



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.9982 of 2021

and

Crl.M.P.(MD)No.5094 & 5095 of 2021

E.Isravel

... Petitioner/Accused No.4

vs.

1.The State rep. by
Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.
(Crime No.637 of 2016)

... 1st Respondent/
Complainant

2. Paul Pradeep Kumar

... 2nd Respondent/
defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with the impugned charge sheet in C.C.No.399 of 2019 pending on the file of the Judicial Magistrate Court No.2, Dindigul, Dindigul District and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Sarvagan Prabhu

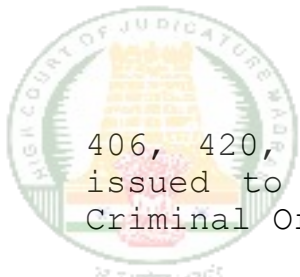
For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor

For R2 : M/s.P.Yasim Begam

O R D E R

The petitioner is figuring as the fourth accused in C.C.No.399 of 2019 on the file of the Judicial Magistrate No.2, Dindigul.

2. The second respondent is the defacto complainant. The case of the prosecution is that the accused entered into a sale agreement in respect of a property belonging to TELC. In this regard, Crime No.637 of 2016 was registered on the file of the Inspector of Police, Town North North Police Station, Dindigul based on the information lodged by the second respondent. The case was registered for the offences under Sections 120 B, 406 and 420 of IPC. Investigation was undertaken and final report came to be filed against the six accused. Cognizance of the offences under Sections



406, 420, 120B, 465, 468 & 471 of IPC was taken. Summons were issued to the accused. To quash the impugned proceedings, this Criminal Original Petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds and submitted that the impugned prosecution is an abuse of legal process.

4. Per contra, the learned counsel appearing for the defacto complainant submitted that one of the attestors of the document namely Ammavasi was examined as L.W.5 and in his statement recorded under Section 161 of Cr.P.C., the role played by the petitioner has been clearly brought out. According to L.W.5, he was acquainted with the first accused namely J.A.Prem Kumar; through him, he got acquainted with the petitioner also; While so, some time in the year 2015, Prem Kumar and the petitioner Isravel took him to the residential quarters of TELC staff; Prem Kumar and the petitioner are said to have told Ammavasi that persons have purchased the said property and measurement was also being done; on 13.03.2016, Prem Kumar and Isravel asked him to go to Dindigul and upon his arrival, he was taken to Nagalnayakanpatti Sub Registrar Office, Dindigul where he was asked to attest the offending documents; in view of his past relationship, without even reading the document, he put his signature; later, he came to know that the property belonging to TELC church was sought to be fraudulently dealt with. After taking me through the said statement, the learned counsel for the defacto complainant submitted that since specific overt act has been attributed to the petitioner, the present quash petition is not maintainable. The defacto complainant also filed a typed set of papers. She called for dismissal of this quash petition.

5. The learned Additional Public Prosecutor appearing for the first respondent also endorsed the stand taken by the learned counsel appearing for the defacto complainant.

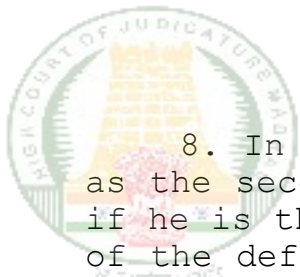
6. I carefully considered the rival contentions and went through the materials on record. There is no dispute that the cause of action for the impugned prosecution is the execution of the two sale agreements dated 14.03.2016 which were registered as Document Nos.1206 and 1207 of 2016 on the file of the Sub Registrar, Nagalnayakanpatti, SRO, Dindigul. There cannot be any dispute that the properties covered by the said two documents belong to TELC and that they cannot be privately alienated.

7. Now the only question that arises for determination is whether in view of the execution of the sale agreements, the petitioner can be fastened with any penal liability and made to face the trial. The charges on which the impugned prosecution rests can be divided into four:-

(I) Criminal breach of trust

(II) Cheating

(III) Forgery & (IV) Conspiracy.



8. In the sale agreements, one Jothi Rajan who has been arrayed as the second accused in the final report, had put his signature as if he is the assistant property officer of TELC. The specific stand of the defacto complainant is that Jothi Rajan was never designated as Assistant Property Officer. Be that as it may, the petitioner herein is not a party to either of the documents. It is not the case of the prosecution that the property in question was entrusted with the petitioner. Since the element of entrustment is not attributed to the petitioner, offence under Section 406 of IPC is not attracted. It is not the case of the prosecution that the petitioner made any false promise to the defacto complainant based on which the defacto complainant altered his position. Therefore, the elementary ingredients of cheating are also absent as far as the petitioner is concerned. The petitioner has not put the signature of the defacto complainant or of anybody else. Therefore, the offence of forgery is also not made out. In support of the charge of conspiracy, there is absolutely no material.

9. Interestingly, out of the nine accused named in the FIR, five of them have now been taken as prosecution witnesses. The person who attested the two fraudulent documents has been taken as a witness. It is on the strength of his averments, the petitioner has been implicated as an accused in the final report. Even assuming that the entire case of the prosecution is taken as true, still no offence is made out against the petitioner. The continuation of the impugned prosecution would be an abuse of legal process. The impugned proceedings are quashed as far as the petitioner is concerned. I do not express any opinion regarding the merits of the case against the other accused. It is seen that the prosecution was initiated way back in the year 2019. The other accused do not appear to have filed any quash petition. The trial court is directed to expedite the proceedings.

10. With this direction to the court below, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

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 Judicial Magistrate No.II,
Dindigul.

2.The Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.

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

+2 CC to M/s.P. YASMIN BEGUM, Advocate (SR-35684[F] dated
24/11/2021)

+1 CC to M/s.S. SARVAGAN PRABHU, Advocate (SR-35741[F] dated
24/11/2021)

Crl.O.P.(MD)No.9982 of 2021
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MGJ(17.12.2021) 4P 7C