



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2021

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGOVA**

Crl.O.P. (MD)No.2597 of 2021

and

Crl.MP (MD)No.1362 of 2021

WEB COPY

1.S.Subramanian

2.S.Swaminathan

: Petitioners/Respondents/  
Respondents

Vs.

1.S.Jeyalakshmi

2.R.S.Manohar

3.Baskar

: 1<sup>st</sup> Respondent/Petitioner/  
Complainant  
: 2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent/  
Respondent  
: 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent/  
Respondent

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the order, dated 21.01.2001 made in Crl.M.P No.2284 of 2020 on the file of the Judicial Magistrate Court No.IV, Trichy and set aside the same as illegal.

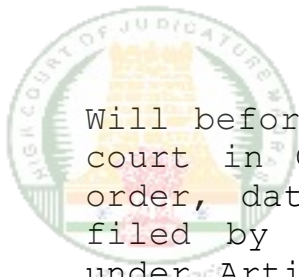
For Petitioner : Mr.R.Gandhi  
For 1<sup>st</sup> Respondent : Mr.S.K.Mani  
For R2 and R3 : Mr.R.Karunanidhi

### O R D E R

This petition has been filed by the petitioners seeking to set aside the order, dated 21.01.2021 made in Cr.MP No.2284 of 2020 on the file of the Judicial Magistrate Court No.4, Trichy.

#### **2.The case in brief is as follows:-**

The first respondent herein is the sister of the petitioners and she filed a private complaint against these petitioners and others under section 200 Cr.P.C before the trial court and the trial court took up enquiry under section 202 of Cr.P.C in Crl.MP No.2007 of 2009 on the file of the Judicial Magistrate No.4, Trichy. The first respondent alleges that by conspiracy, the alleged Will, dated 17.04.2006 has been forged by the first petitioner herein and so, all the accused persons are liable to be punished under sections 120-B and 420 of IPC. Pending pre-cognizance stage, the first respondent filed a petition seeking



Will before the trial court. That came to be allowed by the trial court in Crl.MP No.2284 of 2020 in Cr.M.P No.20762 of 2019, by order, dated 21.01.2021. Against which, this petition came to be filed by the petitioners mainly on the ground that protection under Article 20(3) of the Constitution of India is available to them and no order can be passed by the trial court, directing the first petitioner to produce the disputed Will. The next contention is that the 1<sup>st</sup> respondent also filed O.S No.874 of 2017 before the Additional District Munsif, Trichy and she can very well take steps to send for the original Will in view of the above said proceedings.

3.The Further contention is that the genuineness of the Will has been recognized in O.S No.213 of 2006 on the file of the Additional District Court, Trichy, by which a compromise decree has been passed. Even though the points 2 and 3 are factual issues, the main contention that has been urged by the learned counsel appearing for the petitioners is protection under Article 20(3) of the Constitution of India.

4.A counter has also been filed by the first respondent herein, who is the complainant before the trial court. Even though the factual circumstances are required to be elaborated for the purpose of better appreciation, the issue involved in this case matter can also be taken into consideration.

5.Heard both sides.

6.As usual, it is a property dispute between the brothers and sister. The father of the parties is one Sangilimuthu Chettiar. He got five children namely S.Subramanian, S.Swaminathan, R.S.Manohar, Baskar and Jayalakshmi. The wife of Sangilimuth Chettiar is Rajamani Ammal. They had also another son called 'Thiyagarajan'. He went away from the family. The properties purchased by Sangalimuthu Chettiar are his self-acquired properties. Apart from his self-acquired properties, he is also owning ancestral properties. During his life time, he executed two registered sale deeds bequeathing his properties in favour of several persons as stated in the plaint in O.S No.874 of 2017. Those facts are not relevant for discussion, so we can skip those particulars.

7.The said Sangalimuthu Chettiar was affected by paralysis and he died, on 29.04.2006. Now, it is the claim of the first petitioner that an unregistered Will was executed by his father, on 17.04.2006 bequeathing properties in his favour and in favour of S.Swaminathan and other sons. This Will, according to the first respondent, is a forged one.



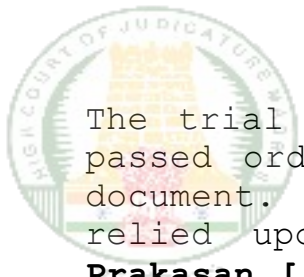
8.A suit in O.S No.213 of 2006 was filed by the first petitioner by arraying his mother Rajamani Ammal and others, as defendants, for permanent injunction. In respect of the property that was bequeathed in his favour, a compromise was reached between the parties. In the above said suit and in the compromise, the 2<sup>nd</sup> defendant namely Rajamani Aammal admitted the genuineness of the Will, dated 17.04.2006 and that Will, after execution was kept in the cupboard and after the death of Sangalimuthu Chettiar, it was taken on 19.04.2006 after the 6<sup>th</sup> day ceremony, by Rajamani Ammal and it was shown to her children and it was also read over to them. Later it was handed over to the first petitioner. She has also admitted that the other Will executed by her husband namely Sangalimuthu Chettiar, on 09.09.1999 and 09.02.2006 had exclusively without any identity to the effect of title arrived when he was alive. So it came to be cancelled. Based upon the said compromise, it was decreed in terms of compromise. Now, challenging the above said compromise decree, the 1<sup>st</sup> respondent herein filed O.S No.874 of 2017 on the file of District Munsif, Trichy. In the affidavit, she has narrated the entire factual position and also challenged the disputed Will, dated 17.04.2006 and also stated that other two Wills, that have been executed by her father, were duly registered and genuine, and to declare that the compromise decree in the above suit is not valid and mandatory injunction to restore the revenue records to its original position and for mesne profits. That suit came to be filed, on 18.09.2007. Later in 2009, the present private complaint has been filed making allegations that it is a forged Will and all the accused persons committed the offence under sections 120-B, 467, 468, 471 and 474 IPC. The suit, which was filed by the 1<sup>st</sup> respondent Jeyalakshmi in O.S No.874 of 2017 came to be rejected in pursuance of the petition filed by the petitioners viz., Subramanian and Swaminathan, by order, dated 18.03.2021 by the Additional District Munsif, Trichy. Pending the above said proceedings, another suit has been filed by the 1<sup>st</sup> respondent Jeyalakshmi and others, in O.S No.151 of 2020 by arraying the 1<sup>st</sup> petitioner Subramani and others as parties in respect of other properties, for partition, etc., Now the suit, that has been filed by the 1<sup>st</sup> respondent challenging the compromise decree, that has been passed in the earlier suit, has been struck off. These factual backgrounds show that there were many disputes between the 1<sup>st</sup> respondent Jeyalakshmi on the one hand and her two brothers on the other hand and Rajamani Ammal, who is the mother also joining hands with her sons. So, this factual background is necessary for the purpose of further discussion.

9.Now coming back to the original issue that has been elaborately advanced by the learned counsel appearing for first respondent herein, finding that the private complaint is in pre-



cognizance stage and petition has been filed by the first respondent by invoking under section under 91 Cr.P.C seeking direction to the first petitioner to produce the disputed Will. This court requested the counsel for both sides to concentrate on the point as to whether the proposed accused can be directed to produce the disputed document, against which forgery has been alleged by exercising the jurisdiction under section 91 of the Criminal Procedure Code in the pre-cognizance stage. The reason for this Court to direct the respective counsel to concentrate on the point as to whether the proposed accused can be directed to produce the disputed Will is that the counsel for the first respondent has relied upon a decision of the Hon'ble Supreme in the case of the **State of Bombay Vs. Kathi Kalu Oghad (A.I.R 1961 S.C 1808)**. The learned counsel appearing for the first respondent mainly relied upon some of the observations that has been made by 11 Judges Bench of the Hon'ble Supreme Court. Finding that it is an issue only with regard to the testimonial compulsion that can be exerted upon the proposed accused persons herein. The petitioners had not expressed their case so far before the court that the case is now in pre-cognizance stage. But however, the learned counsel appearing for the first respondent would submit that the testimonial compulsion does not extend to direct the document to be produced for the purpose of trial. Because on the face of the document, it will not incriminate a person, who has been directed to produce the document. Only on further probe, the issue of self-incrimination will come. The reason for this court to place on record the argument advanced by the first respondent at the initial stage is that there is no decision directly available to answer the issue, either by the Hon'ble Supreme Court or by this Court.

10.Straightway, the learned counsel appearing for the petitioners, even though, relied upon the various other judgments, more particularly cited the decision reported in **V.Gopalakrishnan Nayanar and another Vs. K.V.sasidharan Namhiar and another (1996 (1) MLJ (Crl) 599)**. According to the learned counsel appearing for petitioners, the issue that has been raised by the petitioners is to be discussed. In fact, this court can not straightway go to the other decisions cited by the other side, which are not at all answering the issue that has been raised in this petition. The factual background in the above case is that a Rotary Club was proceeded under Section 200 Cr.P.C and during the course of enquiry under section 202 Cr.P.C, notice was issued to the accused to produce certain documents like account books etc., pertaining to the Club. On receiving the notice, the proposed accused entered appearance and resisted the direction issued by the court on the ground that the testimonial compulsion is prohibited under section 20(3) of the Constitution of India. But the said conclusion has been rejected by the trial court in that matter.



The trial court in that matter also rejected the contention and passed orders directing the Rotary Club to produce the disputed document. So during the course of enquiry, the trial Magistrate relied upon the Judgment reported in **Prakasan Raveendran Vs. Prakasan [(1989)2 KLJ 210]**. That order was challenged before the court under section 482 of Cr.P.C. The Court in the case of **Raveendran Vs. Prakasan**, while passing order, has relied upon the Judgment of the Hon'ble Supreme Court in the case of **Khanna Vs. Chief Secretary, Patna (AIR 1981 SC 5950)**. In that case, the Hon'ble Supreme Court has held that a person, who has arrayed as respondent under 202 of Cr.P.C enquiry, such person does not in fact become an accused, until the Court decides to issue process against him. So according to the Hon 'ble Supreme Court, unless notice is issued against a person, he cannot be called as 'accused' in effect and in law. So the single Juge, who rendered the judgment in **Raveendran Vs. Prakasen case**, that was doubted by another single Judge, who was hearing the petition and the order, has been passed by the trial court in the above said **V.Gopalakrishnan Nayanar case**. So, the matter was heard by the Division Bench. It relied on the Constitution Bench of the Hon'ble Supreme Court in the case of State of **Gujarat Vs. Shyamal (AIR 1965 SC 1251)** has held that Article 20(3) of the Constitution of India would insulate an accused from being ordered to produce document or thing. Whether a person arrayed as a respondent or a proposed accused will come under the definition of 'accused', has been further considered and for that purpose, the Hon'ble Division Bench relied upon the Judgment reported in **Bheru Singh Vs. State of Rajasthan [(1994) 2 SCC 467]**. The Court was dealing with the subject under sections 25 and 27 of the Evidence Act. So in that judgment, the Hon'ble Supreme Court interpreted the expression 'accused' under section 25 of the Evidence Act and stated that it would cover the would be accused also. So the Hon'ble Division Bench of the considered view that the Supreme Court is also in favour of extending the definition of accused of an offence, which occurred under sections 25 and 27 of the Evidence Act. It is further observed that the Hon'ble Supreme Court in the case of **M.P.Sharma Vs. Satish Chandra (AIR 1954 SC 300)** has stated that protection is available to a person against whom a formal accusation has been made. Even though, a person has been formally named in the FIR, he can get a protection. The word "formal accusation" has been defined in the case of **Balakrishnan Vs. State of Maharashtra (AIR 1981 SC 379)**, which reads as follows:-

"Formal accusation is ordinarily brought into existence by lodging of an F.I.R. Or a formal complaint to the appropriate authority or court against the specific individual, accusing him of the commission of a crime which, in the normal course, would result in his prosecution. It is



only on the making of such formal accusation that clause (3) of Art.20 becomes operative covering that individual with its protective umbrella against testimonial compulsion."

So in the concluding portion, the Hon'ble High Court of Kerala has held like this:-

The above discussion leads us to the only conclusion that the person, against whom offences have been alleged in a complaint filed before the Magistrate, is an accused person notwithstanding the fact that an enquiry envisaged in Sec.202 of the Code was still pending. No order under Sec.91 of the Code can be issued against such a person. We, therefore, held that the principle laid down in Raveendran Vs. Prakasan (1989)2 K.L.T 2010 is not correct. Hence, we quash the impugned order, Criminal miscellaneous case is disposed of accordingly."

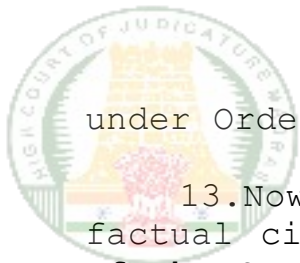
11.According to the learned counsel appearing for the petitioners, this answer the point that has been raised by the petitioners. But the learned counsel for the 1<sup>st</sup> respondent submitted that the Kerala Court has not taken note of the observation that has been made by the 11 Judges Bench in the celebrated case of **Kathi Kalu Oghad**.

12.No doubt that on the legal circle, comments have been raised with regard to the term. It is also commented that the judgment of the Hon'ble Supreme in the case of State of Gujarat Vs. Shyama Satala, must be reconsidered in the light of 11 Judges Bench of the Supreme Court. Now whatever it may be, this court cannot entertain the above said argument. Suffice to say that extended meaning that has been given, is very well now available to the petitioners. But this Court wants to place on record the following observations also:-

(1).The disputed Will was not produced before the court, which passed the compromise decree between the parties, in which the 1<sup>st</sup> respondent was not made as a party.

(2).After hearing the arguments of the parties, a clarification was sought for, whether the disputed Will produced before the court, which was passed the compromise decree.

(3).The xerox copy of the Will was admitted to be a genuine document by her mother and only on that basis, compromise decree has been passed and when that was challenged by the first respondent, the suit plaint was rejected holding that she was not a party to the above said compromise decree and as per the bar



under Order 23 Rule 2 CPC, the plaint has been rejected.

13. Now the question arises for consideration is whether in the factual circumstance of this case, protection under Article 20(3) of the Constitution of India is available to the first petitioner or not.

14. In the judgment of the Hon'ble Kerala Division Bench in the case of **V. Gopalrishnan Nayanar**, both civil and criminal proceedings have been initiated against a Rotary Club in similar circumstance only that has been held that protection is very much available.

15. I find absolutely no reason, to differ from the view expressed by the Kerala Division Bench in the above said case. Even though the conduct on the part of the first petitioner herein by producing the xerox copy in civil court proceedings, after having the compromise decree, bunked the original Will, which cannot be approved by this court, but on the legal point, he is entitled for protection.

16. Now coming to the argument advanced by the learned counsel appearing for the 1<sup>st</sup> respondent, he would submit that Article 20 (3) of the Constitution of India has been considered in the case of **Kathi Kalu Oghad** to mean that an accused person cannot be compelled to disclose only the documents, which are incriminatory in nature and based on his knowledge. The learned counsel for the first respondent would rely upon the following passage in the above said judgment, which would thus:-

*"The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document which is not his statement covering his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of S.139 of the Evidence Act."*

17. In the case of **State of Gujarat Vs. Shyamal**, the Hon'ble Supreme Court went in depth about the word 'person'. Perhaps in one of the cases, the Hon'ble Calcutta High Court was of the view that a rule has been introduced. The Hon'ble Calcutta High Court was of the view that protection should not be granted to the people. Further, in para 13 of the judgment, the Calcutta High Court has held as follows:-

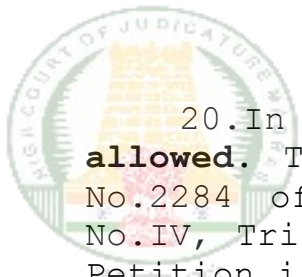
*"13. Opinion has for a long time been divided on the question whether the principle of self-incrimination which prevailed in the United Kingdom the reason of the original source of the rule*



having disappeared tends to defeat justice. On the one hand it is claimed that the protection of an accused against self-incrimination promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime. It is claimed that the privilege in its application to witnesses as regards oral in its application to witnesses as regards oral testimony and production of documents affords to them in general a freedom to come forward to furnish evidence in Courts and be of help in elucidating the truth in a case, with materials known to them or in their possession. On the one hand, there are strong advocates of the view that this rule has an undesirable effect on the larger social interest of detection of crime, and a doctrinaire adherence thereto confronts the State with overwhelming difficulties. It is said that it is a protector only of the criminal. I am not concerned to enter upon a discussion of the relative merits of these competing theories. The Court's function is strictly to ascertain the law and to administer it. A rule continuing to remain on the statute book whatever the reason, which induced the Legislature to introduce it at the inception, may not be discarded by the Courts, even if it be inconsistent with notions of a later date: the remedy lies with the Legislature to modify it and not with the Courts."

18. So the above paragraph will answer the grievance, that has been expressed by the first respondent. According to him, if such a protection is granted to the criminals, then no criminal case can be filed. But of course as observed by the Hon'ble Supreme Court, his grievance has to be addressed and remedied only by the Legislature. That is why, this court also placed on record the anguish and the facts. The difference of opinion that is expressed in *Kathi Kalu Oghad* case as well as in the case of *State of Gujarat Vs. Shyamal*, has been taken note of by this court in the judgment reported in ***K.Senthamarai and others Vs. State by Inspector of Police, CB, CID, Kamarajar District and others (1998 (1) CRIMES 319)*** and after detailed discussion, it has been observed that no such order can be passed directing the accused persons to produce the document, which is capable of incriminating him.

19. For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside.



20.In the result, this Criminal Original Petition stands **allowed**. The impugned order, dated 21.01.2001 passed in Crl.M.P No.2284 of 2020 on the file of the Judicial Magistrate Court No.IV, Trichy, is set aside. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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**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 Court No.IV, Trichy.

**Crl.O.P. (MD)No.2597 of 2021**  
**02.11.2021**

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