



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2021

Pronounced on : 16.04.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C.(MD).No.642 of 2017

and

CRL.M.P.(MD)No.7222 of 2017

Senthil @ Senthil Vadivel : Petitioner/Petitioner/ Accused No.3
Vs.

The State represented by
The Sub-Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur.

(Crime No.217 of 2010) : Respondent / Respondent/ Complainant

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in Cr.M.P.No.1680 of 2014 in C.C.No.30 of 2012 on the file of the learned Judicial Magistrate No.II, Thanjavur and set aside the order dated 31.07.2017.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.1680 of 2014 in C.C.No.30 of 2012, dated 31.07.2017 on the file of the Court of Judicial Magistrate No.II, Thanjavur.

2.The revision petitioner is the third accused in C.C.No.30 of 2012 on the file of the Court of Judicial Magistrate No.II, Thanjavur.

3.The defacto complainant Mahalingam lodged a complaint with the respondent police and on that basis FIR came to be registered in Crime No.217 of 2010. The respondent police after completion of investigation, has laid the final report against the seven accused persons, including the revision petitioner, for the offences punishable under Sections 420 and 506(ii) IPC and the case was taken on file in C.C.No.30 of 2012 on the file of the Court of



Judicial Magistrate No.II, Thanjavur.

4. The case of the defacto complainant is that the first accused sold his lands on 04.06.1996 to the defacto complainant and received the sale price of Rs.1,19,100/- and handed over the possession of the lands, that the first accused again on 20.11.2018 agreed to sell his another property for Rs.90,720/- to the defacto complainant and executed sale agreement, after receiving sale price and handed over the property to him, that the first accused had not executed the sale deeds and was adopting delaying tactics, that the first accused on 25.11.2009 had executed the power of attorney deed in favour of his sons /Accused Nos.4 and 5 in respect of said two properties, who in turn had sold the said properties to one Revathy wife of the defacto complainant's brother Athmanaban, that when the defaco complainant demanded the accused to execute the sale deeds, the accused have entered into criminal conspiracy to cheat the defacto complainant and to snatch away the said properties and that the accused surrounded him with Aruval and wooden logs and threatened him with intimidating words.

5.The revision petitioner, who is the third accused has filed an application under Section 239 of Cr.P.C in Cr.M.P.No.1680 of 2014, seeking orders to discharge him from the proceedings in C.C.No.30 of 2012. The prosecution has filed counter statement objecting the claim of discharge and prayed for dismissal. The learned Magistrate, after conducting enquiry, has passed the impugned order on 31.07.2017, dismissing the discharge application. Aggrieved by the said order of dismissal, the third accused has come forward with the present revision.

6.Whether the impugned order passed in Cr.M.P.No.1680 of 2014 in C.C.No.30 of 2012, dated 31.07.2017 on the file of the learned Judicial Magistrate No.II, Thanjavur, is liable to be set aside ? is the point for consideration.

7. It is not in dispute that the accused Nos.1, 4 and 5 have previously filed a petition in Cr.M.P.No.3750 of 2012 in C.C.No.30 of 2012, seeking order to discharge them from the proceedings in C.C.No.30 of 2012 and that the learned Magistrate after conducting enquiry, has passed the order dated 11.01.2013, dismissing their application. Aggrieved by the said order, the accused Nos.1, 4 and 5 have filed the revision before this Court in Crl.R.C(MD)No.198 of 2018. During the pendency of the above said revision, the defacto complainant got himself impleaded as second respondent and this Court, upon considering the records and on hearing the prosecution, defacto complainant and the accused Nos.1, 4 and 5, has passed an order on 25.10.2013, allowing the criminal revision case and thereby discharging the accused Nos.1, 4 and 5 from the



proceedings of C.C.No.30 of 2012 on the file of the Court of Judicial Magistrate No.II, Thanjavur.

8.The learned counsel for the revision petitioner, mainly relying upon the decision of this Court, would contend that the present case is also covered by the above decision and that there is no specific overt act alleged against the third accused, that the trial Court has failed to consider that the entire dispute is of civil in nature and there are no ingredients so as to attract the offence under Section 420 of IPC and that therefore, the revision petitioner is also entitled to get an order of discharge.

9.The learned Additional Public Prosecutor would fairly concede that this Court has already passed an order with respect to the accused Nos.1, 4 and 5 and that therefore, they are leaving it to the discretion of this Court. As already pointed out, the first accused was shown as the main accused, who had allegedly received the sale price and subsequently, refused to execute the sale deeds. This Court, in its order referred above, has specifically observed that though the defacto complainant had obtained two registered sale agreements in the years 1996 and 1998, no attempt has been made for getting sale deeds executed in his favour nor he filed any suit in case of refusal on the part of the first accused, that since the defacto complainant is having only sale agreement, he is not having any proprietary nor tangible interest over the properties and that the first accused is having unfettered right to alienation and therefore, he has executed a power of attorney deed in favour of his sons who in turn sold the same in favour of defacto complainant's brother's wife and that the above act of the accused would not constitute the offence under Section 420 of IPC.

10.This Court, by holding that the Investigating Officer, without knowing the evil design of the defacto complainant has erroneously filed the final report and the Court without considering the nature of the transactions that existed between the accused and the defacto complainant, has erroneously dismissed the discharge application, allowed the revision.

11. Considering the facts and circumstances of the case, this Court is of the clear view that the observation of this Court in Crl.R.C(MD)No.198 of 2013, is squarely applicable to the case on hand and as such, the revision petitioner, who is the third accused is also entitled to get an order of discharge, but the trial Court without considering the order passed in Crl.R.C(MD) No.198 of 2013, has passed the impugned order mechanically and as such, this Court has no hesitation to hold that the impugned order is liable to be set aside and is set aside accordingly.



12. In the result, the Criminal Revision is allowed the the impugned order passed in Cr.M.P.No.1680 of 2014 in C.C.No.30 of 2012, dated 31.07.2017, on the file of the learned Judicial Magistrate No.II, Thanjavur, is set aside. The revision petitioner/3rd accused is discharged from the proceedings in C.C.No.30 of 2012 on the file of the Court of the Judicial Magistrate No.II, Thanjavur. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1. The Judicial Magistrate No.II, Thanjavur.
2. The Chief Judicial Magistrate, Thanjavur.
3. The Sub-Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai (2 copies).

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and
CRL.M.P. (MD) No.7222 of 2017
16.04.2021

ns (CO)

TR (27.04.2021) 4P 7C