

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 07.01.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.27722 of 2017 & Crl.M.P. No.15801 of 2017

Dr. Amudhan Petitioner/A.1
vs.

1 The State represented by
The Inspector of Police
North Crime Branch
Vellore
(Cr. No.210 of 2015)

R1

2 Uma Balaji R2/de facto complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records relating to C.C. No.396 of 2017 pending on the file of the Judicial Magistrate Court No.IV, Vellore in Cr. No.210 of 2015 and to quash the same.

For petitioner Mr. B. Kumar, Sr. Counsel
for M/s. S. Senthil

For R1 Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

For R2 No appearance

ORDER

This case was taken up through video conferencing.

2 On a complaint lodged by Uma Balaji, the second respondent herein, the first respondent police registered a case in Cr. No.210 of 2015 on 08.06.2015 under Sections 120-B, 465, 466, 467, 468 and 471 IPC read with Section 420 and 109 IPC against Dr. Amudhan (petitioner/A.1), Sangeetha (A.2), Gayathri Devi (A.3) and Shankar (A.4).

3 After completing the investigation, the first respondent police filed a charge sheet in C.C. No.396 of 2017 in the Court of the Judicial Magistrate No.IV, Vellore, against Amudhan (A.1), Elumalai (A.2), Savithri (A.3), Suseela (A.4) and Manickammal (A.5) for the offences under Sections

114, 120-B, 418, 419, 420, 465, 467, 468 and 471 IPC, seeking quashment of which, Amudhan (A.1) is before this Court.

4 Heard Mr. B. Kumar, learned Senior Counsel representing M/s.S.Senthil, learned counsel on record for Amudhan (A.1), Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the first respondent police and Balaji, husband of Uma Balaji (R.2) who is the de facto complainant Uma Balaji (R.2), from the U.S. by video conferencing.

5 To have a clear appreciation of the facts of this case, it is necessary to have a look at the relationship amongst the parties. Amudhan (A.1) is the blood brother of Uma Balaji (R.2) who is the de facto complainant. Amudhan (A.1) and Uma Balaji (R.2) are the children of the Ramachandran - Varalakshmi Ammal couple. Apart from Amudhan (A.1) and Uma Balaji (R.2), the other siblings are Sangeetha and Ashokan, who was a bachelor. Ramachandran and Varalakshmi Ammal died intestate in a road accident on 26.06.1989 and Ashokan died intestate on 10.03.1999. Thus, effectively, Amudhan (A.1), Uma Balaji (R.2) and Sangeetha are the legal heirs of the Ramachandran - Varalakshmi Ammal couple.

6 The Ramachandran - Varalakshmi couple had many a property which were shared by Amudhan (A.1), Uma Balaji (R.2) and Sangeetha vide a family arrangement dated 27.09.2001, under which, Amudhan (A.1), Uma Balaji (R.2) and Sangeetha were allotted eight, four and two, all immovable properties, respectively.

7 The subject matter of the impugned charge sheet is a vacant plot measuring 5,138 sq. ft. at No.37, Periyaswamy Street, Veerasamy Nagar Layout, South Vellore Town, (for brevity "the subject property") which was allotted to Amudhan (A.1). Seemingly, after marriage, Uma Balaji has settled down in the U.S. and continues to live there with her family.

8 The kith and kernel of the allegation in the charge sheet is that on 21.06.2004, Amudhan (A.1) sold the subject property to one Shankar, an Auditor and his wife Gayathri Devi vide document no.4206 of 2004 for a sale consideration of Rs.12 lakhs by causing the co-accused, viz., Savithri (A.3) and Suseela (A.4) to impersonate as his sisters, Sangeetha and Uma Balaji (R.2) respectively, before the Sub-Registrar, Vellore and sign the sale deed.

9 Four voluminous typed set of papers have been filed on the side of Amudhan (A.1) and Mr. B. Kumar made the following submissions:

- i. Concededly, Uma Balaji (R.2) is a party to the family arrangement dated 27.09.2001, under which, the subject property came into the share of Amudhan (A.1). Uma Balaji (R.2) had sold the properties

that were allotted to her under the family arrangement dated 27.09.2001 and thereby, she has acted upon it; having acted upon that, it is not open to her to state that the sale of the subject property by her brother Amudhan (A.1) is illegal.

- ii. Uma Balaji (R.2) filed a suit in O.S. No.190 of 2015 against Amudhan (A.1) and Sangeetha and others for partition of the subject property, but, withdrew the same without getting leave from the Civil Court to file a fresh suit; therefore, Uma Balaji (R.2) is precluded from having any grievance with regard to the disposal of the subject property.
- iii. Balaji, husband of Uma Balaji (R.2), gave a police complaint on the same set of allegations which was enquired into by the Deputy Superintendent of Police (Land Grabbing Cell) and the same was closed as civil in nature on 01.08.2013; therefore, the complaint of Uma Balaji (R.2), which formed the basis for registration of the FIR in Cr. No.210 of 2015 is a second complaint and a prosecution founded on such a second complaint is illegal and ergo, the charge sheet deserves to be quashed. In this regard, heavy reliance was placed on the judgment of the Supreme Court in T.T. Antony vs. State of Kerala¹.
- iv. Repeated police complaints would offend the right of life and personal liberty guaranteed under Article 21 of the Constitution of India.

10 In support of his contentions, he placed reliance on the following judgments:

- i. Government of A.P. and others vs. M. Krishnaveni & Others²
- ii. Sardar Ali Khan vs. State of Uttar Pradesh³
- iii. Suresh Lalchand Lulla and others vs. Neela Sudhish Talpade and another⁴
- iv. Dalip Kaur and others vs. Ram Kishan and others⁵
- v. Subraya M.N. vs. Vittala M.N. and others⁶
- vi. Manohar vs. State of Maharashtra⁷
- vii. State of Maharashtra vs. Ramchandra Keshav Bhala⁸

1 (2001) 6 SCC 181

2 (2006) 7 SCC 365

3 2020 SCC OnLine SC 77

4 1992 SCC OnLine Bom 262

5 2018 18 SCC 807

6 (2016) 8 SCC 705

7 2003 SCC OnLine Bom 560

8 2004 SCC OnLine Bom 343

- viii. Sanjiv Ratanappa Ronad and another vs. Emperor⁹
- ix. T.V.R.Subbu Chetty's Family Charities vs. M.Raghava Mudaliar & Otrs.¹⁰
- x. Rekha vs. Rathashree¹¹
- xi. Chetan vs. State of Maharashtra and others¹²

11 Per contra, Mrs. Kritika Kamal refuted the aforesaid contentions.

12 This Court gave its careful thought and anxious consideration to the rival submissions.

13 In the opinion of this Court, the entire arguments of Mr. B. Kumar miss the wood for the trees. Though the complaint of Uma Balaji (R.2) is replete with the grievance that her brother Amudhan (A.1) had cheated her by not giving her, her due share, etc., the kernel of the prosecution case, as disclosed in the charge sheet is that, Amudhan (A.1) prepared and executed a sale deed in document no.4206 of 2004 for selling the subject property to Shankar and Gayathri Devi; in that sale deed, Uma Balaji (R.2) and Sangeetha are shown as vendors; the said sale deed was presented before the Sub-Registrar, Vellore, for registration on 21.06.2004; Amudhan (A.1) produced one Savithri (A.3) as his sister Sangeetha and one Suseela (A.4) as his other sister Uma Balaji (R.2) to sign in that sale deed; in the sale deed, Savithri (A.3) signed as Sangeetha and Suseela (A.4) signed as Uma Balaji (R.2) and they affixed their left thumb impression in the sale deed as well in the register that is maintained by the Registration Department; during investigation, the police obtained the thumb impressions of Savithri (A.3) and Suseela (A.4) and had them sent to the finger print expert for comparison with the thumb impressions in the sale deed as well in the thumb impression register maintained by the office of the Sub-Registrar and found that the thumb impressions in the sale deed and in the register were those of Savithri (A.3) and Suseela (A.4). To reiterate, the sale deed shows the names of Amudhan (A.1), Uma Balaji (R.2) and Sangeetha as vendors, whereas, the thumb impressions are those of Savithri (A.3) and Suseela (A.4). Amudhan (A.1) who is a signatory to the sale deed as the first vendor was also physically present during execution. The report of the finger print expert is available in black and white on record along with the charge sheet. Therefore, the contention that Uma Balaji (R.2) is greedy and wants the property of Amudhan (A.1), etc. pales into insignificance.

14 As regards the contention that the first complaint given by Balaji, husband of Uma Balaji (R.2) was closed by the Deputy Superintendent of Police, a perusal of the records

⁹ 1932 SCC OnLine Bom 23

¹⁰ (1961) 3 SCR 624

¹¹ AIR 2006 MP 107

<https://hcservices.ecourts.gov.in/hcservices/>

¹² 2008 SCC OnLine Bom 679

shows that Uma Balaji's husband Balaji had sent a complaint by email from the U.S. to the office of the Superintendent of Police, on which, no FIR was registered. An enquiry was conducted by the Deputy Superintendent of Police and the same was closed. That complaint proceeds on the footing that Amudhan (A.1) has cheated his (A.1's) sister Uma Balaji (R.2) by selling the properties and not giving her her due share.

15 Further, it is seen that though there are materials to show that Sangeetha was also impersonated by Savithri (A.3), somewhere down the line, Sangeetha and Amudhan (A.1) had entered into a deal and settled the matter between themselves. In the opinion of this Court, in a case of this nature where there has been impersonation and forgery of records, even if the accused and the victim enter into an unholy compromise, the offences can neither be compounded nor quashed on the ground that the siblings have settled the matter amongst themselves.

16 The trial has not progressed in view of the order of stay granted by this Court on 14.12.2017. In the light of overwhelming materials against the accused, this Court is of the view that this is not a fit case to quash the prosecution.

17 Accordingly, Amudhan (A.1) is directed to appear before the trial Court and partake in the trial. It is made clear that:

- a. he shall cross-examine the witnesses on the day they are examined in chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab¹³;
- b. In the event of he adopting dilatory tactics, he shall be remanded in custody as held by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh¹⁴; and
- c. In the event of he absconding, a fresh FIR can be registered against him under Section 229-A IPC.

In the upshot, this criminal original petition stands dismissed as being bereft of merits. Connected CrI.M.P. stands closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

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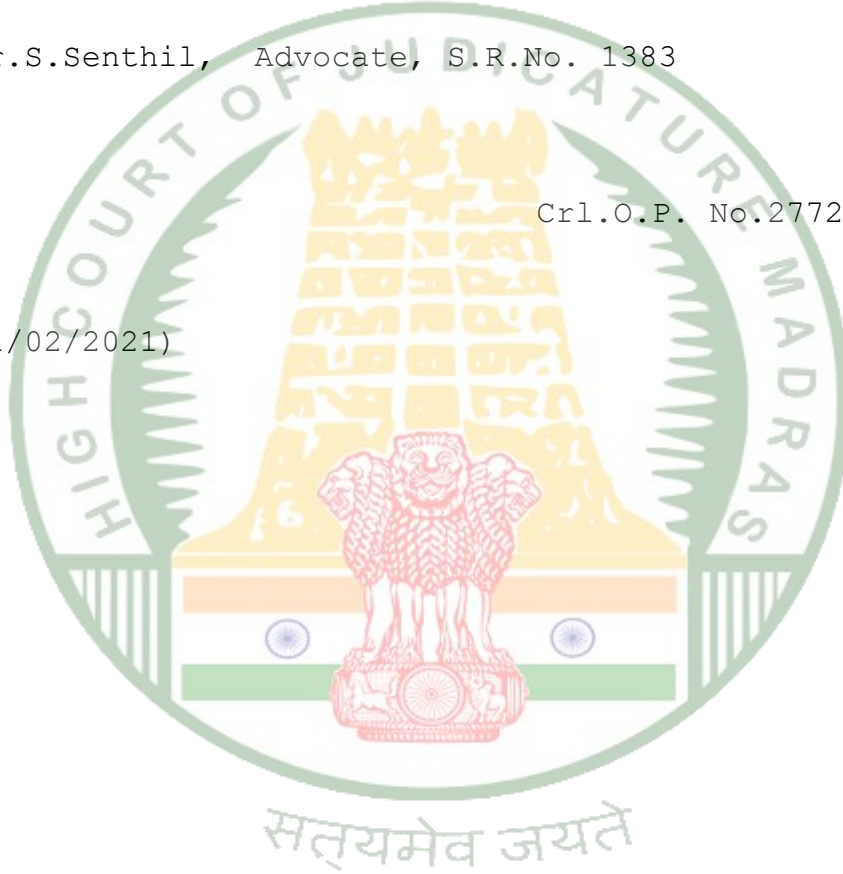
- 1 The Inspector of Police
North Crime Branch, Vellore
- 2 The Judicial Magistrate No.IV, Vellore
- 3 The Public Prosecutor
Madras High Court
Chennai - 600 104

+1cc to Mr.S.Senthil, Advocate, S.R.No. 1383

CrI.O.P. No.27722 of 2017

RGN (CO)

GN(01/02/2021)



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