IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2022

Date of Verdict : 23.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.12985 & 12986 of 2020
Crl.M.P.Nos.5061 & 5062 of 2020 and 1455 & 1456 of 2021

S.Jagathrakshakan ... Petitioner in both Crl.O.Ps.

Vs.

1. The State by
   The Inspector of Police,
   CBCID,
   Head Quarters,
   Chennai.
   (Crime Nos.02 & 03/2016)

2. Q.Dawson
   Power Agent of
   George Joseph Chambers (Late)

3. Saroja Chambers

4. David Chambers

5. Robin Chambers

6. Rakshna Jai Balaji

7. Sylvia Chambers

8. Leena Hiba

Respondents 3 to 8 rep. by
their Power of Attorney Agent
S.Ravi Kumar Alias Ravi
Respondents 3 to 8 were impleaded
as per the order dated 23.09.2022
passed by this Court in
Crl.M.P.Nos.5024 & 5027 of 2022 ... Respondents in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records relating to the FIR in Crime Nos.2 & 3 of 2016 on the file of the Inspector of Police, CBCID, Head Quarter, Chennai, the first respondent herein and quash the same.

In both Crl.O.Ps.

For Petitioner : Mr.S.Manishankar, Senior Counsel
For Mr.N.Senthilkumar

For Respondents
For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 : Mr.G.Rajagopalan, Senior Counsel
For Mr.E.J.Ayyappan

For R3 to R8 : Mr.M.Vignesh

COMMON ORDER

These petitions have been filed to quash the FIR registered in Crime Nos.2 & 3 of 2016 on the file of the first respondent police registered for the offences under Sections Sections 420, 465, 466, 467, 468, 471 & 120B of IPC, and under Sections 420, 465, 467, 471 & 120B of IPC respectively, as against the petitioner.

2. The case of the prosecution is that the defacto complainant is the power agent of one George Joseph Chambers, who is the only legal heir of late George Alexander Chambers and Ida L Chambers. The said George Alexander Chambers purchased 5000 equity shares and 2000 preferential shares in the name of M/s. Chrome Leather Company and appointed three trustees viz., Ida L Chambers, H.M.Small and Vellore Parthasarathy Jeganathan Mudaliar. Among those shares 4997 shares were held by the trustees and the trustees executed a sale deed in favour of M/s. Chrome Leather Company and Ida L Chambers came into possession of the properties in her individual capacity and later compromise decree was passed on 19.02.1965 in C.S.Nos. 46 of 1963 & 2 of 1964.

3. Thereafter, the properties came into the possession of Ida L Chambers and she died on 13.08.1968, leaving behind the principal of the defacto complainant as her sole legal heir. Since the principal of the defacto complainant was travelling on the high seas, he was not able to concentrate

upon the properties. While being so, the defacto complainant collected details and came to know that the equity shares and preferential shares were transferred in the name of A.Nagappa Chettiar and he was representing M/s. Chrome Leather Company as Managing Director. After demise of Ida L Chambers, the said A.Nagappa Chettiar had deposited the bogus share certificates in the Central Bank of India to obtain loans. The said A.Nagappa Cheittiar had shown himself as Managing Director of M/s. Chrome Leather Company as early as on 1944, but he had come to picture only after the demise of Ida L Chambers.

4. Thereafter the said A.Nagappa Chettiar mortgaged the properties belonging to M/s. Chrome Leather Company and also the private properties of George Alexander Chambers and Ida L Chambers. The bank authorities of Central Bank of India without following the rules and regulations, sanctioned the loan and thereafter filed a suit in O.S.No.314 of 1980 for declaration and bringing the properties for public auction. The petitioner herein had purchased the shares in collusion with A.Nagappa Chettiar knowing that the shares were fabricated. The bank authorities without following the legal procedures and the SARFAESI Act had transferred the shares in favour of the petitioner herein.

Thereafter most of the properties were unlawfully and illegally meddled by the petitioner herein and others. They manipulated the revenue records and created false documents by forging the signature of the original owner and also threatened the second respondent. Hence, the cases in Crime Nos.304 & 305 of 2007 were registered by the City Crime Branch X, Thousand Lights, Chennai, on 20.06.2007.

5. After completion of investigation, the Crime Branch Police had filed final reports by concluding that the cases were “Mistake of Facts” before the learned Judicial Magistrate No.I, Poonamallee. The second respondent had also filed protest petitions before the learned Judicial Magistrate No.I, Poonamallee, in C.M.P.Nos.4147 & 4148 of 2007 and the same were dismissed on 23.04.2009 by accepting the final reports filed as mistake of fact. Thereafter, based on the suo-muto order passed by the Additional Director General of Police, vide R.C.No.C6/8313/2012, the above cases were taken up for further investigation and the first respondent herein had filed petitions for further investigation in Crl.M.P.Nos.3915 & 3914 of 2013 before the learned Judicial Magistrate No.I, Chengalpattu, and the same were also dismissed on 26.02.2014. As against the said order, the first respondent had filed revision

petitions in Crl.R.C.Nos.5 & 4 of 2014 before the Additional District and Sessions Judge, Chengalpattu, and the same were allowed on 11.08.2016. Based on the said order, the first respondent has registered the present FIRs in Crime Nos.2 & 3 of 2016, by relying upon the same allegations levelled in the original complaint lodged by the second respondent.

6. Mr.S.Manishankar, learned Senior Counsel appearing for the petitioner submitted that after registration of FIRs, the investigation was conducted and filed final reports thereby concluded the cases as mistake of facts. On the closure report, the second respondent had filed protest petitions in C.M.P.Nos.4147 & 4148 of 2007 on the file of the learned Judicial Magistrate No.I, Poonamallee, and the same were also dismissed by an order dated 23.04.2009 and the closure reports were accepted as the FIRs closed as mistakes of facts. The second respondent failed to prefer any revision as against the said order and it attains finality.

6.1. After three years from the date of the order passed by the learned Judicial Magistrate No.I, Poonamallee, the Additional Director General of Police by his proceedings in R.C.No.C6/8313/2012 had taken up the FIRs registered in Crime Nos.304 & 305 of 2007 on the file of the City Crime Branch X, Thousand Lights, Chennai. The first respondent filed petitions in Crl.M.P.Nos.3915 & 3914 of 2013 before the learned Judicial Magistrate No.I, Chengalpattu, seeking permission for further investigation. The learned Judicial Magistrate No.I, Chengalpattu, dismissed both the applications on 26.02.2014. Aggrieved by the same, the first respondent herein filed revision petitions in Crl.R.C.Nos.4 & 5 of 2014 before the learned Additional District and Sessions Judge, Chengalpattu. Both the petitions were allowed on 11.08.2016 and based on the order passed by the learned Sessions Judge, the first respondent registered the present impugned FIRs in Crime No.2 of 2016 for the offences under Sections 420, 465, 466, 467, 468, 471 & 120B of IPC, insofar as the Crime No.304 of 2007. Insofar as the Crime No.305 of 2007 is concerned, the first respondent registered the FIR in Crime No.3 of 2016 for the offences punishable under Sections 420, 465, 467, 468, 471 & 120B of IPC.

6.2. He further submitted that there is absolutely no allegations as against the petitioner to attract any of the offence as registered by the first respondent. Even according to the case of the complainant, Ida L Chambers left the properties leaving behind the second respondent's principal as her legal heir and her signatures were forged and all the documents were fabricated. But the said Ida L Chambers during her life time sold out the shares of M/s. Chrome Leather Company to one A.Nagappa Chettiyar as early in the year 1965. He died in the year 1982 and the bank authorities had brought the properties for public auction. In the said public auction, the petitioner was being the authorized representative of M/s. V.K.K. Charities had participated in the bid and had purchased the properties by clearing the mortgage loan in the year 1995.

6.3. He further submitted that one George Alexander Chambers had three wifes and he married one after the other, after each of the earlier wife died. The first wife was Ethel Mary Chambers and the second wife was Margaret Agnes Chambers and third wife was Ida L Chambers. Through the first wife, George Alexander Chambers had three children and through second wife, he has a son and through the third wife, he had no issue. He was carrying on the business of leather in the name of two proprietorship firms viz., M/s. Chrome Leather Company and M/s. Chambers & Co. The said George Alexander Chambers died on 16.11.1937 left behind a Will in favour of his third wife Ida L Chambers and Roy Edwin Medcalf Chamber, the son born through the second wife and also appointed Executors. The said Will was probated before this Court in O.P.No.57 of 1938.

6.4. In the mean while, the said Ida L Chambers and the Executors of the Will constituted a limited liability company viz., M/s. Chrome Leather Company Private Limited by converting the aforesaid two proprietary concerns on 07.12.1943 and the same was incorporated with the Registrar of Companies, Chennai. Thereafter, they sold out six movable and immovable properties of M/s. Crome Leather Company Private Limited. The said sale was challenged before this Court in C.S.No.46 of 1963 by Roy Edwin Medclaf Chambers. The counter party viz., Ida L Chambers also filed another suit in C.S.No.2 of 1964 seeking permission to effect a sale of 7000 shares of M/s. Crome Leather Company Private Limited. In both the above suits, a Common Compromise Memo filed in application No.220 of 1965 in C.S.No.2 of 1964 and both the suits were disposed of under a Common Compromise Decree dated 19.02.1965.

6.5. After the compromise decree, Ida L Chambers has become absolute owner of the properties and she entered into an agreement with A.Nagappa Chettiar, with an intention to transfer her shareholding in M/s. Chrome Leather Company Private Limited. As per the said agreement the purchaser viz., A.Nagappa Chettiar was directed to pay a sum of Rs.10 lakhs with interest thereon to Roy Edwin Medcalf Chambers and his family members as per the compromise decree dated 19.02.1965. The share certificate issued in favour of A.Nagappa Chettiar with distinctive numbers totaling 4,995 equity shares and 1800 preference shares. Immediately, Roy Edwin Medcalf Chambers raised objection and filed application in A.No.2297 of 1965 in C.S.No.46 of 1963 on the ground that the charge created under compromise decree was not registered with Registrar of Companies. Therefore, he had knowledge about the transfer of shares from the Ida L Chambers to A.Nagappa Cheittiyar. In fact the said application No.2297 of 1969 was dismissed by an order dated 27.09.1965. Therefore, there could not have been any forgery or transfer deeds in respect of the shares in favour of the said A.Nagappa Chettiar. When there was no allegations of forgery as early in the year 1968, there cannot be any plea of forgery to be taken by any other persons like the second respondent herein.

6.6. As per the prevailed norms of the Reserve Bank of India at the relevant time, the shares pleaded by A.Nagappa Chettiar were also transferred in the name of the Bank viz., Central Bank of India on 20.07.1977. Since the company defaulted in making payment, the Central Bank of India filed a civil suit for recovery of the amount before the Sub Court, Chengalpattu in O.S.No.314 of 1980. In the said suit, the parties entered into a compromise and preliminary compromise decree was passed. As per the decree, the Central Bank of India was entitled to transfer 4995 equity shares and 1800 preference shares of M/s. Chrome Leather Company Private Limited. Since the company was sustained losses, it was referred to the Board for Industrial and Financial Reconstruction (herein after referred to as "BIFR") and the BIFR Bench concluded that the company had to be wound up as per the provisions under Section 20 of the BIFR Act.

6.7. In the meanwhile, the Central Bank of India in order to realize its dues published notice inviting tenders from the prospective buyers for purchase of the shares of M/s. Chrome Leather Company Private Limited including its building and machineries. M/s. V.K.K. Charities made their bid and finally declared as successful bidder. The successful bidder approached the BIFR to rehabilitate the company without resorting to the sale of lands.

Accordingly, BIFR appointed the Central Bank of India as operating agency to examine the proposed revival scheme submitted by the new promoters, by an order dated 18.10.1994. Thereafter, the Central Bank of India came to a conclusion that V.K.K. Charities had proved their capacity for bringing in funds for a start-up operation.

6.8. The said V.K.K. Charities nominated the petitioner herein to the Board of M/s. Chrome Leather Company Private Limited vide order dated 29.05.1995 and nominated him for receiving transfer of shares in his own name and also nominate him as a Director of the company and the same also informed to BIFR. The Central bank of India accepted the nomination and executed necessary share transfer deed transferring 4995 equity shares in favour of the petitioner. The Central Bank of India had also released its dues and issued no due certificate, as such the transfer of shares either in favour of Nagappa Chettiar or in favour of the petitioner did not involve any forgery or fabrication. All the transactions had been effected either with the permission of the Court or it had been recognized by the Court. The transfer in favour of A.Nagappa Chettiar had been clearly admitted by Ida L Chambers and Roy Edwin Medcalf Chambers before this Court in the year 1968 itself.

6.9. He further submitted that after demise of Ida L Chambers, the Executors renounced Executorship and thereafter the Advocate General & Official Trustee took possession of the assets by virtue of an order passed in O.P.No.156 of 1986. M/s. Chrome Leather Company Private Limited, voluntarily informed the Advocate General & Official Trustee regarding the movable assets of Ida L Chambers. Thereafter, the Advocate General & Official Trustee filed petition in O.P.No.178 of 1969 seeking the grant of Letter of Administration in respect of the Will executed by the said Ida L Chambers and the same was ordered by an order dated 26.03.1970. Therefore, the properties owned by the M/s. Chrome Leather Company Private Limited cannot be the subject matter of the Letter of Administration granted in O.P.No.178 of 1969.

6.10. As per the Will executed by George Alexander Chambers in favour of his third wife Ida L Chambers and Roy Edwin Medcalf Chambers, son born through his second wife and he had not bequeathed any of the property in favour of the first wife's children. The said George Joseph Chambers, who allegedly claimed to be a son of Kellan Huxford Chambers, who is the son of George Alexander Chambers born through his first wife, filed an application in A.No.3899 of 2007 to revoke the Letter of administration granted in O.P.No.178 of 1969 and the same was dismissed for the reason that he is not the legal heir of Ida L Chambers. Therefore, the present impugned FIRs are initiated only to grab money from the petitioner.

6.11. In fact, the legal heirship certificate issued to George Joseph Chambers showing him as a legal heir of Kellan Huxford Chambers was quashed by this Court in W.P.Nos.33248 & 33249 of 2007. Therefore, he was facing charges of forgery and fabrication of documents in C.C.No.1083 of 2012 on the file of the learned Judicial Magistrate, Tambaram. On 04.06.1987 the said Kellan Huxford Chambers died at England. Therefore, the present impugned FIR is nothing but clear abuse of process of law and it is liable to be quashed.

6.12. The learned Senior Counsel further submitted that the second respondent relied upon the Will as if executed by his principal George Alexander Chamber and filed O.P.No.382 of 2010 for probation. Though it was allowed initially, thereafter revoked and condemned the conduct of the second respondent and had observed that *prima facie* case of fraud has been shown to the Court. Aggrieved by the same, the second respondent filed an appeal in O.S.A.No.256 of 2012 and this Court directed to convert the aforesaid OP as Testamentary Suit and accordingly it had been numbered as T.O.S.No.7 of 2012 and the same was also dismissed by this Court by an order dated 17.07.2018.

6.13. In fact, the acceptance of tender submitted by M/s.V.K.K. Charities has been challenged by one Motherland Leathers before the District Munsif, Tambaram, in O.S.No.3392 of 1993 and the same was also dismissed by an order dated 23.06.1994. Therefore, the second respondent has no locus standi to lodge any complaint. The Hon'ble Supreme Court of India time and again insisted that a civil case cannot be converted into criminal case and such a practice will have to be deprecated. There is absolutely no allegations to attract the offences under Sections 420, 465, 466, 467, 468, 471 & 120B of IPC, of IPC, as against the petitioner. Hence, he prayed for quashment of both the FIRs in Crime Nos 2 & 3 of 2016.

7. The learned Additional Public Prosecutor appearing for the first respondent filed counter affidavit in both the cases. On perusal of the counter

affidavit filed by the first respondent in Crl.O.P.No.12985 of 2020 revealed that through the judgment dated 19.02.1965 passed by this Court in C.S.Nos.46 of 1963 & 2 of 1964, all the properties of George Alexander Chambers were transferred into the name of Ida L Chambers, after reserving a cash settlement in favour of Roy Medcalf Chambers. Further all the properties standing in the name of M/s. Chrome Leather Company were also transferred into the name of Ida L Chambers. M/s. Chrome Leather Company was a party to the above suits and yet the petitioner/accused continues to claim that the company is the owner of the properties by virtue of the void sale deed dated 14.03.1944 bearing document No.530 of 1944, hence knowingly the petitioner has committed a clear case of forgery and has repeatedly attempted to use as forged document as genuine for the purpose of cheating.

7.1. In the year 1977, the bank insisted for further security since Nagappa Chettiar had completely defaulted in repayment of the loan and by way of abundant caution, the bank got the forged share certificates standing in the name of Nagappa Chettiar transferred and registered into their name. The company had yet again failed to repay the loan and hence the Central Bank of India filed a mortgage suit for recovery of its dues from the company in

O.S.No.314 of 1980 before the Sub Court, Chengalpattu and obtained a preliminary compromise decree dated 19.10.1981 for recovery of a sum of Rs.2,82,01,917.44 with interest. However, even after obtaining a final decree on 15.02.1984, the Bank did not take any steps for executing the decree upto the year 1993, when the Bank opted for a direct public auction of the shares of the company without the knowledge of the civil Court, which is again an illegal attempt to deal with the properties of Ida L Chambers, by illegally selling the same through a private auction.

7.2. Further in the year 1988 itself, when the properties were under mortgage with the bank, the petitioner herein had purchased 5.96 grounds of land in S.No.517/6, situated at Pallavaram Village from the Bank vide document No.1764/1988 in favour of the petitioner's wife, in violation of the civil Court decree. Thus, the criminal conspiracy between the bank and the petitioner to illegally acquire the company with the bank's support commenced from the year 1988 itself. The records disclose that the bank has sold nearly 20 acres of lands which were illegally pledged by A.Nagappa Chettiar and the same has taken place directly without following the procedures as contemplated under the Cr.P.C., and without accounting for the same before the Court.

7.3. The investigation revealed that the petitioner had a close nexus with the bank and manipulated the sale of the shares from the name of the successful bidder M/s. V.K.K. Charities into his own name and started selling the properties indiscriminately and thus he had continued with the illegal activities commenced by Nagappa Chettiar. Further the petitioner had entered into an agreement dated 31.01.1995 with M/s. V.K.K. Charities to purchase the shares in his own name as the nominee, much before the sale consideration was deposited into the Central Bank of India. It is evident from the fact that the Central Bank of India had issued no-due certificate to M/s. Chrome Leather Company Private Limited even before the sale was concluded in favour of the petitioner and hence the documentation was preplanned without any transfer of funds into the Central Bank of India.

7.4. During the enquiry, the petitioner gave statement that he has availed a loan from the Indian Bank, Ethiraj Salai Branch to pay the sale consideration. However, the investigation reveals that the petitioner has availed a loan from the Indian Bank only on 07.10.1995 by pledging 67.69 acres property of M/s. Chrome Leather Company for rupees six crores which completely contradicts the version he stated. The petitioner has fabricated illegal sale deeds without any title in the name of the Company as the vendor and he has wrongfully enriched himself by selling the properties belonging to Ida L Chambers and her legal heir.

7.5. M/s. Chrome Leather Company while claiming that they owned the properties purchased by the vide void sale deed dated 14.03.1944 bearing document No.530 of 1944, it should be expected that all the properties measuring 248 acres belongs to M/s. Chrome Leather Company. However, 107.75 acre were alone pledged with the Central Bank of India and the petitioner claims that the rest of the properties other than 107.75 acres have been sold by M/s. Chrome Leather Company prior to the 1965 High Court judgment to various third parties. When M/s. Chrome Leather Company does not own any property pursuant to the High Court decree dated 19.02.1965, the claim of transfer of ownership of the immovable properties in favour of the company together with the transfer of the shares is yet another illegal attempt made by the petitioner.

7.6. The investigation reveals that the petitioner has not only sold parts of the property measuring 67.69 acres, but he has been selling properties which do not form part of the said 67.69 acres. The petitioner had conspired with other accused and executed sale deed for the properties over which neither the petitioner nor other accused have any right, title or interest over those properties. Further, the properties which was transferred to Ida L Chambers as per the High Court decree in the year 1965 was around 248 acres, in which 57.95 acres of land were used for constructing Madras Institute of Technology at Chrompet. The remaining 190 acres was in the name of Ida L Chambers, which was taken possession by the petitioner herein under the pretext of belonging to M/s. Chrome Leather Company Private Limited.

7.7. In Crl.O.P.No.12986 of 2020, the first respondent filed counter and it revealed that the entire transaction of shares of M/s. Chrome Leather Company Private Limited, first by way of pledging in Central Bank of India by A.Nagappa Chettiar and later taken in auction by the petitioner herein, has been done arbitrarily without following any of the procedure as mentioned in the Companies Act, 1956, with the criminal intention of grabbing the large landed properties of Ida L Chambers. The subsequent act of the petitioner in selling the landed properties of Ida L Chambers is even more grave offence which has been committed through forging of land records and using benamies for selling them and making huge pecuniary gains.

7.8. The petitioner herein was a sitting Member of Parliament and has been in public life for many years. His above act strikes at the very root of probity in public life which is very essential for a healthy democracy as pointed out by the Hon'ble Supreme Court of India in many cases. Hence the above cases have to be investigated in depth and it is likely that several more persons involved since the magnitude of the case is so enormous that more and more incriminating documents are being seized even at the stage of the investigation. Further the points raised by the petitioner are the subject matter of trial. Criminal jurisprudence would require the alleged offender to co-operate in the investigation and face the trial in the manner known to law. The filing of quash petition is only with the intention to subvert the investigation which is the complete abuse of process of law.

8. Mr.G.Rajagopalan, learned Senior Counsel appearing for the second respondent/defacto complainant submitted that Ida L Chambers had never executed any document for transfer of her shares in favour of A.Nagappa Chettiar and hence the signature found on the share certificate is forged one. Further the share transfer procedure itself has not been performed as per law

and no supporting statutory registers have been produced by the petitioner during the investigation. The investigation reveals that it is the duplicate share certificate which has been used by A.Nagappa Chettiar for transferring the shares of M/s.Chrome Leather Company in favour of the Central Bank of India, since the name of the transferee viz., the Central Bank of India has been endorsed on the reverse side of the said duplicate share certificate and hence the original share certificate has been suppressed by A.Nagappa Chettiar.

8.1. Further, when M/s. Chrome Leather Company Private Limited approached the Central Bank of India for a loan, it had no properties standing in its name, since by virtue of the common judgment and decree dated 19.02.1965 passed in C.S.Nos. 46 of 1963 & 2 of 1964, all the properties standing in the name of M/s. Chrome Leather Company was transferred into the individual name viz., Ida L Chambers. Therefore, A.Nagappa Chettiar has played a fraud on the Central Bank of India by depositing the invalid sale deed dated 14.03.1944 bearing document No.530 of 1944 for availing loan and further producing false share certificates and by transferring the same in favour the said bank.

8.2. He further submitted that the said A.Nagappa Chettiar also illegally pledged the properties standing in the name of Ida L Chambers as the said properties belong to the Company. Further the tender notice dated 27.06.1993 issued by the Central Bank of India was only for the sale of the shares of M/s. Chrome Leather Company Private Limited and never for sale of the immovable properties, buildings and machineries, which were never included for sale through the said notice. If the company had already owned the immovable properties, then with the transfer of shares through the sale, the immovable properties of the company also got transferred. But here in this case, when the company had been divested of all its immovable properties by virtue of the judgment of this Court dated 19.02.1965, the question of transfer of the properties along with the sale of its shares does not arise.

8.3. He further submitted that more than 9000 documents have been collected in the course of investigation and the evidence discloses that the properties worth about several crores of rupees have been illegally grabbed by the petitioner and his associates, by forgery and fabrication of title deed and share certificates. Further, the investigation is almost reaching its finality and at this stage the FIRs cannot be quashed and therefore, he prayed for dismissal of both the petitions.

9. Mr.M.Vignesh, learned counsel appearing for the respondents 3 to 8 submitted that the respondents 3 to 8 are the only surviving legal heirs of the late George Joseph Chambers and his great grandparents of late George Alexander Chambers and late Ida L Chambers. By virtue of the compromise decree dated 19.02.1965 in C.S.Nos.46 of 1963 & 2 of 1964, Ida L Chambers is an absolute owner of the properties of M/s. Chrome Leather Company Private Limited. She died on 13.08.1968 without alienating the properties of M/s. Chrome Leather Company Private Limited and no other person has any right or interest on title over the immovable properties of the said company. A.Naappa Chettiar and the petitioner herein had fabricated and created bogus documents and there is no piece of valid document to establish that Ida L Chambers had transferred the above equity shares and preferential shares to A.Nagappa Chettiar.

9.1. He further submitted that the second respondent/defacto complainant is acting against the interest of the legal heirs of late George Joseph Chambers and he has started to grab the properties of Ida L Chambers and started continuously to cheat the respondents 3 to 8 herein. In fact, this Court by the judgment dated 17.07.2018 in T.O.S.No.7 of 2012 specifically held that the second respondent has played a fraud upon this Court and the conduct of the second respondent smacks malafide from the date of initiation of the proceedings. The respondents 3 to 8 are being the legal heirs of late George Joseph Chambers, it is their duty to safeguard the estate of Ida L Chambers. Therefore, he prayed for dismissal of the quash petitions.

10. Heard Mr.S.Manishankar, learned Senior Counsel appearing for the petitioner, Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the first respondent/police, Mr.G.Rajagopalan, learned Senior Counsel appearing for the second respondent and Mr.M.Vignesh, learned counsel appearing for the respondents 3 to 8 in both petitions.

11. In both the FIRs registered in Crime Nos.2 & 3 of 2016, the petitioner is arrayed as A2. The brief case in Crime No.2 of 2016 is that the properties of Ida L Chambers have been meddled and misappropriated by the petitioner and others who are all professional rowdies. With the help of the Revenue Officers and local Thasildar, all the properties were transferred in the name of the petitioner and his wife in various survey numbers. The accused formed layouts and sold the properties making crores of money which are not

rightfully their properties and they continuously threatened the defacto complainant to do away with his life.

12. The brief fact in Crime No.3 of 2022 is that one A.Nagappa Chettiyar forged certificates of M/s. Chrome Leather Company Private Company and pledged it with the bank and subsequently sold to the petitioner illegally. The original share certificates were in the name of the trustees viz., H.M.Small, V.P.Jaganathan and Ida L Chambers. However, the shares in possession of the petitioner herein were false and fabricated by the previous owner A.Nagappa Chettiyar. Further the said A.Nagappa Chettiyar and the Central Bank of India were co-conspirators and under valued the shares. Further A.Nagappa Chettiyar and the petitioner entered into a conspiracy to forge and fabricate the share certificate of M/s. Chrome Leather Company Private Limited.

13. It is not disputed by both parties the one English businessman by named George Alexander Chambers had purchased extensive properties in an around Pallavaram & Thiruneermalai village and he had also established a tannery company called M/s. Chamber & Co in Zamin Pallavaram. He had

executed a Will dated 18.12.1930 bequeathing his entire properties in favour of his third wife Ida L Chamber and his son Roy Edwin Medcalf Chambers, born through his second wife and further appointed three persons as Trustees viz., Ida L Chambers, H.M.Small and Vellore Parthasarathy Jaganatha Mudaliyar to manage the properties, since Roy Edwin Medcalf Chamber was a minor at that time.

14. After demise of George Alexander Chambers, the Trustees transferred the entire extent of immovable properties standing in the name of George Alexander Chamber to and in favour of M/s. Chrome Leather Company Private Limited, by executing a sale deed dated 14.03.1944 bearing document No.530 of 1944. After attaining majority, Roy Edwin Medcalf Chambers filed a civil suit in C.S.No.46 of 1963 before this Court against Ida L Chambers and M/s. Chrome Leather Company Private Limited challenging the sale of immovable properties made by the trustees in favour of M/s. Chrome Leather Company Private Limited. In the above suit, a compromise decree dated 19.02.1965 was passed by this Court, putting an end to the trust created by George Alexander Chambers and by transferring the entire corpus of the immovable properties from M/s. Chrome Leather Company Private

Limited into the name of Ida L Chambers as determining a cash settlement of Rs.10 lakhs for Roy Edwin Medcalf Chambers and his family.

15. On 21.04.1965, Ida L Chambers entered into an agreement to sell her shareholdings of M/s.Chrome Leather Company Private Limited to A.Nagappa Chettiar. She died in a car accident on 13.09.1968. Therefore, the company requested the Administrator General and Official Trustee to take possession of the estate of Ida L Chambers. Thereafter, the Administrator General & Official Trustee filed O.P.No.178 of 1969 seeking the grant of Letter of Administration and the same had also been ordered on 26.03.1970. In the said order of granting Letter of Administration is only in respect of the estates owned by Ida L Chambers and the properties owned by M/s. Chrome Leather Company Private Limited was not the subject matter of the Letter of Administration.

16. Thereafter, the said A.Nagappa Chettiar pledged the shares of M/s. Chrome Leather Company Private Limited with the Central Bank of India and availed loan to start up his business. Due to various reasons, he could not repay the said loans. Thereafter, the bank filed suit in O.S.No.314 of 1980 and

the same was ended in compromise wherein the bank was authorized to sell the shares. Thereafter, M/s.Chrome Leather Company Private Limited was referred to the Board for Industrial and Financial Reconstruction (herein after referred to as "BIFR") by the bank and its shares were brought for auction.

17. M/s. V.K.K. Charities being the highest bidder and the same was also confirmed. M/s. V.K.K. Charities nominated the petitioner as Director who was acted upon and the Bank also issued no due certificate on 05.06.1995. Therefore, there is no direct accesses between the petitioner and the said A.Nagappa Chettiar and the petitioner had no connection with him. The said A.Nagappa Chettiar died on 13.03.1982 and after the period of twenty five years, the second respondent claimed to be a power agent of George Joseph Chambers lodged complaints and the same had been registered in Crime Nos.304 & 305 of 2007 on the file of the City Crime Branch X, Thousand Lights, Chennai.

18. Further, after registration of FIRs in Crime Nos.304 & 305 of 2007, they conducted detailed investigation and thereafter closed as mistake of facts and the same was also duly accepted by the concerned learned

Magistrate. In fact, the protest petitions filed by the second respondent were also dismissed on 23.04.2009. While being so, after the period of four years, the Additional Director General of Police, suo-muto ordered to transfer of investigation to the file of the first respondent herein. Therefore, the first respondent filed petition for further investigation and the same was also dismissed on 26.02.2014. As against the said order, the first respondent filed revision petitions in Crl.R.C.Nos.4 & 5 of 2014 on the file of the learned Additional District and Session Judge, Chengalpattu and both were allowed on 11.08.2016. In pursuant to the same, the first respondent registered the impugned FIRs in Crime Nos.2 & 3 of 2016.

19. The second respondent/defacto complainant is claimed to be a power agent of George Joseph Chambers, who is the son of Kellan Huxford Chambers, born to George Alexander Chambers through his first wife. The said George Joseph Chambers claimed to be a grandson of George Alexander Chambers, who is the original testator. It is also seen that as per the compromise decree in the suit in C.S.Nos.46 of 1963 & 2 of 1964, George Joseph Chambers did not acquire any property from George Alexander Chambers. Further as per the Will of George Alexander Chambers also, he did not acquire any property.

20. Even assuming that George Joseph Chambers is the son of Kellan Huxford Chambers, he will not get any property from Ida L Chambers, since he is not her legal heir and the same was declared by this Court in the application in A.No.3899 of 2007 in O.P.No.178 of 1969 by an order dated 08.07.2008. This Court declared that the said George Joseph Chambers is not at all the legal heir of Ida L Chamber and further held that the probate order dated 26.03.1970 cannot be set aside that too after 37 years. Therefore, it becomes final and binding on the second respondent and George Joseph Chambers. Hence, the second respondent cannot claim any property as alleged in the impugned FIRs.

21. Further the death certificate produced by the second respondent was forged one and he is facing trial in C.C.No.1083 of 2012 on the file of the learned Judicial Magistrate, Tambaram for the offences under Sections 420, 467, 468 & 471 of IPC. Further the application filed by George Joseph Chambers to revoke the Letter of Administration granted in O.P.No.178 of 1969 and the proceedings initiated to annul the probate of Ida L Chambers was also dismissed. When the said George Joseph Chambers himself has no right over the property, the second respondent cannot assign any right either over

the company viz., M/s. Chrome Leather Company Private Limited or its property. Therefore, the second respondent is a total stranger and he has no right to initiate any proceedings which were inter-se party viz., Ida L Chamber on the one side and Roy Edwin Medclaf Chambers, who got settled by way of memorandum of compromise and compromise decree dated 19.02.1965 in application in A.No.220 of 1965 in C.S.Nos.46 of 1963 & 2 of 1964.

22. Further George Joseph Chambers himself died on 06.09.2008 as such, the power executed by him in favour of the second respondent also expired. Therefore, the second respondent has no locus standi to claim any property for his principal. Further his principal viz., George Joseph Chambers had no right over the property and there is a categorical finding by this Court in the order dated 29.06.2012 passed in Application Nos.2361 to 2363 of 2011 in O.P.No.382 of 2010 that the second respondent had played fraud on Court. Though the second respondent obtained order of probate of Will of George Joseph Chambers in O.P.No.382 of 2010 the same was revoked and converted into T.O.S.No.7 of 2012 on the ground of fraud and suppression of material facts. By virtue of the said order, the legal heir certificate obtained by the said George Joseph Chamber was set aside and the title of the M/s. Chrome Leather Company Private Limited has been renounced.

23. In fact, in the proceeding before the Revenue Divisional Officer, the second respondent created certain records pertaining to patta proceeding in respect of the property belonging to M/s. Chrome Leather Company Private Limited and the same was challenged before this Court in W.P.No.9595 of 2020 and this Court by an order dated 24.08.2020 set aside the proceeding of the Revenue Divisional Officer. Thus, it is clear that the second respondent lodged the present complaints with intention to usurp the property without any locus. In pursuant to the above said proceeding, a criminal proceedings was lodged as against the second respondent and the same has been registered in Crime No.1 of 2018 registered for the offences under Sections 420, 467, 468, 471 & 120B of IPC on the file of the City Crime Branch, Chennai. Now it is charge sheeted as against the second respondent. The second respondent has been charged that he created fictitious person viz., George Joseph Chambers and fabricated legal heirship certificate and created forged Will as that of in order to usurp the property of M/s. Chrome Leather Company Private Limited as such, Ida L Chambers become original owner of the M/s. Chrome Leather Company Private Limited and hence both the FIRs are nothing but clear abuse of process of Court.

24. In fact, the FIRs in Crime Nos.304 & 305 of 2007 have been registered after the period of 12 years from the date of alleged transactions. Both the FIRs were closed by the investigating agency as mistake of fact. The relevant portion of the closure reports reads as follows :-

> *"During the course of investigation, the complainant and other witnesses who are acquired with the facts of the case were examined and recorded their statements. The records were collected and perused.*
>
> *The complainant though alleged that G.J. Chambers is the sole legal heir of the G.A. Chamber and Ida L Chamber and also the owner of the Chrome Leather Company, he is not able to produce any single document to substantiate his allegations. The death certificate of the said K.H.Chambers and Ida L Chambers produced by the complainant seems to be bogus in nature and not issued by the Corporation authorities. Therefore, the complainant is not able to establish that G.J. Chamber is the actual legal heir of the above said persons.*
>
> *Secondly, the complainant has not produced any documentary evidence to show that the said Chrome Leather Company was illegally usurped by Nagappa Chettiar and others. Whereas the said legal heirs of Nagappa Chettiar and Jagathratchagan had produced number of documents to prove that Ida L Chambers had sold the Company to*

Nagappa Chettiar by transferring the shares in his name during the year 1965. The affidavit filed by Ida L Chamber before the Hon'ble High Court also confirms that she had sold the company along with the properties to Nagappa Chettiar.

Further the statements filed by the said Nagappa Chettiar and his legal heir clearly established that the said Nagappa Chettiar had mortgaged the company properties and the share certificate in the Central Bank of India and received loan for running the company. Since the said Nagappa Chettiar was not able to pay the debts, the Central Bank of India had brought the property in public auction and sold the same for the debt amount to one V.K.K. Charities and subsequently settled to Jegathratchagan. Therefore, the entire transaction seems to be genuine one and not fabricated transaction as alleged by the complainant. The complainant was not able to prove that G.J.Chamber is the sole legal heir of the K.H.Chamber has made all sorts of false claim in the complaint to threaten the genuine purchasers with ulterior motive to make wrongful gain to himself. Hence, the case was referred as mistake of fact according to the legal opinion of Asst. Director of Prosecution, Alandur."

25. The above reports were duly accepted by the learned Judicial Magistrate No.1, Poonamalle by rejecting the objections raised by the second respondent by way of protest petitions in Crl.M.P.Nos.4147 & 4148 of 2007. While being so, the Additional Director General of Police, by his proceedings dated 18.11.2016, transferred the very same complaints to the file of the first respondent herein, without any order passed by any of the Court. Once the investigating agency completed the investigation and closed as mistake of facts, and also accepted by the Court below, the Additional Director General of Police, ought not to have ordered for transfer of investigation or re-investigation, that too without seeking any permission as contemplated under Section 173(8) of Cr.P.C., since the investigation agency already closed the FIRs as mistake of facts.

26. The second respondent also filed direction petitions before this Court in Crl.O.P.Nos.19104 & 19428 of 2021 for direction to register the FIR, investigate and to file final report on the basis of the complaints dated 27.02.2014& 27.05.2014 respectively. Both the petitions were dismissed by this Court by the orders dated 23.07.2014 & 25.07.2014 respectively by detailed orders. In the said orders, this Court recorded all the facts and

concluded that the second respondent has no locus standi to lodge any complaint and also observed that he suppressed the earlier closure report in Crime Nos. 304 & 305 of 2007. There was absolutely no new material warranting re-investigation in the closure report submitted in Crime Nos.304 & 305 of 2007. Therefore, there is no iota of material evidence to attract the offences under Sections 420, 465, 466, 467, 468, 471 & 120B of IPC as against the petitioner.

27. It is relevant to extract the provisions under Section 420 of the Penal Code as follows :-

> *420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

> (i) A person must commit the offence of cheating under Section 415 and

(ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420 of IPC.

28. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others*** reported in (***2006) 6 SCC 736***, held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

29. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Hon'ble Supreme Court of India held as follows:-

> *"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

Therefore, there is absolutely no ingredient to constitute the offence under Section 422 of IPC, as against the petitioner.

30. Further it would be appropriate to consider whether the allegations made in the FIRs, even assuming to be true make out the ingredients of the offences punishable either under Section 467, Section 468 or Section 471 of IPC. Section 467 provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 468

provides that whoever commits forgery, intending that the document shall be used for the purpose of cheating. Section 471, relevant to this purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

31. The term "forgery" used in these sections is defined in Section 463 of IPC. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 of IPC defines "making a false document". The condition precedent for an offence under Sections 467, 468 and 471 is forgery. The condition precedent for forgery is making a false document. This case does not relate to any false record and all the documents are more than 30 years old and with proper custody.

32. An analysis of Section 464 of IPC shows that it divides false documents into three categories:

(i) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

(ii) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

(iii) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

33. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document purporting to convey some property of which he is not the owner, is not execution of a false document as defined under Section 464 of the IPC. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the IPC are attracted. The nature of cheating or forgery is not avert by the second respondent nor there is evidence to that effect. Hence the FIRs as against the petitioner for the offences mentioned above, if continued is abuse of process of law and it cannot be sustained as against the petitioner.

34. The transfer of properties pertaining to M/s. Chrome Leather Company Private Limited was done long back in the year 1965 and the same was ended in a compromise decree dated 19.02.1965. Subsequently the shares of M/s. Chrome Leather Company Private Limited transferred to A.Nagappa Chettiar on 21.04.1965. He along with his family members were holding the shares and pledged the same to the Central Bank of India. Thereafter, the petitioner being the nominee of M/s. V.K.K. Charities, in the year 1995, with the approval of BIFR, purchased the shares in the auction proceedings dated

27.08.1993.

35. On perusal of all the proceedings pertaining to the subject properties categorically shows that the matter has been settled by the orders of this Court 50 years ago and the same sought to be re-opened for investigation which is clearly not permissible. The petitioner came into the picture only in the year 1995, when the shares transferred to M/s. V.K.K. Charities, who was the successful bidder in the auction. All the proceedings from the initiation of auction are sanctioned by the BIFR by sanctioning the scheme of rehabilitation.

36. That apart, the shares which were pledged to the Central Bank of India by A.Nagappa Chettiar as early in the year 1968 and the charge was also recorded with the Registrar of Company on 08.01.1971. The said A.Nagappa Chettiar transferred 4995 fully paid up equity shares and 1800 fully paid up preference shares to the Central Bank of India by the sanction of Court and authorities. Hence, there is a presumption in respect of these transactions under Section 114 (e) of the Indian Evidence Act. Further all these documents are more than 30 years old and proper custody. Therefore, there is a presumption

under Section 90 of the Indian Evidence Act and it cannot be said that these documents were forged and fabricated one.

37. Over all proceedings pertaining to M/s. Chrome Leather Company Private Limited, before this Court initiated by the second respondent were dismissed by holding that he had played fraud on the Court. Without considering these facts and circumstances, the learned Additional District & Sessions Judge, Chengalpattu, set aside the order passed by the learned Judicial Magistrate No.I, Chengalpattu, in Crl.M.P.Nos.3914 & 3915 of 2013 dated 26.02.2014 and ordered to conduct further investigation. In pursuant to the said directions, the first respondent registered the impugned FIRs. It is nothing but clear abuse of process of law.

38. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

> *“ (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-*

cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

....

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

39. In view of the above discussions, the FIRs in Crime Nos.2 & 3 of 2016 cannot be sustained as against the petitioner and they are liable to be quashed. Accordingly, the FIR registered in Crime Nos.2 & 3 of 2016 on the file of the first respondent Police are hereby quashed and both the Criminal Original Petitions stand allowed. Consequently, connected Miscellaneous Petitions are closed.

.09.2022
(½)

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
rts

G.K.ILANTHIRAIYAN, J.
rts

To

1. The Inspector of Police,
   CBCID,
   Head Quarters,
   Chennai.

2. The Public Prosecutor
   Madras High Court,
   Chennai.

Common order in
Crl.O.P.Nos.12985 & 12986 of 2020
Crl.M.P.Nos.5061 & 5062 of 2020
and 1455 & 1456 of 2021

23.09.2022
(½)