



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2022

Pronounced on : 29.04.2022

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.879 of 2021
& Crl.M.P.Nos.12394 &12395 of 2021

Venugopal

...Petitioner / Accused 4

Vs.

1.The State rep.by Sub Inspector of Police
CBCID, Namakkal.
Namakkal District.
Crime No.39 of 2018 (DCB)

2.Dr.S.Senthilkumar

...1st Respondent / Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the Order dated 21.10.2021 made Crl.M.P.No.81 of 2019 in C.C.No.28 of 2019 on the file of the Chief Judicial Magistrate Court, Salem on the file by allowing this Criminal Revision Petition.

For Petitioner : Mr.A.Padmanabhan

For Respondents: Mr.Leonard Arul Joseph Selvam for R1
Government Advocate(Crl.side)
Mr.Saravanakumar for R2

ORDER

A4 in C.C.No.28 of 2019 on the file of the Chief Judicial Magistrate Court, Salem has moved this revision petition challenging the order of the learned Chief Judicial Magistrate dismissing his petition in Crl.M.P.No.81 of 2019 for discharging him from the case.

2. The brief facts that formed the background may be stated :

- The defacto complainant/second respondent's father was a certain Subramaniam. Subramaniam's brother was Natarajan. Natarajan's son were A1 and A2. As between Subramaniam and Natarajan, there held a suit for partition in O.S.No.165/1989 before the Sub Court,



WEB COPY

Namakkal, in which the final decree came to be passed on 29.3.1993. This final decree deals with several items of properties, and one of the properties has an extent of 7.94 acres. Out of this, half the extent, equivalent to 3.97 acres was allotted to Subramaniam and the other half was allotted to Natarajan.

- The setting being what is now described, A1 and A2 with the assistance of A3 and A4 (revision petitioner) have brought into existence a false sale agreement as if was executed by his uncle Subramaniam, the allottee of aforesaid 3.97 acres, along with his two sons, namely the defacto complainant and one Babu, in their favour. The execution of the sale agreement was alleged to have been attested by A3 and A4. Later, on the strength of the sale agreement, A1 and A2 have laid a suit for specific performance in O.S.No.65/2012 and this has alerted the defacto complainant.
- Promptly, the second respondent / defacto-complainant preferred a complaint before DCB, Namakkal, and a case in Crime No.39/2020 came to be registered.
- Later, defacto complainant moved this Court, and had the investigation transferred to CBCID, and accordingly, the first respondent herein took up the investigation of the matter in Crime No.1/2015. On completing the investigation, the first respondent had laid the final report before the Chief Judicial Magistrate Court, Namakkal.
- A1 and A2 are stated to have moved this Court in CrI.O.P.No.23695 & 23596 of 2017 under Section 482 Cr.P.C., for quashing the final report. This Court while dismissing that petition, has found that inasmuch as A1 and A2 are practicing advocates of Namakkal Bar, transferred the trial of the case to the Chief Judicial Magistrate Court, Salem.
- When once the matter reached the Salem Court, A4 has filed his CrI.M.P.No.81/2019 for discharge. This came to be dismissed by the learned Chief Judicial Magistrate vide her order dated 21.10.2021.
- This is now under challenge in this revision petition.

3. The learned counsel for the revision petitioner argued that even according to the prosecution case, A4 is one of the attessor to the sale agreement. There is no scintilla of material available on record to indicate the complexity of the revision petitioner to the crime alleged. The bulk of materials which the Investigating Agency has produced are all directed against A1 and A2. Indeed, the Investigating Agency has also obtained the expert opinion of the forensic department which again tilts the needle of suspicion against A1 and A2. The learned counsel for the petitioner added that the learned Chief



WEB COPY

Judicial Magistrate in her order has merely stated that there are materials available to frame charges against A4, but the order is still silent on the very material that may have permitted the learned Chief Judicial Magistrate to dismiss A4's petition. He relied on the ratio in *Minakshi Bala Vs. Sudhir Kumar and others* [1994 SCC (Cr1) 1181]; *The State of S.P. Through the SPE, CBI Vs. Uttamchand Bohra* in Cr1.A.No.1590 of 2021 dated 09.12.2021; *Union of India Vs. Prafulla Kumar Samal and Another* [AIR 1979 SC 366].

4. The learned counsel for the defacto complainant / second respondent submitted that A4 is working in the same Advocate's office where A1 and A2 are practising. He also brought to the notice of the Court the statement recorded by the Investigating Officer under Section 161 Cr.P.C., A certain Saravanan is stated to be the scribe/typist of the sale agreement in question. He also brought to the notice of the court, the statements of LW1 to LW3, and also the contents in paragraph 11 in Cr1.O.P.No.23538 of 2012 dated 21.09.2012, in which the present Revision Petitioner along with others had approached this Court for anticipatory bail, in which the revision petitioner herein had taken up a plea that he was an attester, whereas, in the present petition seeking discharge he has taken a plea that even his signature in that sale agreement has not been proved.

5. Learned Government Advocate (Cr1.side) relied on the statements of LW1 to LW3, and argued that there is prima facie material for framing the charge.

6. While considering the application for discharge, the trial Court is not required to go into a meticulous analysis with the materials available before it, and must be concerned only if there are prima facie materials available for framing the charge. It may be that the present revision petitioner might have been an attester to the alleged fabricated document, but not every attestation can be presumed to be innocent when the attester faces charge of his involvement in fabricating a document. This has to be decided in the trial Court.

7. It is alleged that the revision petitioner is engaged in double swing, in that in his petition for anticipatory bail in Cr1.O.P.No.23538 of 2012, he has admitted the attestation, whereas in the present petition he has denied it. At the best, it may amount to an admission of attestation or denial of attestation. Admitting the attestation neither proves the guilt of the accused, unless the criminal overtone attributed to it, is evaluated. And the denial of the very signature by the attester is only a line of defence and that cannot be decided under Section 239 Cr.P.C., This apart, the space under Section



397 Cr.P.C., is far too narrow, and this Court does not find any irregularity in the order of the learned Chief Judicial Magistrate, Salem.

8. In this case, orders were reserved, and while this Court was preparing its judgment, it was brought to the notice of the Court that the learned Chief Judicial Magistrate has already framed charges. Though this Court expressed its disappointment over the learned Chief Judicial Magistrate, rushing to frame charges, when the order is pending before this Court for pronouncement, yet the learned Judge has not set aside the charges so framed.

9. In the result, the revision is dismissed, and the trial Court may proceed to hold the trial of the case, and dispose of the matter as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

msv / ds

To:

1.The Chief Judicial Magistrate
Salem.

2. The Sub Inspector of Police
CBCID, Namakkal.
Namakkal District.

3.The Public Prosecutor
High Court, Madras.

+2cc to Mr.P.R.Balasubramanian, Advocate, S.R.No.30138

+1cc to Mr.A.Padmanaban, Advocate, S.R.No.30333

Cr1.R.C.No.879 of 2021
& Cr1.M.P.Nos.12394 &12395 of 2021

GSM(CO)
PM(30/05/2022)