



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01.11.2021
Date of Judgment	15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).Nos.9223 of 2021 and 12915 of 2020
and Crl.M.P.(MD).Nos.4726 of 2021 and 5884 of 2020

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Crl.O.P.(MD).No.9223 of 2021

R.Rajendran

... Petitioner/Accused No.4

Vs.

1.State rep. by the
Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.66 of 2020)

... 1st Respondent/Complainant

2.Balu ... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the First Information Report in Crime No.66 of 2020, dated 19.02.2020 on the file of the respondent No.1 registered under Sections 420, 465, 467, 468 and 471 of IPC and quash the same as illegal as for as the petitioner is concerned.

For Petitioner : Mr.T.Thirumurugan

For 1st Respondent : Mr.K.Sanjai Gandhi

Government Advocate (Crl. Side)

Crl.O.P.(MD).No.12915 of 2020

Ramakrishnan

... Petitioner/Accused No.1

Vs.

1.State rep. by the
Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.66 of 2020)

... 1st Respondent/Complainant

2.Balu ... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining in Crime No.66 of 2020, on the file of the 1st respondent police and to quash the same as illegal as for as the petitioner/Accused No.11, is concerned.

For Petitioner : Mr.J.Ashok

For 1st Respondent : Mr.K.Sanjai Gandhi

Government Advocate (Crl. side)



COMMON ORDER

Crl.O.P.(MD).No.12915 of 2020 has been filed by Accused No.11 in Crime No.66 of 2020 on the file of the first respondent police and Crl.O.P.(MD).No.9223 of 2021 has been filed by the 4th respondent in the above said criminal case seeking quashment of the proceedings in respect of themselves.

2.The facts in brief:-

The second respondent, who is the defacto complainant has lodged the complaint with the following facts:-

On 10.01.2019 one Subramania Pandian @ Subbiah Pandian executed a power of attorney in favour of one Aya Nambhi. Subsequent to that, he executed a sale deed on 31.12.2019 in favour of one Sivasakthi in respect of the property situated in S.No.635/2 at Ayan Surandai Village measuring about 50 cents. That document has been registered by the petitioners with the connivance of the other accused persons. Property in S.No.635/2 is a Government land, in which neither the principal, nor the power of attorney nor the purchaser got any right. With intend to grab the property from the Government, the above said power of attorney and subsequent sale deeds have been executed. Based upon the complaint given by the second respondent, a case in Crime No.66 of 2020 has been registered for the offences punishable under Sections 420, 465, 467, 468, 471 IPC.

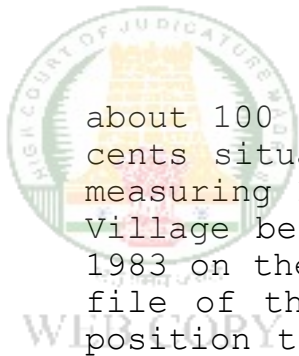
3. Seeking quashment of this criminal case, the petitioner in Crl.O.P.(MD).No.9223 of 2021 has stated that he was working as 'Junior Assistant' in Sub Registrar Office, Edaikal and when the Sub Registrar on leave, he discharged the functions. Only on the basis of the Encumbrance Certificate, he registered the document. He did not involve in any criminal offence and conspiracy with the other accused persons.

4. The case of the petitioner in Crl.O.P.(MD).No.12915 of 2020 is that he is only a Document Writer and played only a limited role without any criminal intention and *mens rea*.

5. Heard both sides.

6. In the petitions, one is the Document Writer and another is the Government Official. The petitioner discharged his function as an in-charge Sub Registrar on the date of the alleged execution of the power of attorney and as well as the sale deed and the former only reduced the instructions into a document and nothing more.

7. In both the cases, one common ground available is that the power deed, dated 10.01.2019 alleged to have been executed by one Subramania Pandian @ Subbiah Pandian in favour of one Aya Nambhi, S/o Thiranambiyar, is dated 10.01.2019, wherein, it has been stated that the property situated in Natham Survey No.12/C 1A1A measuring



about 100 sq. feet and the property in S.No.635/2 measuring about 2 cents situated in Surandai Village, Tenkasi Taluk and Survey No.487 measuring 1 acre 23.5 cents situated in the above said Ayan Surandi Village belongs to him by way of compromise decree in O.S.No.60 of 1983 on the file of Sub Court, Tenkasi and O.S.No.206 of 1986 on the file of the District Munsif Court, Tenkasi. Since he was not in a position to take care of the property, he executed a General Power of Attorney in favour of the above said Aya Nambhi.

8.In pursuance of the above said power of attorney, the power of attorney holder namely Aya Nambhi executed a sale deed, on 31.12.2019 in favour of one Sivasakthi in respect of the properties in 54 sq. feet, comprised in three survey fields, namely 109/1B8, 109/1B12 & 109/B10 situated in Inamkovilpatti village and 50 cents in S.No.635/2 situated in Surandai Village. Now, after the registration of the above said sale deeds, the second respondent herein lodged a complaint, who is the Village Administrative Officer of Surandai Part I, wherein he has stated that the property comprised in S.No.635/2 of Surandai Village and S.No.487, originally as per the 'A' register was found to be Government Poramboke in 2004 by the orders of the District Collector, Tirunelveli. It was assigned to Tamil Nadu Police Department and ever-since, it was registered as Police Department property. When it came to his notice, after going through the encumbrance, he found that in respect of the above said property, the accused persons have created forged documents and tried to convert the Government property as if their individual property.

9.Now, without going in to the other issues, the role that is played by the petitioners have to be seen, where enough materials are available against them to proceed further.

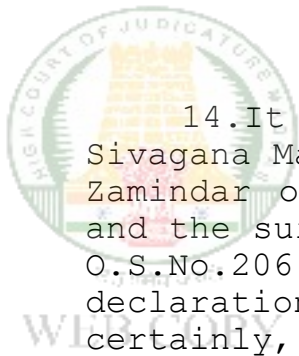
10.No doubt, the petitioner namely Rama Krishnan is only a Document Writer. But when he prepared the document, he ought to have verified the parent documents also. The parent document that has been produced before him is only the power deed. Prior document with regard to the court decree mentioned in the power of attorney seems to have been not produced before the petitioner, namely the Document Writer Rama Krishnan. This is the major allegation against him. So whether this will amount to criminal conspiracy with the seller and purchaser is the point to be decided. The petitioner, straight away relying upon the judgment of Madhya Pradesh High Court, reported in the case of ***Khuman Singh Vs. S.P of Police, Dalia ([2017]1 RN 295)*** submitted that the duty of a Document Writer is only to reproduce the instructions that has been given by the Executor of the document and the purchaser. So beyond that, no duty is cast upon the Document Writer to verify the genuineness of the document that has been produced before him as well as the title over the property. He cannot be fastened with any liability much less than criminal liability.



11. So far as the petitioner Rajendran is concerned, he would state that he discharged only an official function as a Sub Registrar in-charge and he was not supposed to scrutinize the title documents and other connected matters and for that purpose, he would rely upon the Circular issued by the Registration Department with regard to the role to be played by the Executive Officers right from the year 2011. The Circulars have been produced. The later Circular reveals that the Registering Officer should insist the presentation of the previous original documents, by which, the Executant claims right over the property. He is not aware of the fact that the revenue records must be produced. He has to verify the encumbrance certificate at least for ascertaining in whose name the property standing. This Circular has been issued on a specific issue.

12. This petitioner also relies upon an observation made by this Court in Crl.O.P.(MD).No.17055 of 2007, wherein it has been stated that the Sub Registrar has not expected to verify the ownership of a property and whether a person, who executes the sale deed is a genuine person and his duty to register the document, which bears necessary stamp duty and he has no legal obligation to verify the genuineness of the documents. So, no doubt the petitioner cannot go into the title. Similarly, he cannot also verify the genuineness of the document. Repeated circulars have been issued by the Registration Department for the purpose of preventing such illegal activities. We need not concentrate much on that. But it is seen that a specific duty casts upon the Registering Officer to see that the title documents be produced before him. Here except the encumbrance certificate, no other document has been produced before the Registering Officer. He ought to have insisted upon the executant to produce the alleged compromise decree that is mentioned in the power of attorney deed, that is the original parent document, in so far as the title of the principal is concerned. But why that was not taken into account is not properly explained by this petitioner, even at the time of hearing the arguments. He has simply stated that in the encumbrance certificate, it has not been indicated that the property belongs to the Government and later, it was assigned in the name of the Police Department. But as I mentioned earlier, the parent document is the court decree as mentioned in the power of attorney. He ought to have been insisted the production of the above said document. But he has failed in his duty and has not satisfactorily explained anything, even at the time of argument, except stating that there was no entry in the encumbrance.

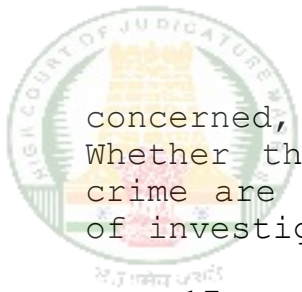
13. The first respondent has produced a copy of the decree and judgment passed in O.S.No.60 of 1983 on the file of the Sub Court, Tenkasi and O.S.No.206 of 1986 on the file of the District Munsif Court, Tenkasi, which were referred in the above said power of attorney.



14.It appears that suit O.S.No.60 of 1983 was filed by one Sivagana Maruthupandian @ S.M.Pandian and he is the son of erstwhile Zamindar of Othumalai. It was filed against Alamelumangai Nachiyar and the suit stands dismissed for default and similarly, the suit in O.S.No.206 of 1986 was also filed by the above said parties for declaration and that was decreed in terms of compromise. So certainly, the the power of attorney was executed by the persons, who are not the plaintiffs in O.S.No.206 of 1986. The description of property also entirely different. So it appears that by misrepresentation, the power of attorney had been executed by the above said persons in favour of the above said Aya Nambhi. But without verifying the above said title documents, when it is mandated in the above said circular, the petitioner Rajendran has registered the document. He cannot simply say that he verified the encumbrance and no entry was found in the encumbrance shows that it is a Government property. Even if we peruse the encumbrance, which has been produced along with the typed set of papers, it shows that it is not standing in the name of the Principal namely the above said Subbiah Pandian. Only on 10.01.2019, we find the entry regarding the power of attorney executed by the above said Subbiah Pandian. Before that, it was standing in different persons name. So this does not fit with the arguments advanced by this petitioner stating that he verified the encumbrance and nothing was found. So I am of the considered view that even though the Document Writer ought not to have verified the document, his role must be found out only in the facts and circumstances.

15.After hearing the argument of the parties, the matter was reserved for order and during the course of perusal of the records, this court entertained a doubt with regard to the plea that has been taken by Rajendran, who is the officer in-charge at the relevant point of time. So, during clarification that has been pointed out in respect of Survey No.635/2 extenting about 2.1 Acres, no encumbrance has been noted in the Register. No doubt that no encumbrance has been noted. But however, the revenue records ought to have been verified to find out, who is the real owner, while registering the same. But that was not done. In respect of other survey numbers, I observed to the effect that even as per the earlier entries, the properties does not stand in the name of the executor. The entire facts and circumstances clearly shows that a larger extent conspiracy took place in the whole transactions.

16.So the facts and circumstances clearly shows that the plea that has been raised by the two petitioners cannot be discussed and decided, since the investigation is at the primary stage. But one thing is clear that not only Document Writer, but also the Registering Officer has played a prominent role in the whole facts. So only at the conclusion of the investigation, their role can be brought to light. So I am of the considered view that it is in preliminary stage, which requires no interference at the hands of



concerned, something is fishy apparent on the fact of the records. Whether the petitioners were actively involved in the above said crime are the matters that can be found out only during the course of investigation.

17. Even though number of judgments have been cited by the petitioners starting from the Hon'ble Supreme Court judgment in **Mohamed Ibrahim's** case, Devendra and others vs State of Uttar Pradesh and another [(2009)7 SCC 495], Ramesh Dutt and others Vs. State of Punjab and others [(2009)15 SCC 429] , Md.Ibrahim and others Vs. State of Bihar & another [(2009) SAR (Criminal) 961], T.Muthuramalingam Vs. Inspector of Police [(2018)4 MLJ (CrI) 392], Muthammal Vs. S.Thangam [2019(2)MWN (Cr.) 458] and Narayanamma Vs. Chikka Venkateshaiah [(2019)(3) MWN (CrI.) 438], I am of the considered view that those judgments are not relevant for discussion.

18. Now the role played by these petitioners and offences that were attracted against them must be thoroughly investigated and only at the time of conclusion of the investigation, the offences that were committed by the petitioners will be brought to light. However, liberty is always available to the petitioners to workout their remedy as per law, if any ground is available to them to challenge the final report. Except that opportunity, no consideration by this Court is required at the preliminary stage.

19. With the above liberty, both the criminal original petitions are **dismissed**. The investigation may go on to its logical conclusion. Considering the nature of offence, that has been mentioned, let investigation be completed within a period of six months from the date of receipt of a copy of this order and final report shall be filed before the concerned Court. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

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

1.The Inspector of Police,
Surandai Police Station,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.J.ASHOK, Advocate SR.No. 39341

Crl.O.P.(MD)Nos.9223 of 2021
and 12915 of 2020
15 .12.2021

NSN(CO)

TR(07.03.2022) 7P 4C