed for the relief of injunction. The suit property is said to be the disputed property was obtained by the petitioner out of a settlement deed executed by Meenakshi Ammal, who is the mother of the accused. The entire allegation by the 2nd respondent is that the alleged settlement deed said to have been executed by the said Meenakshi Ammal was fabricated one. The learned counsel would further submit that in order to prove the same, no iota of evidence was produced on the side of the 2nd respondent. Therefore, conducting the trial in C.C.No.574 of 2016 is an abuse of process of law.

4. Mr.S.Chandrasekar, the learned Additional Public Prosecutor appearing for the 1st respondent Police would submit that as of now, the petition mentioned case was posted for examination of the witnesses after framing the charge.

5. Now, on considering the submission made by either side, the first question to be answered in this case is, whether the Investigation Officer is having power for further investigation, after filing the final report under Section 173(2) of Cr.P.C. In this regard, it is necessary and useful to see the Judgment of our Hon'ble Apex Court in **Athul Rao Vs. State of karnataka and Anr.**, reported in **(2018 (1) L.W. (Cr1.)287)** in which, it has been held as follows:

"8. The question as to whether, after framing of charges and taking cognizance, it is open to the Magistrate to direct further investigation either suo motu or on an application filed by the complainant/informant is no more res integra. In a recent decision of this Court (to which one of us, Justice Dipak Misra was party) in the case of Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others³, after analysing earlier decisions on the point, it has been held that neither the Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Further investigation in a given case



may be ordered only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

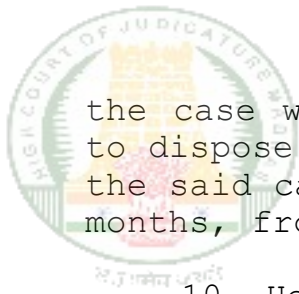
6. Further, Section 173(8) of Code of Criminal Procedure itself is very clear in respect to the power vested with the Investigation Officer for further investigation. For easy reference, Section 173(8) Cr.P.C., reads as follows:-

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2). "

7. Therefore, the provision available in the Code of Criminal Procedure is positive in nature and accordingly, filing the final report as a second time after completion of further investigation is no away affected the case of the prosecution and also it cannot be termed as abuse of process of law.

8. Secondly, we have to decide as to whether the earlier suit in O.S.No.276 of 2008, filed by the petitioner, against the 2nd respondent for the relief of injunction, is a bar to prosecute the petitioner.

9. Though it was admitted on either side that the said suit has been filed by the petitioner in respect to the property now under dispute, it is necessary to see the averments made in the FIR. The short averments set out in the FIR will clearly disclose the fact that the alleged settlement deed executed by the mother of the 2nd respondent is after her demise. In this regard, to prove the said allegation, verifying the veracity of the death certificate relating to Meenakshi Ammal is necessary. In fact, the same has to be verified only during the time of trial. In otherwise, instituting the suit against the 2nd respondent is no bar for filing criminal proceedings. Therefore, the reasons now stated by the petitioner is not at all a sufficient ground to quash the proceedings in C.C.No.574 of 2016, pending on the file of the learned Judicial Magistrate No.6, Madurai. However, considering the period on which



the case was instituted, it is appropriate to give some directions to dispose the case. The Judicial Magistrate is directed to dispose the said case as early as possible, preferably, within a period of 6 months, from the date of receipt of a copy of this order.

10. Hence, in the light of the above discussions, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate Court No.6,
Madurai, Madurai District.
- 2.The Chief Judicial Magistrate,
Madurai.
- 3.The Inspector of Police,
Avaniyapuram Police Station,
Madurai - 12
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Order Made in
CRL OP(MD)No.13522 of 2018
17.07.2020

MPK

TK/SAR./26.08.2020/4P/5C