



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.12.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.15462 of 2017

and

Crl.M.P.(MD).Nos.10272 and 10273 of 2017

1.Sivalingam
2.M.Velmurugan

... Petitioners/Accused 8&9

Vs

Subash Chandrabose

... 2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.206 of 2017 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.D.Deva Prakash
For Respondent : Mr.V.R.Venkatesan

ORDER

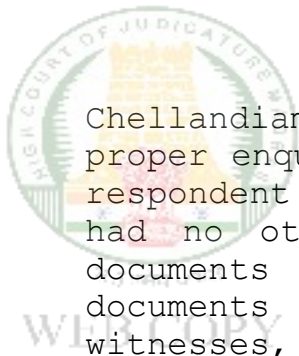
This criminal original petition has been filed to quash the proceedings in C.C.No.206 of 2017 on the file of the learned Judicial Magistrate No.II, Dindigul, as against the petitioners.

2.The learned counsel appearing for the petitioners submitted that totally there are nine accused in this case, in which, the petitioners have been arrayed as A8 and A9. At the time of alleged occurrence, the first petitioner was working as Asssitant Commissioner, in the HR and CE Department, Dindigul District and the second petitioner was working as Executive Officer of Arulmigu Kalagatheeswarar Temple, Dindigul. Since the petitioners are public servant, the learned Magistrate without obtaining any sanction under Section 197 Cr.P.C., had taken cognizance and as such the entire proceedings is vitiated. He further submitted that the first petitioner has filed a report under Section 78 of the HR and CE Act to the Joint Commissioner for removal of encroachment of the respondent herein and the Joint Commissioner of HR and CE has also issued a notice under Section 78 of HR and CE Act and passed orders against the respondent herein. These facts were



suppressed by the respondent and lodged a private complaint along with other accused persons without evidence and also there are no ingredients to attract any of the offence as alleged by the prosecution. Even according to the defacto complainant, the alleged documents said to have been tampered during the year 2009 to 2011. Whereas the petitioners have assumed their respective office only on 27.08.2015 and 01.08.2013 respectively. Therefore, the petitioners are nothing to do with the said allegations as alleged by the respondent herein. He further submitted that the respondent initially lodged a complaint for the very same set of allegations before the Sub Inspector of Police, District Crime Branch, Dindigul District and the same has been registered in Crime No.159 of 2014 for the offence under Sections 420, 294(b) and 506(i) of IPC. Thereafter, the police after completing the investigation found that as per records produced by the second petitioner viz., Inam Fair Register (IFR) with regard to Survey No.507 at measure 3.82 acres, which belongs to Arulmigu Chellandiamman Thirukoil, Seelapadi Village and no purpose will be served in investigating the complaint and filed a final report as "Action Dropped". Therefore, the entire allegations had already enquired in detailed and further action was dropped. He further submitted that the respondent herein has also filed writ petition before this Court in W.P.(MD).No.10873 of 2015 for directing the District Collector to conduct detailed enquiry against the private respondent as well as the erred employees for changing the entry in the settlement land register of the year 1914 by an act of forgery in respect of land in Survey No.507 bearing Patta No.1148 to an extent of 3.82 acres situated at Seelapadi Village, Dindigul District. This Court by order dated 30.10.2015 dismissed the writ petition and also entrusted the final report filed by the Inspector of Police, District Crime Branch, Dindigul. In fact, the respondent has also filed a writ appeals before the Division Bench of this Court in W.A.(MD).Nos.558 and 578 of 2016, the Hon'ble Division Bench, by order dated 25.07.2017 disposed of the writ appeals with the observations that the fifth respondent temple is at liberty to proceed against the respondent and another under Section 78 of the Hindu and Religious and Charitable Endowments Act, 1959. Accordingly, the Joint commissioner of HR and CE, has also initiated proceeding under Section 78 of HR and CE Act, for eviction from the subject property. Therefore, there is no prima facie case made out as against the petitioners and prayed for quashment of the proceedings.

3.The learned counsel appearing for the respondent filed a counter and submitted that the respondent initially lodged a complaint only as against the five persons alleging that the accused persons involved in the transactions to grab his property and colluded with the Revenue officials and also officer of the HR and CE department, had made an attempt to grab his property and they were trying to claim the property through forgery documents in respect of the property comprised in Survey No.507, as if it belongs to



Chellandiamman Temple. The Inspector of Police, without conducting proper enquiry and without perusing of the documents produced by the respondent mechanically closed the FIR. Therefore, the respondent had no other option to file a private complaint along with 32 documents and the learned Magistrate, after perusing all the documents and also recording sworn statement in support of the witnesses, had taken cognizance as against all the accused persons for the offence under Sections 120(b), 204, 218, 260, 420, 465, 467, 468, 469, 471, 475, 482 and 483 of IPC. He further submitted that the subject property originally owned by Ponnaiah Pillai. After his demise, his son viz., C.P.Karuppana Pillai became absolute owner and his name was found in the settlement deed registered in the year 1914. Thereafter, his daughter viz., Thangammal was in possession of the said property and obtained patta in her name and she also paid all the taxes before the concerned authorities. After her demise, her daughter viz., Ponnuthaiammal got patta in her name. Thereafter, the said Ponnuthaiammal had sold the subject property to one Perumal Goundar and Ramasamy Goundar and they became absolute owner of the property and they have also obtained patta in their names and they applied for planning permission and laid out into house plots and also sold out to various persons including respondent herein. From the date of purchase, their vendors and the petitioners are in possession and enjoyment of the subject property for the past several years. At any point of time, Poojari and Chellandi Amman Temple are not in possession of the subject property. He further submitted that Chellandi Amman Temple has not come under the purview of the HR and CE Department and as such the petitioners absolutely no power to initiate any proceedings under HR and CE Act as against the respondent herein. In fact, the Division Bench of this Court disposed of the writ appeals by observing that the parties are at liberty to take appropriate action as per law and given liberty to raise all their contentions in their proceedings and also observed that all the issues are left open. He further submitted that in respect of the sanction to initiate prosecution as against petitioners herein, the act illegally committed by the petitioners and as such no sanction is required to prosecute the petitioners herein. In this regard, it is relevant to rely upon the judgment of the Supreme Court reported in **2016 (3) SCC 722** in the case of **Surinderjit Singh Mand and another Vs. State of Punjab and another**, as follows;

“When an act is not done in the execution of his duty, it may very well be done in bad faith, and even an act which cannot at all in done in execution of duty if another is made believe wrongly that it was being done in execution of duty. It is therefore not possible to restrict the applicability of the section to only such cases where an act could possibility have been done both in good and bad faith. Of course the



question of good and bad faith cannot be gone into at the early stage at which objection may be taken. Making false entries in a register may well be an act purported to be done in execution of duty, which would be an offence, although it can never be done in good faith."

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4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5. Totally there are nine accused in this case, in which, the petitioners have been arrayed as A8 and A9. According to the respondent herein, the subject property was purchased by him through valid sale consideration from his vendors viz., Perumal Goundar and Ramasamy Goundar. From the date of their purchase, the respondent is in possession and enjoyment of the subject property for the past several years. While being so, all the accused persons have conspired together and fabricated false documents as if the property belonged to the Chellandi Amman Temple and had taken action to evict respondent from the subject property. Insofar as the petitioners are concerned, they are being the Commissioner and executive officer of HR and CE Department, they also colluded with the other accused persons and committed offence.

6. On perusal of the records, it is seen that for the very same set of allegations, the respondent lodged a complaint before the District Crime Branch, Dindigul District and the same has been registered in Crime No.159 of 2014 for the offence under Sections 420, 294(b) and 506(i) of IPC and after completion of investigation, the investigating officer closed the FIR as "Action Dropped" and further it is observed that the land in Survey No.507 belonged to the Chellandiamman Thirukoil. When the officials of the HR and CE Department initiated proceedings to vacate the respondent and the same was challenged in W.P.(MD).No.10873 of 2015 for appropriate action as against the erred officials before this Court and the same was dismissed by order dated 30.10.2015, and it is observed as follows:

19. With regard to the title of the property, it is the case of the petitioners that as per the settlement of the year 1872, the land in survey No.507, measuring to an extent of 3 acres and 82 cents originally belonged to one C.Poonaiyah Pillai and the patta number is 759. Subsequently, his legal heir C.P.Karuppanna Pillai inherited the said land in Survey No.507 and the said C.P.Karuppanna Pillai was interrupted possession till his life time and patta was also issued in his name vide Patta No.696. The said C.P.Karuppanna Pillai had one daughter viz.,



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Thangammal wife of Muthuvel Pillai. After the demise of C.P.Karuppanna Pillai, the said land was inherited by the said Thangammal. Thereafter, the said Thangammal was in absolute the uninterrupted possession and enjoyment of the land till her life time. Thereafter, her only daughter Ponnuthaiyammal inherited the land during the year 1970, from whom the petitioners' vendors viz., Perumal Gounder and Ramasamy Gounder had purchased the property. Thus, the petitioners have traced their title in the property on 30.09.1980. Now, according to the petitioners, the fifth respondent as well as respondents 6 to 9 with the connivance of some of the Revenue officials made deletion in the settlement land Register on the year 1914 and are falsely claiming the land which belongs to "Chellandi Amman Kovil". But, I find that the said submission made by the learned counsel appearing for the petitioners are absolutely not supported by any material evidence. Further more, this Court is not conducting any roving enquiry with regard to the title of the property in these writ petitions. This Court has to see as to whether any prima facie case has been made out by the petitioners warranting this Court to give a direction to the first respondent to conduct a detailed enquiry as against the employees and respondents 6 to 9, who are alleged to have made deletion of the name of the original owner of the land viz., C.P.Karuppanna Pillai and thereby entered the name of "Chellandi Amman Kovil" in the settlement land register of the year 1914. Firstly, it has to be seen as to whether a strong case with cogent and convincing reasons has been made out by the petitioners to establish the alleged forgery made in the revenue records. On a perusal of the materials, i find that except a bald statement made in the affidavits filed in support of the writ petitions, no cogent or convincing reasons has been given. Further, on perusal of the copy of Inam Fair Extract of the year 1866, i find that much earlier to the settlement land register of the year 1914, the name of the temple was mentioned as "Chellandi Amman Kovil Pagoda" in the said extract of the year 1866. Further, from the materials produced on the side of the respondents, i find that an enquiry under Section 11 of the Act 30/63 was conducted by the settlement Tahsildar (Statutory Enquiry Officer) No.II, Madurai and in the said



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proceedings, Ponnuthaiyammal, the descendant of C.P.Karuppanna Pillai had participated. But, on completion of enquiry, vide proceedings of the settlement Tahsildar (Statutory Enquiry) No.II, Madurai in S.R.No.103/M.I.Act/DGL/67, dated 25.02.1967, Ryotwari Patta No.432 was issued in the name of deity "Chellandi Amman Kovil" through its present Poosari" not in the name of Ponnuthaiyammal. As against the said proceedings, Ponnuthaiyammal had not preferred any appeal. Further, the Chitta of the Fasli year 1388 also reveals only the name of the Patta holder of the land as "deity Chellandi Amman Kovil through its Temporary Poosari viz., Ponnuthaiyammal". Therefore, it is clear that the said land was given to Ponnuthaiyammal as in the capacity of Temporary Poosari of Temple, who is said to be the descendant of the original service doers of the Temple. It appears from the records that the said ponnuthaiyammal has no right to alienate the property. But, in the year 1980 i.e., after 13 years from the date of the order passed by the settlement Tahsildar, she has illegally alienated the property in favour of Perumal Gounder and Ramaamy Gounder from whom the petitioners have purchased their respective plots. Thus, there are sufficient documents to show that the subject land was standing in the name of Chellandi Amman Kovil for a long time. In these background, i am of the opinion, now no significance could be attached to the alleged deletion made in the settlement land register of the year 1914. Further more, the petitioners have also not given any details in support of their allegation by giving the name of the employees, who are alleged to have erred or the relevant period during which, the alleged deletion is said to have been made in he settlement land register of the year 1914. Therefore, in my considered opinion, the prayers made in the writ petition cannot be granted. Apart from that, i find that earlier the petitioners had lodged a complaint to the Sub Inspector of Police, Dindigul Taluk Police Station, as against the fifth respondent on 04.10.2012 and the same was registered in Crime No.159 of 2014 for the alleged offence under Sections 420, 294(b) and 506(i) of IPC and on the said complaint , an enquiry was conducted by the investigating agency and final report stating "Action dropped" was filed before the learned



Judicial Magistrate No.II, Dindigul. Again, the petitioners want to make a detailed enquiry on the same set of allegations, which cannot be entertained by this Court.

20. For all the reasons stated above, i am of the opinion that absolutely no prima facie case has been made out by the petitioners warranting this Court to give a direction to the first respondent to conduct detailed enquiry against the employees and respondents 6 to 9, who are all alleged to have erred with regard to the alleged change of entry made in the settlement land register of the year 1914. Therefore, i am not inclined to give such a direction. Consequently, all the other prayers have to fail.

7. Aggrieved by the same, the respondent has also filed writ appeals in W.A.Nos.558 and 578 of 2016 and the Division Bench of this Court by order dated 25.07.2017, disposed of the writ appeals with the observations as follows;

2. We have heard the matter at length. After making their submissions on merits, the learned counsel appearing for the appellants would submit that liberty may be given to the appellants to workout their remedy in the manner known to law, in which case, the order passed by the learned Single Judge shall not have any bearing. The learned counsel for the fifth respondent submitted that already against two persons, viz., R.Subash Chandrabose and Shanmugam proceeding have been initiated under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959.

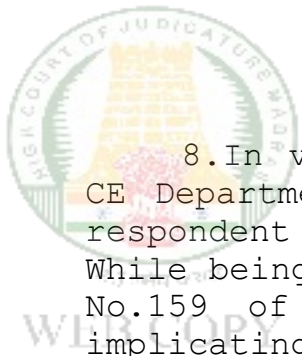
3. Considering the above, we dispose of these writ appeals in the following manner:

(i) The parties are at liberty to take appropriate action as per law.

(ii) The 5th respondent temple is at liberty to proceed against two persons viz., R.Subash Chandrabose and Shanmugam under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959.

(iii) Liberty is given to the parties to raise all their contentions in the above said proceedings.

(iv) The observations made by the learned Single Judge in the order under challenge is only prima-facie in nature and thus all the issues are left open.



8.In view of the above discussion, the officials of the HR and CE Department viz., Joint Commissioner had proceeded to vacate the respondent herein from the subject property and it is pending. While being so, aggrieved by the referred charge sheet filed in Crime No.159 of 2014, the respondent has filed a impugned complaint implicating the petitioners as an accused. With the above said allegations, the charge sheet also entrusted by this court in the writ petition and writ appeals. In fact, the parties are at liberty to proceed against the respondent under Section 78 of HR and CE Act. Therefore, the impugned complaint as against the petitioner is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

9.Accordingly, this criminal original petition is allowed and the proceedings in C.C.No.206 of 2017 on the file of the learned Judicial Magistrate No.II, Dindigul is hereby quashed as against the petitioners alone. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

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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:

The Judicial Magistrate No.II,
Dindigul.

+ 1 CC TO Mr.V.R.VENKATESAN, ADVOCATE IN SR No. 24981
+ 1 CC TO Mr.M.MUTHU GEETHAIYAN, ADVOCATE IN SR No. 24802

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