



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	16.06.2021
DELIVERED ON	21.06.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 657 of 2016

Saila

...Petitioner/Complainant

Vs.

1. Mani
2. Saraswathi

...Respondents/Accused

PRAYER: Criminal Revision filed under Section 397 r/w 407 of the Criminal Procedure Code, to pass an order allowing the above Criminal Revision Petition and consequently set aside the order as made in Crl.M.P. No.3142 of 2016 dated 27.07.2016 passed by the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District.

For Petitioner : Mr.S. Palani Velayutham

ORDER

The complainant in private complaint is before this Court, by way of a criminal revision case, as against the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District, in Crl.M.P. No. 3142 of 2016, dated 27.07.2016.

2. The petitioner/complainant has filed a petition U/s 156 (3) of Criminal Procedure Code before the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District on 13.07.2016 as against the respondents herein. The relief sought for in the petition is that a case to be registered as against the respondents herein based on her complaint dated 26.05.2016 by the District Crime Branch, Kanyakumari District at Nagercoil for the offences punishable under Sections 420, 465, 467, 423 and 413 of IPC.

3. The learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District, has dismissed the Crl.M.P.No.3142 of 2016 vide the order impugned, dated 27.07.2016 on the ground that the matter pertains civil in nature and therefore, she has preferred the instant criminal revision case.



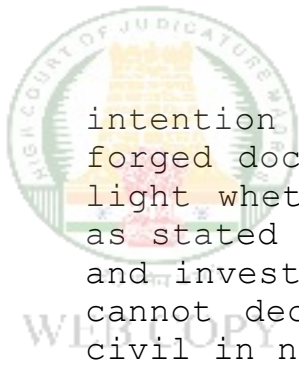
4. The learned Counsel for the petitioner submitted that the reasons assigned by the Court below in dismissing the private complaint by the petitioner is against law, weight of evidence and probabilities of the case. He further submitted that the facts as adduced in the private complaint have made out the offences, but the Court below failed to allow the same and consequently dismissed the private complaint. He further submitted that the offences committed by the respondents 1 & 2 would squarely come under the ambit of various offences. He further submitted that the other reasons given by the Court below in dismissing the said private complaint is unsound and unsustainable in law. Therefore, he prays for allowing this petition.

5. Heard the learned Counsel appearing for the petitioner and perused the material documents available on record.

6. The petitioner/complainant has filed this Revision case against the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District, in Crl.M.P. No. 3142 of 2016, dated 27.07.2016.

7. It is stated in the petition that on 30.07.2007, the petitioner and the 1st respondent have purchased a house property measuring 30 cents of vacant land with built up area of 3 cents at Palluoor Village, Kanyakumari District bearing Re-Survey Nos.495/8 and 495/9-A and Door No.4/60-A and subsequently the same got to be registered in the office of Sub Registrar Karungal as Document No.1442 of 2007. After its purchase, the Taxes payable to the Local Authority and other competent persons are being paid in the joint name. When the facts stood thus the 1st and 2nd respondents joined hands to grab the share of the petitioner in the said property, they conspired and on that basis fabricated a document as if the entire property belongs to the 1st respondent and a deed of settlement got to be made into the existence in favour of the 2nd respondent with evil intention on 12.10.2015. Further, they made the fake and false documents to be registered by exhorting the joint ownership of the petitioner in the office of the concerned Sub Registrar Vide document No.1964 of 2015. By virtue of the above fake and false documents they changed the name of the petitioner in the EB record and made entry as if the same belongs to the 1st respondent exclusively. In addition to that, both respondents 1 & 2 grabbed the front shop and frontage of the road for wrongful gain to them by making wrongful loss to the petitioner.

8. The learned Judicial Magistrate dismissed the petition on the ground that the matter pertains to civil dispute. The allegation in the petition is that the respondents with an



intention to grab the property of petitioner by creating false and forged documents. Only after an investigation, it comes into the light whether there is any prima facie made out for the offences as stated in the petition. Registering of First Information Report and investigation help us to find out the truth. The Court below cannot decide without any enquiry that the complaint is only a civil in nature in some cases.

9. Eventhough, notices are not served to respondents the order is only to register the First Information Report and investigation. It is matter between Court and the petitioner. If the police find any material then they can file charge sheet or other way it may close the First Information Report.

10. ***The ingredients of Section 156(3) is extracted here under:***

"Power of Magistrate to direct investigation arises in two situations:

(i) when FIR is refused to be lodged; and

(ii) when statutory power of investigation for some reason or the other is not exercised. When order is passed under Section 156(3), investigation must be carried out, which culminates in filing a charge-sheet if prima facie case is made out. When however, IO finds that alleged offence has not been committed, a report to that effect needs to be submitted, Dharmeshbha Vasudevabhai Vs. State of Gujarat, (2009) 6 SCC 576. "

11. For the aforesaid reasons, this Criminal Revision Cases is allowed. The order impugned dated 27.07.2016 in Crl.M.P. No.3142 of 2016 passed by the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District is hereby set aside. The Jurisdictional police is directed to register First Information Report and investigate the same.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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,
Kuzhithurai,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer, Criminal Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Superintendent of Police,
Kanyakumari District.

**Order made in
Crl.RC(MD)No. 657 of 2016
21.06.2021**

KM(29.06.2021) 4P 6C