

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.112 of 2021 and
Crl.M.P.No.2237 of 2021

S.Vasanthi

... Petitioner

Vs.

The State Represented by.,
The Inspector of Police,
District Crime Branch,
Namakkal District.
Cr.No.32/2011.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order of the learned Judicial Magistrate, Tiruchengode in C.M.P.No.1045 of 2020 in Cr.No.32 of 2011 on the file of the learned DCB, Land Grabbing Wing, Namakkal.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.M.Rajamani

For Respondent : Mr.K.Madhan,
Government Advocate (Crl. Side)

ORDER

The petitioner has filed a complaint against one Natesan and Rajavelu before the respondent Police and the respondent Police have registered the case against the said persons in Crime No.32 of 2011, for offence under Sections 147, 148, 447, 294(b), 120 (b), 420, 467, 468, 471 and 506(ii) IPC. After completing the investigation, the respondent Police closed the case as 'Mistake of Fact' on 10.02.2014 and did not serve RCS notice to the petitioner. The petitioner filed a petition under Section 482 Cr.P.C., in Crl.O.P.No.13364 of 2020 before this Court to direct the respondent Police to file a charge sheet in Crime No.32 of 2011 before the jurisdictional Magistrate Court. At the time of hearing, this Court found that the investigation was completed and charge sheet was filed before the Special Court for Land Grabbing Cases, Namakkal. Since the petitioner did not receive the Referred Charge Sheet Notice from the respondent Police,

this Court directed the respondent Police to serve RCS notice forthwith to the petitioner and granted liberty to the petitioner to file a protest petition in the manner known to law. Subsequently, the petitioner filed the protest petition before the learned Judicial Magistrate, Tiruchengode in C.M.P.No.1045 of 2020. The learned Judicial Magistrate, after hearing the arguments and considering the materials available on record, has given certain directions based on the decision of the Hon'ble Supreme Court in the case of "Vishnu Kumar Tiwari Versus State of Uttar Pradesh reported in 2019 (3) MLJ (Crl.) 406 SC", that there is no need for further investigation and the allegations made in the protest petition can be proved by producing evidence and in the protest petition, there is no list of witness has been annexed, but on considering the averments stated and prayer sought for in the protest petition, the learned Magistrate inclined to take the protest petition under Section 200 Cr.P.C., and granted liberty to the petitioner if she chooses to file a fresh complaint by annexing the list of witness and directed the petitioner to give sworn statement and evidence if available and posted the case on 08.01.2020 for recording the sworn statement and production of witnesses. Challenging the same, the present criminal revision has been filed before this Court.

2.The learned Senior Counsel appearing on behalf of the petitioner would submit that the petitioner gave a complaint before the respondent Police on 31.08.2011 and the complaint was taken on file by the respondent Police in Crime No.32 of 2011. The learned Senior Counsel would further submit that the property in survey Nos.142/2 and 74/2, totally 14 acres 79 cents are in the enjoyment of the petitioner's father, after death of the mother of the petitioner's father and subsequently, 5 acres 32 cents also gave to their possession totally they are in enjoyment of the possession of the property to the extent of 20.41 acres without any partition. Since the petitioner's sister-in-law Balasurili occasionally was not in conscious, the petitioner only administering the property. At that time, the said Natesan and Rajavelu cheated the petitioner and alleged that a sale deed was obtained from Kamalam by Rajavelu and subsequently, Natesan purchased the property from Rajavelu. On 07.08.2011, at about 12.30 p.m., the said Natesan and Rajavelu trespassed into the property and threatened to take away the life Balasurili, sister in law of the petitioner with dire consequence and asked her to vacate the land and if they did not vacate the building within one or two days, they will take away the life of family members of the petitioner and therefore, the petitioner lodged a complaint dated 31.08.2011 to the respondent Police to take action against Natesan and Rajavelu.

3.The learned Senior Counsel for the petitioner would further submit that the respondent Police did not conduct the investigation in proper and even they have not examined Kamalam, who is alleged to have executed the sale deed in favour of Rajavelu and also not examined Balasurili. Simply, the respondent Police has filed the Referred Charge Sheet and even also not served the notice to the petitioner. Therefore, the petitioner approached this Court by way of filing a petition under Section 482 Cr.P.C., in CrI.O.P.No.13364 of 2020 to file charge sheet in Crime No.32 of 2011. Thereafter, the petitioner has filed a protest petition before the learned Judicial Magistrate, Tiruchengode as directed by this Court. The learned Judicial Magistrate without considering the Referred Charge Sheet filed by the respondent Police that they have not investigated the matter in proper and there was a defect in the investigation and instead of directing the respondent Police to conduct fresh investigation, observed that she would take protest petition as complaint under Section 200 Cr.P.C., and since the petitioner has not filed any list of witnesses, directed the petitioner to file list of witnesses and to give a sworn statement, which is against the provisions of law. Once the criminal complaint lodged before the Police, it is duty of the Police to investigate the matter or if the Police filed a closure report, it is the duty of the Magistrate to issue notice to the complainant and receive an objection by way of protest petition and decide the matter in accordance with law and issue direction for further investigation, if the fair investigation has not been done by the Police. In this case, the respondent Police admitted that they have not examined all the witnesses and they referred certain documents and says that the dispute is civil in nature and he closed the case as 'Mistake of Fact and filed the closure report before the learned Magistrate and also not served the RCS notice to the petitioner. Therefore, the order of the learned Judicial Magistrate, Tiruchengode warrants interference of this Court.

4.Mr.K.Madhan, learned Government Advocate (CrI. Side) appearing on behalf of the respondent Police would submit that the petitioner's sister-in-law Balasurili entitled 9/10th share in undivided property. There is no document to show entrustment of 1/10th share of Kamalam to petitioner father's enjoyment and there is no document available to show the right of the petitioner in the said property. The learned Government Advocate would further submit that the petitioner has no locus standi to file the protest petition. If the allegations that made by the petitioner that the accused forged the documents and possessed the share of Kamalam illegally was taken as true, then the aggrieved should be Kamalam. But the said Kamalam never preferred any complaint till date. The title of Kamalam also never be disputed by the petitioner herein. The alleged offence

under Sections 294(b) and 506(ii) is said to have been committed against the said Balasurili. But during Police investigation, the said Balasurili did not support the complaint preferred by the petitioner. The investigation officer collected the documents which shows Kamalam has sold her 1/10th share to Rajavelu. The statement recorded under Section 161(3) Cr.P.C., shows the said Balasuruli and Rajkumar entered into oral partition with respect to undivided 1/10th share of Kamalam for their convenience. Hence, there is no need of further investigation and prayed to dismiss the revision.

5. Heard the learned senior counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police and perused the materials available on record.

6. Admittedly, the petitioner filed the complaint before the respondent Police against Natesan and Rajavelu on 31.08.2011. The respondent Police also registered a case in Crime No.32 of 2011 and subsequently after completing the investigation, filed the closure report as 'Mistake of Fact' before the learned Magistrate on 10.02.2014. The closure of the case was intimated to the petitioner as per the direction of this Court and RCS notice was served to the petitioner and after receiving the notice, the petitioner filed the protest petition before the learned Judicial Magistrate, Tiruchengode and the same was taken on file in C.M.P.No.1045 of 2020. The learned Judicial Magistrate after hearing the matter and following the decision of the Hon'ble Supreme Court in the case of "Vishnu Kumar Tiwari Versus State of Uttar Pradesh reported in 2019 (3) MLJ (Crl.) 406 SC" and issued certain directions.

7. The learned Senior Counsel for the petitioner vehemently contended that the petitioner lodged a complaint to the Superintendent of Police on 31.08.2011 and the case was registered in Crime No.32 of 2011. On the basis of the complaint, Natesan was arrested as first accused and he was in judicial custody for 41 days and the 2nd accused Rajavelu absconded for almost 6 months before getting Anticipatory Bail. On the basis of the forged sale deed dated 26.11.2009 executed in favour of Ramasamy son of Sengodan, the said Ramasamy came to the land on 04.06.2015 and put up a bore well. When the sale on the basis of which the land was sold to the extent of 1,603 sq.ft, is the subject matter of the criminal case, the said Ramasamy has no right to enter into the disputed land and put up the bore well. The subject matter of the complaint given against Natesan is the land grabbing complaint and the respondent Police should have conducted thorough investigation and filed the charge sheet, but unfortunately without even examining the affected persons, the investigating officer got

statement under Section 161(3) Cr.P.C., from the persons known to the accused and referred the criminal complaint as 'Mistake of Fact'. The same was intimated to the petitioner on 04.09.2020. It is unfortunate to note that the land grabbing complaint was kept idle for nearly 9 years and finally referred to as 'Mistake of Fact'.

8.It is the duty of the Investigating Officer to conduct investigation speedily and impartially and take effective steps for filing charge sheet of the earliest, which forms part of the fundamental right guaranteed to the complainant under Article 21 and 22 of the Constitution of India. The speedy investigation and the speedy trial are two fundamental rights acted on Article 22 and it is obvious that because of the inordinate delay, the complaint for a serious offence was made diluted and the real accused person given a scope and and hope to escape from the clutches of criminal law inspite of the gravity of the offence committed by them. The learned Judicial Magistrate treated the protest petition as a fresh complaint under Section 200 Cr.P.C., and posted the matter on 28.01.2021 for recording sworn statement and production of witnesses, which is against the law and the learned Judicial Magistrate failed to understand the scope of the private complaint under Section 200 Cr.P.C., and the scope of the complaint under the provisions to the Land Grabbing Act which is a special enactment read with Section 173 (8) Cr.P.C. The offence under the Land Grabbing Act and the right of the petitioner to the land in question is supported by nearly four registered sale deeds and it is clear from the execution of sale deed dated 26.11.2011 by Natesan in favour of Ramasamy that such a property right of the petitioner supported by four registered sale deeds is interfered with. It is very clear from the protest petition that Ramasamy based on the forged deeds, dug the bore well and attempted to put up a construction of the house.

9.For making out a case under the Land Grabbing Act, the above said sale deeds and the conduct of the accused are sufficient to file the charge sheet and proceeded with the trial and the very purpose of Land Grabbing Act itself is defeated by treating the complaint as private complaint, that too after 9 years from the cause of action and date of occurrence. Therefore, a prima facie case was made out by the petitioner. It is not proper on the part of the investigating officer to delay the charge sheet and referred the same as 'Mistake of Fact'. When the officials have not discharged their duty cast upon them, Section 173(8) of Cr.P.C., confers power for appropriate direction for further investigation. But, unfortunately the learned Judicial Magistrate treated the case so simple and shifted the burden on the petitioner, when the complaint is of the land grabbing which is a serious offence

against the State.

10.A perusal of the records, it is seen that the complaint was given on 31.08.2011 and on the same day, the FIR in Crime No.32 of 2011 was registered, whereas the Referred Charge Sheet was filed as 'Mistake of Fact' on 04.09.2020. Simply for filing the Referred Charge Sheet, the respondent Police took time for 9 years. Even at the time of arguments, this Court raised a question to the learned Government Advocate whether the petitioner and the persons mentioned in the complaint that is Kamalam and Balasurili were examined or not, he stated that they were not examined by the Investigating Officer. Further they informed that the said Kamalam subsequently died. Therefore, as stated by the learned Senior Counsel, the respondent Police have not examined the petitioner and the witnesses and simply perused the document and filed the Referred Charge Sheet as 'Mistake of Fact'. The learned Judicial Magistrate also failed to look into the fact that the complaint was given in the year 2011 and the Referred Charge Sheet was filed in the year 2020 that to, after given a direction by this Court on 01.09.2020. There is no quarrel with the settled preposition of law laid down by the Hon'ble Supreme Court referred supra by the Judicial Magistrate, Tiruchengode. However, in this case, the petitioner has filed the objection to the Referred Charge Sheet filed by the respondent Police before the learned Magistrate. Since the petitioner filed the complaint under the Land Grabbing Act, the learned Judicial Magistrate should have directed the respondent Police to conduct fresh investigation and file charge sheet and should not have shifted the burden to the petitioner to establish the case by way of private complaint under Section 200 Cr.P.C.

11.A reading of the materials, the respondent Police before filing the Referred Charge Sheet has not completed the investigation in fair and proper manner. Therefore, the order passed by the learned Judicial Magistrate, Tiruchengode dated 18.12.2020 in C.M.P.No.1045 of 2020 warrants interference of this Court and the same is liable to be set aside and accordingly, set aside. The respondent Police is directed to conduct fresh investigate in Crime No.32 of 2011 on the complaint given by the petitioner dated 31.08.2011 and file the charge sheet in accordance with law.

12.Since the matter is pertaining to the alleged forgery in the year 2009 and complaint given in the year 2011, the respondent Police is directed to expedite the investigation and file the charge sheet in accordance with law within a period of three months from the date of receipt of a copy of this order. The respondent Police is further directed to file compliance report before this Court.

13.In the result, this Criminal Revision Case stands allowed, with the above directions. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

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To

1.The Judicial Magistrate,
Tiruchengode.

2.The Inspector of Police,
District Crime Branch,
Namakkal District.

3.The Public Prosecutor,
High Court, Madras.

4.The learned DCB
Land Grabbing Wing,
Namakkal

+1 cc to M/s.M.Rajamani Advocate sr 16993 dt 17/03/2021
Crl.R.C.No.112 of 2021

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