



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2022

PRONOUNCED ON : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.282 OF 2022

AND

CRL.M.P.NOS.2824 & 2825 OF 2022

A.Narayanan

... Revision Petitioner/A2

.Vs.

The State Rep. By
The Inspector of Police,
Central Crime Branch,
Team XXI Thousand Lights,
Chennai.

... Respondent/complainant

PRAYER:-

Criminal Revision Case filed under Section 397 r/w 401 of of the Code of Criminal Procedure, against the order dated 13.10.2021 made in C.M.P.No.3059 of 2021 in C.C.No.189 of 2009, on the file of the learned Judicial Magistrate No.I, Poonamallee.

For Revision Petitioner : Mr.B.K.Girish Neelakantan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate
(Criminal Side)

O R D E R

This Criminal Revision Case has been directed against the order dated 13.10.2021, passed by the learned Judicial Magistrate No.I, Poonamallee, in Crl.M.P.No.3059 of 2021 in C.C.No.189 of 2009.

2. The petitioner is arrayed as Accused No.2 in C.C.No.189 of 2009. The said case has been foisted against the petitioner



and four others, alleging that they committed offence under Sections 420, 465, 467, 468, 471, 420 and 120 IPC. After taking cognizance, when the said case has been posted for trial, the petitioner herein filed a petition under Section 239 of Cr.P.C., praying to discharge him from the charges.

3. Before the trial Court, it is the case of the prosecution that the defacto complainant's father had purchased a landed property measuring an extent of 34 cents in Survey No.440/2A1A and 11 cents in Survey No.440/2J, from one Mr.Parthasarathy Pillai by a deed of Sale Document No.2693/1963 registered on the file of the Sub Registrar's Office, Poonamallee. One Mr.Paulraj and his sister Arockiya Madha along with their 5 henchmen came to the land and picked up a quarrel with the defacto complainant and damaged the fencing and removed the name board erected by the defacto complainant. Later, the defacto complainant came to know that they are the group fabricating forged documents for the lands. In this regard, the defacto complainant lodged a complaint in CCB, Land Grabbing Cell. On receipt of complaint, a case in CCB Cr.No.425/2008 under Section 420, 465, 467, 468, 471 and 120(b) IPC was registered and after completing investigation, the investigation officer has filed a charge sheet against the accused persons and the case is now under trial.

4. The learned counsel appearing for the petitioner submitted that the defacto complainant has attempted to give the colour of criminal offence against the petitioner and that too, the matters of which are essentially and purely in civil nature. All documents relied on by the prosecution are properly registered before the Sub Registrar's Office, Ambattur and there is no necessity of forging such documents as alleged in the charge sheet.

5. It is the further submission of the learned counsel for the petitioner that the charge sheet is prepared without noticing and taking into consideration of complainant's parent documents. Parent document of the complainant revealed that, complainant Gopalan's predecessor did not purchase 0.11 cents by any registered document. The respondent police without verifying the boundary marks of previous documents, believing the document submitted by the complainant registered a case and filed a final report against this petitioner. Even assuming that the documents relied on by the petitioner is a forged one, being the reason that the same was executed by the vendor of the land with the bonafide belief that the land belongs to him, it cannot be said that with an intention to defraud the defacto complainant, the petitioner and others committed the offence as alleged by the prosecution.

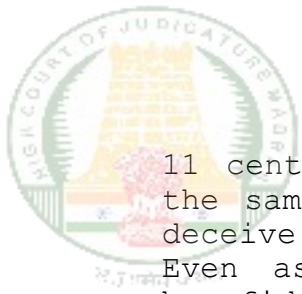


6. Further, the learned counsel for the petitioner submitted that since a Civil Suit in C.S.No.260 of 2008 is pending before the competent forum, it would be necessary to discharge the petitioner from the alleged charges. The trial Court without considering the said aspect dismissed the petition filed by the petitioner, which is erroneous in law. In support of his contentions, the learned counsel appearing for the petitioner relied on the following judgments and prayed to set aside the order impugned herein.

- (i) B. Suresh Yadav v. Sharifa Bee & Another [CDJ 2007 SC 1120].
- (ii) Yogesh Alias Schin Jagdish Joshi v. State of Maharashtra [(2008) 10 SCC 394].
- (iii) Mohammed Ibrahim and Others v. State of Bihar and Another [(2009) 8 SCC 751]
- (iv) Devendra and Others v. State of U.P. And Another [(2009) 7 SCC 495]
- (v) Sheila Sebastian v. R.Jawaharaj and Another [(2018) 7 SCC 581]

7. The learned Government Advocate (Criminal Side), appearing for the respondent police denied the submissions made by the petitioner's counsel. He would further submit that the document enclosed along with the final report i.e. Document No.2692/1963, would disclose the fact that the defacto complainant is having title for 11 cents. Infact one T.Parthasarathy Pillai sold the property comprised in SF No.440/2A measuring of 34 cents and S.F.No.440/2J, measuring of 11 cents, totally 45 cents, in favour of Ramanatha Dheekchadhar, who is the father of the defacto complainant herein. Later, the accused included the land belongs to the defacto complainant, entered into sale transaction and executed the documents in the name of various persons. It shows that without any right in respect to the subject property, the petitioner and others sold the property and thereby, there was a prima facie case, to show that the petitioner has committed an offence as alleged by the prosecution.

8. Submissions made by the learned counsel appearing on either side are considered. Vide Document No.2692/1963, the father of the defacto complainant purchased the property measuring an extent of 45 cents in S.F.No.440/2A and 440/2J, among which, the petitioner after including 11 cents, which found in S.F.No.440/2J, sold some other properties and created a false document. In such a situation, if the petitioner sold out



11 cents of property which belongs to the defacto complainant, the same will prove that he is having a dishonest intention to deceive the defacto complainant and executed a false document. Even assuming that he executed the said sale document with bonafide intention that the said property belongs to him, the same has to be decided only at the time of trial as to whether the petitioner committed a bonafide mistake or not.

9. It is true, a civil dispute cannot be converted into a criminal nature. A dispute regarding the boundaries and the pendency of the civil cases, does not substantiate a criminal case. However, in the present case, all the accused layout the property including the plot belongs to the defacto complainant, without any right over the property. Only based on such complaint a case has been registered. Therefore, without tracing out the document, which will prove that the defacto complainant is having the right in a property, which was sold already by the petitioner, it cannot be said the dispute having by the petitioner is only a civil nature.

10. The obligation to discharge the accused under Section 239 Cr.P.C., arises when the Magistrate considers the charge against the accused to be groundless. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage. The exercise of weighing materials in golden scales is certainly not to be undertaken at this stage and has to be postponed to a later date. In otherwise, while at the time of framing charge, the Magistrate is expected to apply his mind to the facts of the case keeping in view the essential ingredients of the offence for which the accused is sought to be charged.

11. Here it is a case, in the impugned order, the learned Magistrate clearly held that the Document No.2692/1963 is an important document and also the same is evident for proving the title having by the defacto complainant. In otherwise, it is not the case of the petitioner that the said property has been partitioned during the time of laying out the properties. Therefore, the said act committed by the petitioner is sufficient for framing the charge against him. Therefore, whether the accused is guilty/innocence of the charge the evidence adduced is not be meticulously seen, the same has to be seen only at the time of trial.

12. It is settled law, where material on record discloses offence, the accused cannot be discharged. Further, where complaint, the statement of witness and documents filed along with the charge sheet, show prima facie material to frame the charge, the accused would not be discharged.



13. Herein also, in the impugned order, as rightly pointed out by the learned counsel appearing for the respondent, that the execution of the document without any right in respect to subject property will come under the caption of 'forgery or false' document. Accordingly, I am of the considered opinion that the learned Judicial Magistrate after going through the entire final report filed by the prosecuting agency came to the conclusion that there was a prima facie case against the petitioner for framing the charge and ultimately, dismissed the application. The said findings arrived at by the trial Court is not a perverse one.

14. Further, though it was alleged that the other accused in this case have entered into compromise with the defacto complainant, until the petitioner herein entered into a compromise with the defacto complainant, this Court cannot conclude that the entire dispute having by the defacto complainant with the petitioner is settled.

15. In the result, the Criminal Revision Case is dismissed. The order dated 12.02.2020 made in C.M.P.No.4545 of 2019 in C.C.No.546 of 2012, on the file of the learned Judicial Magistrate No.I, Poonamallee, is confirmed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ars

To

1. The Judicial Magistrate No.I,
Poonamallee.
2. -Do Thro The Chief Judicial Magistrate,
Thiruvallur District.
3. The Inspector of Police,
Central Crime Branch,
Team XXI Thousand Lights,
Chennai.



4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.K.Girish Neelakantan, Advocate, S.R.No.16720

WEB COPY

CRL.R.C.NO.282 OF 2022

KK (CO)
PBS/22/03/2022