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Crl.O.P.No.14688 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2022

PRONOUNCED ON: 30.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.14688 of 2022
and Crl.M.P.No.8129 of 2022

R.Dharmalingam

...Petitioner

-Vs-

1. K.P.Ramasamy
2. K.P.Deivasigamani
3. K.P.Nataraj
4. C.R.Anandhakrishnan
5. State rep. by
The Inspector of Police,
CBCID (South),
Coimbatore.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, pleaded to set aside the order dated 10.06.2022 made in CMP.No.8274 of 2022 in CMP.No.337 of 2019 in CC.No.21480 of 2019 on the file of the Ld. Chief Judicial Magistrate, Coimbatore by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manoharan

For R1 to R4 : Mr.Ar.L.Sundaresan, Senior Counsel
for M/s.A.L.Gandhimathi

For R5 : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed challenging the order passed in C.M.P.No.8274 of 2022 in CMP.No.337 of 2019 in CC.No.21480 of 2019 on the file of the learned Chief Judicial Magistrate, Coimbatore, thereby allowed the petition filed under Section 91 of Cr.P.C to issue summons to cause production of office copy of the enquiry report pertaining to the complaint of N.J.Subramaniam submitted to the Registrar (Vigilance), High Court, Madras, wherein an enquiry had been done by the ADSP-Vigilance Cell(Judicial), Coimbatore.

2. The case of the petitioner is that he and his brother are having ancestral properties in S.F.No.138/1 and 138/2, Neelambur Village, Coimbatore District. On 27.06.2006, they sold out the property ad-measuring to an extent of 4 acres to the respondents 1 to 3 herein for valid consideration. Subsequently, the petitioner's wife one Parameswari filed a suit in O.S.No.245 of 2006 on behalf of her minor children against the respondents 1 to 3 claiming equal share in the property which was already sold out. Therefore, there was enmity between the petitioner's family and the respondents 1 to 3 herein.



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3. In order to get over the suit, the respondents 1 to 3 along with other unknown persons namely N.J.Subramaniam and 2 others created a bogus agreement for sale dated 15.03.2006 by forging the signature of the petitioner's family members for the land ad-measuring to an extent of 1.60 acres and filed a suit for specific performance in O.S.No.438 of 2009. The agreement for sale dated 15.03.2006 is a fake document. The said N.J.Subramaniam and 2 other witnesses whose name was entered in the bogus document were not known to the petitioner and his family members. The signature found in the document is not of the petitioner or of his family members. Subsequently, the suit filed by the said N.J.Subramaniam was withdrawn.

4. Thereafter, the petitioner lodged a complaint and on receipt of the same, the Inspector of Police, Sulur Police Station had conducted enquiry and closed the petition on 10.08.2015. Therefore, the petitioner was constrained to file a petition in CrI.O.P.No.15024 of 2015 before this Court and this Court directed the Inspector of Police to conduct fresh enquiry by setting aside the closure report dated 10.08.2015. In pursuant



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to the direction, the respondent police had registered FIR in Crime No.306 of 2016 and submitted a closure report dated 10.04.2016 before the learned Judicial Magistrate No.7, Coimbatore as 'Further Action Dropped'. Hence, the petitioner again approached this Court for transfer of investigation in Crl.O.P.No.15756 of 2016 and the same was allowed and transferred the investigation to CCB, Coimbatore for re-investigation. Again, the Inspector of Police, CCB, did not conduct any enquiry and as such, the petitioner was constrained to file a petition in Crl.O.P.No.23712 of 2016 for transfer of investigation from the file of CCB to the file of CBCID, the 5th respondent herein.

5. After registration of FIR in Crime No. 2 of 2016, the 5th respondent did not complete the investigation as such, the petitioner again filed a petition for direction in Crl.O.P.No.22787 of 2018 before this Court. This Court directed the 5th respondent to complete the investigation and file final report within a period of two months. Therefore, the 5th respondent filed a final report on 26.12.2018 only against the said N.J.Subramaniam and deleted the respondents 1 to 4 herein and served the RCS notice to the petitioner in so far as the



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respondents 1 to 4 are concerned. On receipt of the same, the petitioner filed a protest petition in C.M.P.No.337 of 2019 and also filed a private complaint under Section 200 of Cr.P.C. The learned Chief Judicial Magistrate dismissed the protest petition in C.M.P.No.337 of 2019. Aggrieved over the same, the petitioner preferred a revision before this Court in CrI.R.C.No.967 of 2019 and the same was allowed by order dated 13.11.2019. This Court concluded that all the accused persons have committed the offence under Sections 120B, 467, 468, 471, 420 read with 511 of IPC and directed to take cognizance as against all the accused persons for the said offences and issued summons to the accused. Aggrieved by the same, the respondents 1 to 4 herein filed SLP(Cr) No.354 of 2020 before the Hon'ble Supreme Court of India and the same was dismissed by order dated 24.01.2020 with an observation that the learned Chief Judicial Magistrate will hear the respondents 1 to 4 also on protest petition and take a decision on the point of issuing process or not.

6. In pursuant to the said direction, the protest petition in C.M.P.No.337 of 2019 has been taken on file for hearing. The



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respondents 1 to 4 appeared before the learned Magistrate Court and also filed a petition in C.M.P.No.8274 of 2022 under Section 91 of Cr.P.C to issue summons to cause production of the enquiry report pertaining to the complaint lodged by one of the accused made to the Registrar(Vigilance), High Court, Madras wherein an enquiry had been conducted by the ADSP-Vigilance Cell(Judicial), Coimbatore and the same was allowed. Aggrieved by the same, the present petition has been filed by the complainant.

7.The learned counsel for the petitioner would submit that the suit filed by the accused had voluntarily chosen to withdraw in O.S.No.438 of 2009 since the said suit was filed on the strength of fake agreement for sale dated 15.03.2006 for the reason that non judicial stamp paper used in the said agreement for sale dated 15.03.2022 were released by the Treasury only on 23.12.2008. The scope of enquiry on the protest petition is limited to the extent of taking cognizance. Though the Code of Criminal Procedure does not contemplate the mode of enquiry on the protest petition, it is being conducted pursuant to the Court of law. Therefore, the respondents 1 to 4 cannot enlarge the scope of the enquiry



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to a trial of a warrant case under chapter XIX. They cannot expect the court to conduct a trial before a trial or mini trial to avoid prosecution.

Therefore, the respondents 1 to 4 have no right to invoke a provision under Section 91 of Cr.P.C. That apart, the enquiry report is not at all required for taking cognizance in the protest petition. They have also not disclosed the necessity and desirability of the documents at this pre-cognizance stage. The right of the accused to seek an order under Section 91 of Cr.P.C would ordinarily arise only at the time of defence witness. In support of his contentions, he also relied upon the judgment reported in *(2005) 1 Supreme Court Cases 568* in the case of *State of Orissa Vs Debendra Nath Padhi*.

8. Per contra, Mr.Ar.L.Sundaresan, learned Senior counsel for the respondents 1 to 4 would submit that the Hon'ble Supreme Court of India had directed the learned Magistrate to hear the respondents 1 to 4 in the protest petition and take a decision on the point of issuing process or not. Infact, the learned Magistrate had passed docket order thereby, directing the respondents 1 to 4 herein to clarify and get suitable order from the Hon'ble Supreme Court to proceed further since already the Trial Court



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had taken cognizance on 18.12.2019 and the protest petition is disposed of whereas the Hon'ble Supreme Court of India passed an order only on 24.01.2020. It was challenged before this Court in CrI.O.P.No.21854 of 2021 to set aside the docket order and this Court by order dated 16.03.2022 had directed the trial Court to hear the protest petition after hearing the respondents 1 to 4 herein. While pending enquiry in the protest petition, the respondents 1 to 4 filed a petition under Section 91 of Cr.P.C to cause production of documents pertaining to the complaint of one of the accused submitted to the Registrar (Vigilance), High Court, Madras. He lodged a complaint that certified copy of the alleged agreement for sale dated 15.03.2006 furnished by the competent Court is a fabricated one. Therefore, the enquiry report is a vital document for taking cognizance as against the respondents 1 to 4 herein. It becomes necessary that the findings of the Vigilance Authorities in respect of the said document are to be summoned for proper appreciation of the case on hand in the protest petition. In support of his contentions, he also relied upon the judgment reported in **(2018) 2 SCC 93** in the case of **Nitya Dharmananda Alias K.Lenin and another Vs Gopal Sheelum Reddy and another**. Considering the above facts and circumstances of the case,



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the Court below had rightly allowed the petition.

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9. Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.Ar.L.Sundaresan, learned Senior Counsel for the respondents 1 to 4 and learned Additional Public Prosecutor for the 5th respondent police.

10.The petitioner is the defacto complainant. He lodged a complaint that they are having ancestral properties in S.F.No.138/1 and 138/2 in Neelambur Village, Coimbatore District. On 27.06.2006, they sold out land measuring about 4 acres to respondents 1 to 3. But the petitioner's wife had filed a suit for partition on behalf of her minor children in O.S.No.245 of 2006 against the respondents 1 to 3 herein. Therefore, there was enmity between both the families.

11.That apart, the respondents 1 to 4 along with other accused persons have created a bogus agreement for sale by forging the signature of the petitioner's family members for a land measuring to an extent of 1.60 acres and filed a suit for specific performance. The agreement for sale dated 15.03.2006 is a fake document. The witnesses attested in the



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agreement for sale are unknown to the petitioner and his family members. Infact, prior to the complaint, one of the accused filed a suit for specific performance in O.S.No.438 of 2009 on the file of 1st Additional District Court, Coimbatore. As per the agreement of sale, the petitioner and his family members have executed agreement for sale on 15.03.2006 to sell the 1.6 acres in S.F.No.138/1, 138/2 for the total sale consideration of Rs.12 Lakhs per acre and also received a sum of Rs.5 lakhs as advance on the date of agreement for sale and subsequently, Rs.2 lakhs was also received by the petitioner with an endorsement for executing the Sale Deed after disposal of the partition suit filed by one of the legal heir. Therefore, the petitioner lodged a complaint, after so many directions issued by this Court finally, the 5th respondent filed final report against only one accused namely N.J.Subramaniam and deleted the respondents 1 to 4 herein from the charge sheet. Thereafter, the petitioner filed a protest petition in CMP.No.337 of 2019 and the same was dismissed. Aggrieved by the same, the petitioner preferred revision petition in CrI.R.C.No.967 of 2019 before this Court and the same was allowed and directed the trial Court to issue summons to the respondents 1 to 4 herein. Aggrieved by the same, the respondents 1 to 4 herein filed



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Special Leave Petition in SLP.No.354 of 2020 before the Hon'ble Supreme Court of India and the same was dismissed with the observation that the learned Magistrate will hear the respondents 1 to 4 herein also on the protest petition and take decision on the point of issuing process or not. While pending the protest petition, the respondents 1 to 4 herein filed a petition in C.M.P.No. 8274 of 2022 under Section 91 of Cr.P.C.

12. Now the point for consideration in this petition is whether the petition under Section 91 of Cr.P.C filed by the proposed accused persons can be entertained at pre-cognizance stage. Ordinarily, the Court has to proceed on the basis of material produced with the charge sheet dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigating agency, the Court is not debarred summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defense has a right to invoke a provision under Section 91 of Cr.P.C de hors the satisfaction of the Court at the stage of charge. It is relevant to extract Section 91 of Cr.P.C which is as follows:-

“Section 91.Summons to produce document or other thing-(1) *Whenever any Court or any officer*



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in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

13. Thus, it is clear that the provision under Section 91 of Cr.P.C is made to have invoked for producing documents or other things by way of summon. It can be invoked at any stage of investigation, inquiry, trial or even other proceedings under the Criminal Procedure Code. It does not expressly provide as to who can invoke this provision. However, it implies that it can be invoked by the Court or the officer incharge of the police station. This invocation can be done when the Court or the police is of the view that production of documents are necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under Cr.P.C.

14. The satisfaction regarding the necessity or the desirability of the Court or the police is sine qua non for invoking this provision. The



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production of document or other things is to be made before the Court if directed by the Court or before the officer if directed by the police officer. Therefore, the production of any document or a thing can be directed by the Court after being satisfied such production is necessary and desirable for the purpose of proper lawful conduction of investigation, inquiry , trial or other proceedings.

15.Hence, the provision confers power in the hands of the Court. The process of investigation is unilateral in nature where the accused has no role to play during pendency of investigation. The accused has no right to invoke Section 91 of Cr.P.C. However, invocation of section 91 of Cr.P.C during investigation remains open for the Court, the police or the victim whereas the accused can invoke Section 91 of Cr.P.C on and after filing charge sheet from which stage, the proceeding becomes multilateral bringing the other stakeholders namely the victim and also besides the prosecution. The paramount object behind the provision under Section 91 of Cr.P.C is to ensure that no cogent material connected to the offence is left undiscovered and unconsidered in pursuit of the truth during investigation, inquiry, trial or other proceedings.



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16. In the case on hand, the certified copy of the agreement for sale dated 15.03.2006 was produced by the petitioner before the investigating officer since, the suit for specific performance filed by one of the accused was withdrawn and all the original documents which were filed along with the claim were also returned to him. When the suit was pending, the petitioner applied for the certified copy of the said agreement for sale and he obtained the certified copy from the Trial Court. Now, it is alleged by the accused, who filed a suit for specific performance with the certified copy produced by the petitioner is not obtained from the Trial Court. In fact, while pending this petition, this Court called for the enquiry report from the Registrar(vigilance) of this Court.

17. On perusal of the enquiry report, this Court found that the certified copy was issued by the Trial Court. That apart, the stamp vendor from whom, the non-judicial stamp papers were purchased by the accused persons was examined as L.W.4 and he stated that the NJS No.30 AA477977 was purchased from the treasury, Coimbatore on



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23.12.2008 and it was sold by him on 05.01.2009 to someone represented by KTVR Coimbatore. He had also noted that the Serial No.65 dated 05.01.2009-KTVR Coimbatore and it was manipulated and re-written as Serial No.1131 dated 10.03.2006 in the name of N.J.Subramaniam, Erode, who is an accused in this case and it was used by him for filing suit for specific performance in O.S.No.438 of 2009.

18.The attestors of the said agreement for sale were examined by the investigating agency as L.W.15 and L.W.16 and they stated that they pleaded ignorance about the purchase of non-judicial stamp papers. Therefore, the enquiry report in pursuant to the issuance of certified copy of the agreement for sale dated 15.03.2006 does not require to decide the protest petition filed by the petitioner herein. There are other materials which are very much available with the final report to take cognizance. In this regard, it is relevant to extract the Paragraph No.25 of the judgment of Full Bench reported in **(2005) a SCC 568** in the case of **State of Orissa Vs Debendra Nath Padhi** which is extracted hereunder:-

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or



desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused



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cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

19. Thus, it is clear that the first and foremost requirement of the provision under section 91 of Cr.P.C about the document being necessary or desirable. The necessity or desirability will have to be seen with reference to the stage when a prayer is made for the production of documents. If any document is necessary or desirable for the defence of the accused, the question of invoking provision under Section 91 of Cr.P.C at the initial stage of framing of a charge would not arise since the defence of the accused is not relevant at the pre-cognizance stage. When the section 91 of Cr.P.C refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move to the Court for summoning and production of a



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document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence.

20. In this regard, it is relevant to extract Paragraph No.5 of the judgment reported in **(2018) 2 SCC 93** in the case of ***Nitya Dharmananda Alias K.Lenin and another Vs Gopal Sheelum Reddy and another*** which is extracted hereunder:

“5.It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the Court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the Court is to be satisfied that the material available with the investigator, not made part of the charge-sheet, has crucial bearing on the issue of framing of charge”.

As stated supra, in the case on hand, the enquiry report which is sought to be summoned is absolutely not necessary and desirable to take cognizance as against the respondents 1 to 4 herein.



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21. The judgment cited by the learned Senior Counsel for the respondents 1 to 4 reported in **(2018) 2 SCC 93** in the case of ***Nitya Dharmananda Alias K.Lenin and another Vs Gopal Sheelum Reddy*** wherein, the Hon'ble Supreme Court of India held that the material available with the investigating agency not made part of the charge sheet, has crucial bearing on the issue of framing of charge. Hence, it is not helpful in the case on hand.

22. In view of the above, the trial Court allowed the petition filed by the respondents 1 to 4 under Section 91 of Cr.P.C erroneously as they cannot invoke the provision under Section 91 of Cr.P.C at pre-cognizance stage. Hence, under these circumstances, the order passed by the Trial Court is required to be interfered by this Court.

23. Accordingly, the order passed in C.M.P.No.8274 of 2022 in CMP.No.337 of 2019 in CC.No.21480 of 2019 on the file of the learned Chief Judicial Magistrate, Coimbatore dated 10.06.2022 is set aside. However, the Trial Court is directed to dispose the protest petition in



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C.M.P.No.337 of 2019 within a period of eight weeks from the date of receipt of a copy of this order.

24. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

30.09.2022

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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Note: Issue order copy on 12.10.2022

To

1. The Ld.Chief Judicial Magistrate, Coimbatore.

2. The Inspector of Police,
CBCID (South),
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.



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