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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1064 OF 2017

Boominathan

... Petitioner

.Vs.

1. Nallasivam [Died]

2. The State rep. by
The Sub Inspector of Police,
Central Crime Branch,
Crime No.102 of 2005.

... Respondent

PRAYER:-

Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records relating to the judgment passed by the learned Principal Sessions Judge, Thiruvallur in C.A.No.35 of 2015 dated 05.07.2017, dismissing the appeal and confirming the order of the learned Judicial Magistrate No.I, Poonamallee dated 27.03.2015 in C.C.No.233 of 2006 under Sections 465 r/w. 120-B of IPC, 468 r/w. 471 of IPC and 420 r/w. 34 of IPC and set aside the same.

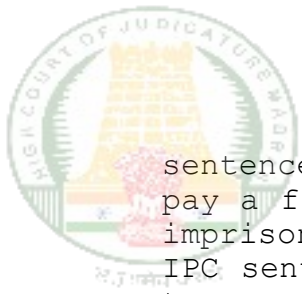
For Petitioner : Mr.Swami Subramanian

For R2 : Mr.A.Damodaran
Additional Public Prosecutor

For Defacto : Mr.M.K.Subramanian
Complainant

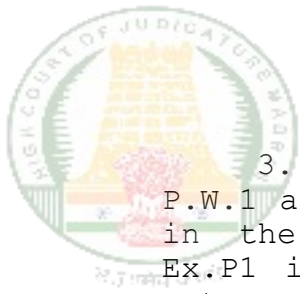
ORDER

The petitioner/A3 in C.C.No.233 of 2006 convicted by the learned Judicial Magistrate No.I, Poonamallee by judgment dated 27.03.2015 for the offence under Section 465 r/w. 120-B of IPC sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo one month simple imprisonment, for the offence under Section 468 r/w. 471 of IPC



sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment and for the offence under Section 420 r/w. 34 of IPC sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo two months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Thiruvallur in C.A.No.35 of 2015. The learned Sessions Judge by judgment dated 05.07.2017 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court, against which the present revision petition is filed.

2. The gist of the case is that the defacto complainant Rajasekar lodged a complaint to the Commissioner of Police that his great grandfather Raghavan Naicker gave 1.50 acres of land comprising in S.No.51/2, 52/2A, 52/2B at Okkiam, Thoraipakkam to his grandmother Kannammal [daughter of Raghavan Naicker and Mother of Ayyasamy] as sreedhanam vide settlement deed in Doc.No.2704 of 1925 dated 23.10.1925 registered in SRO, Saidapet. Till 1979, Kannammal was doing agriculture and thereafter, the defacto complainant's father Ayyasamy, who is the only son of Kannammal. The defacto complainant's father died on 20.06.1993, from that date onwards the defacto complainant and his sister Shanthi was in enjoyment of the property, all the taxes and revenue records are in the name of the defacto complainant's father Ayyasamy. One Kathiresan/A2 approached the Village Administrative Officer for obtaining patta for the said lands of the defacto complainant. On coming to know about the same, the defacto complainant verified the encumbrance certificate and found that one Santha/A1, wife of Senthilvelayutham executed a registered settlement deed for 58 cents comprised in S.No.51/2, 52/2 at Okkiam, Thoraipakkam in favour of her son Kathiresan, vide Doc.No.4719 of 2005 dated 17.08.2005 at S.R.O., Neelankarai. The said Kathiresan/A2 executed a registered sale deed for 58 cents of land to Boominathan/the petitioner herein on 10.10.2005 vide Doc.No.5867 of 2005, the sale consideration was shown as Rs.14,16,128/- contrary to the market value of Rs.2 Crores. Hence, the defacto complainant lodged a complaint to the CCB Police, who registered a case in Crime No.102 of 2005 and on conclusion of investigation, filed the final report. During trial, P.W.1 to P.W.9 were examined, Ex.P1 to Ex.P16 were marked, on the side of the defence D.W.1 was examined and Ex.D1 to Ex.D10 were marked. On conclusion of the trial, the Trial Court convicted A1/Santha who executed the settlement deed in favour of A2/her son, A3 is the petitioner herein who purchased the property based on the forged settlement deed, A4 and A5 are the attesting witnesses to the documents. The Lower Appellate Court dismissed the appeal filed by the accused and confirmed the conviction and sentence imposed by the Trial Court as stated above.



3. The contention of the petitioner is that the evidence of P.W.1 and P.W.2 proving the origination of document, Ex.P2/Patta in the name of Kannammal, grandmother is highly doubtful. Ex.P1 is a certified copy of the sale deed, original document not produced. P.W.1 and P.W.2 not produced any evidence to show that they have inherited the property and were in exclusive possession and enjoyment of the same. The encumbrance certificate for Doc.No.2704 of 1925, which is marked as Ex.P7, is not helpful to the prosecution. The Land Acquisition Award receipt/Ex.P3 which the Lower Court relied upon heavily is not proper. All these documents are self serving documents and the case before the Lower Court was not with regard to land acquisition by the Government. Admittedly, in S.Nos.51 and 52 of Okkiyam Village, large extent of lands were available. P.W.6/Stamp vendor admit that she initially an unlicensed stamp vendor was dealing with stamp papers, her father and brother are the licensed stamp vendors during the relevant period, hence issuance of non-judicial stamp papers by P.W.6 cannot be doubted. Further, it is seen that Ex.P9 is only a certified Photostat copy of the document filed before the Civil Court, P.W.8/Investigating Officer not taken any steps to bring the originals before the Trial Court, from the Photostat copy of the document, the forgery of the signatures cannot be studied and conclusively proved. In this case, admittedly no forensic or any handwriting expert, examined to prove that the documents were tampered and forged. The Lower Court relied on the confession of A1 and A2 in toto which is against law, under Section 27 of the Indian Evidence Act only the portion leading to any recovery alone can be relied upon, but that is not the case herein. The Lower Court in a pre-determined mind admitted the inadmissible documents despite objections made by the petitioner. It is further submitted that under section 91 Cr.P.C. certain documents were summoned, without any reason P.W.3 was recalled to mark these documents. Hence, Ex.P14 to Ex.P16 cannot be looked into. Further the Lower Court failed to consider the civil suits pending which were filed by either side. There is no iota of evidence to show that the petitioner conspired with the other accused in commission of any of the offence, the petitioner is only an innocent purchaser. A2 produced the settlement deed of his mother and certified copy of the parent document stating that the original was damaged and destroyed. It was on such submission and on perusal of the material, after getting opinion, the petitioner purchased the property. The petitioner paid for the property on the guideline value and purchased the same. The Registration authorities finding that the documents, properly valued admitted the same and registered the document. The petitioner, on coming to know that he was cheated and he became victim of circumstances, not only lost the valuable consideration paid for the property, now facing criminal case, now due to the conviction, he is



stigmatized. The petitioner thereafter approached the defacto complainant, explained to him as to under what circumstances he was cheated, expressed his willingness to withdraw the civil suit and not to contest the civil suit filed by the defacto complainant. On such submission, the defacto complainant also agreed to the same and necessary petitions were filed before the Civil Court. The petitioner produced the memo filed in O.S.No.159 of 2007 and the withdrawal affidavit filed in O.S.No.335 of 2005. Before the Civil Court, O.S.No.159 of 2007 was filed by Mrs.Shenbagavalli, mother of P.W.1, P.W.2, O.S.No.335 of 2005 filed by the petitioner against Mrs.Shenbagavalli, P.W.1 and P.W.2 and now there is no civil suit pending between them. The claim over the property by the petitioner no more exist. The petitioner relinquished all his rights over the disputed property

4. The defacto complainant filed written statement and submitted that his great grandfather Raghavan Naicker gave 1.50 acres of land comprising in S.No.51/2, 52/2A, 52/2B at Okkiam, Thoraipakkam to his grandmother Kannammal as Sreethanam vide settlement deed registered in SRO, Saidapet as Doc.No.2704 of 1925 dated 23.10.1925. The defacto complainant's grandmother was doing agriculture and after her demise, his father Ayyasamy was doing agriculture till his death on 20.06.1993. Thereafter, the property devolved on defacto complainant's mother Shenbagavalli, defacto complainant and his sister Shanthi. In the year 1983, a notice was issued by Special Tahsildar to Ayyasamy to acquire land for formation of road. On 09.10.1987, the Government had taken over 69 cents in S.No.51/2, 9 cents in S.No.52/2A, 9 cents in S.No.52/2B, totally 87 cents and paid the award of Rs.8,757.85 paise in Award No.7/87 dated 16.12.1987. Aggrieved against the payment of award, the defacto complainant's father Ayyasamy filed a case before the Sub Court, Poonamallee in L.A.O.P.No.58 of 1988. Subsequently, the case was transferred to Sub Court, Chengalpet and now the case is pending before the Sub Court, Alandur. After the demise of Ayyasamy, P.W.1, P.W.2 and their mother Mrs.Shenbagavalli got impleaded as petitioners in the land acquisition case. After the land acquisition, the defacto complainant was left with 63 cents of land in his possession and enjoyment. One Kathiresan/A2 approached the concerned Village Administrative Officer for obtaining patta for the said land of the defacto complainant, this came to the knowledge of the defacto complainant, immediately he obtained encumbrance certificate and found that Santha [A1], wife of Senthilvelayutham, mother of Kathiresan [A2] registered an illegal and unlawful settlement deed for 58 cents comprised in S.No.51/2 and S.No.52/2 at Okkiam, Thoraipakkam Village, vide Doc.No.4719 of 2005 dated 17.08.2005 at S.R.O., Neelangarai. Thereafter, Kathiresan [A2] executed a registered sale deed conveying the 58 cents of land to Boominathan/A3/petitioner



herein on 10.10.2005 vide Doc.No.5867 of 2005 and the purchase price was shown as Rs.14,16,128/- which is a sham transaction since the said property, at that time, was valued more than Rs.2 Crores. Thereafter, the defacto complainant lodged a complaint and the Central Crime Branch took up the investigation, examined the defacto complainant, his sister, the stamp vendor, other revenue and registration authorities, collected documents and filed a charge sheet against A1 to A5.

5. Before the Trial Court, P.W.1 to P.W.9 were examined, Ex.P1 to Ex.P16 were marked, on the side of the defence, D.W.1 was examined and Ex.D1 to Ex.D10 were marked. It is further submitted that the petitioner conspired with the other accused, created forged document, thereby attempted to take away the defacto complainant's property, the petitioner filed a civil suit knowingly on the forged documents. Further, A1 in this case traces the right over the property through Doc.No.2648 of 1964 as though her husband Senthilvelayutham purchased the property. It is conveniently stated in the settlement deed in favour of A2 vide Doc.No.4719 of 2005 and in the sale deed executed by A2 in favour of the petitioner vide Doc.No.5867 of 2007 that the original sale deed in Doc.No.2648 of 1964 was destroyed by fire in the year 1971. During investigation, it was found Doc.No.2648 of 1964 is a mortgage deed between Sultan Mohideen and Abdul Rahim and the property mentioned in that deed is situated at Jamin Pallavaram. These facts deposed by P.W.3/Sub-Registrar, Pallavaram, marked Ex.P5. Further, P.W.4/Ramaiah, District Registrar, Administration South Chennai, gave details with regard to the address and license number of stamp vendor P.W.6/S.Mangalam whose name found as stamp vendor in the copy of document. It was found that the license number of P.W.6/Mangalam is L.No.9941/89 dated 28.02.1990 and her address is No.18/2, Moorthy Street, West Mambalam, Chennai-33, on the contrary her name is found in the stamp paper in the copy of document in Serial No.3238 dated 15.12.1972. The said Mangalam/P.W.6 admits that she was not a stamp vendor during that period and she is a licenced stamp vendor only from 1989. Thus, Doc.No.2648 of 1964 is a forged one in all aspects. Based on this forged document, the subsequent settlement deed and sale deed were created and executed. The petitioner aware of these forgery, purchased the property. Further the petitioner filed O.S.No.335 of 2005 before the Civil Court based on these forged documents.

6. In this case apart from P.W.1, P.W.2, his sister, P.W.3/Sub Registrar, Pallavaram, P.W.4/District Registrar Administration South Chennai, P.W.5/Joint Registrar, Saidapet, P.W.6/Mangalam, Stamp Vendor, P.W.7/witness to the confession of A1 and A2, lead to recovery of certain documents, P.W.8 and P.W.9, Investigating Officers have cogently given their evidence with corresponding documents. The Trial Court on the material



evidence produced rightly convicted the petitioner and other accused. It is fairly submitted that the petitioner/A3 filed a memo to withdraw the suit filed by him against the defacto complainant and his family members in O.S.No.335 of 2005 and now memo filed in O.S.No.335 of 2005 is dismissed as withdrawn on 04.04.2022. The petitioner also filed a memo in the suit filed by the family members of the defacto complainant against the petitioner and others in O.S.No.159 of 2007 submitting that he has no objection to decree the suit as prayed for by the plaintiff therein. It is further submitted that by the proceedings of the District Registrar, Administration Chennai South in Na.Ka.No.15827/E2/2018 dated 21.05.2019 had cancelled Doc.No.4719/2005, Doc.No.5867/2005 and Doc.No.6342/2005, the encumbrance created using forged documents were set aside and removed.

7. The learned Additional Public Prosecutor appearing for the second respondent submits that on the complaint of the defacto complainant, a case came to be registered, on conclusion of investigation, charge sheet filed before the learned Judicial Magistrate No.I, Poonamallee and the same was taken on file in C.C.No.233 of 2006. During trial, P.W.1 to P.W.9 examined, Ex.P1 to Ex.P16 marked, on the side of the defence D.W.1 was examined, Ex.D1 to Ex.D10 marked, on conclusion of trial, A1 to A5 convicted. Aggrieved against the same, A1/Santha preferred an appeal in C.A.No.34 of 2015, the same was dismissed on 27.03.2015, thereafter she filed a revision petition before this Court in Crl.R.C.No.1063 of 2017 and the same was dismissed on 13.09.2019. A5 preferred an appeal in C.A.No.125 of 2017, the same was dismissed, against which he preferred a revision petition before this Court in Crl.R.C.No.478 of 2019 and this Court by order dated 14.06.2017 directed him to surrender before the Trial Court. Thereafter, finding A5 failed to surrender, the revision petition was dismissed as withdrawn. A5 approached the Apex Court by way of a Special Leave Petition in S.L.P.(Crl.). No.45379 of 2019, the Apex Court on 27.01.2020 granted three weeks time to A5 to surrender. Thereafter, A5 surrendered before the Trial Court on 13.02.2020 and this Court by order dated 20.03.2020 granted suspension of sentence in Crl.R.C.No.478 of 2019, the same is pending. He further submitted that the respondent police formed a special team to secure A1 and A2 and produce before the Competent Court for them to serve their sentence. As far as this petitioner is concerned, he is the purchaser of the property for consideration. He would further submit that in view of the understanding arrived at and withdrawal of the civil suit and on the specific undertaking given by the petitioner, that he or his men or anyone will not make any claim over the property can be considered. Further, the forged documents created are in the nature of private documents and now cancelled, the encumbrance created, removed.



8. Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner/A3 purchased the property by a registered sale deed vide Doc.No.5867/2005 for a consideration. The registration authorities finding the sale deed proper in all aspects including valuation of the property registered the sale deed. In the sale deed Doc.No.5867/2005, the devolution of property is by way of settlement by Shantha/A1, mother to Kathiresan/A2, her son is recorded. The petitioner finding objection and resistance from the defacto complainant/P.W.1, his sister/P.W.2 and mother Mrs.Shenbagavalli filed civil suit in O.S.No.335 of 2005. On the other hand, Mrs.Shenbagavalli, mother of defacto complainant/P.W.1 filed a civil suit in O.S.No.159/2007. Now the petitioner coming to know about the real actual position, realizing the folly, now withdrawn the civil suit in O.S.No.335 of 2005, further filed a memo submitting to decree in O.S.No.159 of 2007, which he was defending. It is further seen that the District Registrar, Administration South Chennai in Na.Ka.No.15827/E2/2018 dated 21.05.2019 cancelled the Documents, Doc.No.4719/2005, Doc.No.5867/2005 and Doc.No.6342/2005 after detailed enquiry finding it to be forged. The encumbrance created now set aside, cleared and removed.

9. Be that as it may. From the evidence and materials available in this case, it is seen P.W.1, P.W.2 and Mrs.Shenbagavalli are legal heirs of Late.Ayyasamy. The property in S.No.51/2 and 52/2 to the total extent of 1 acre 50 cents was given in settlement to their grandmother Late.Kannammal by great grandfather Late.C.M.Raghavan Naicker by settlement deed vide Doc.No.2704/1925 dated 23.10.1925, in patta No.25. Then on, it is in their continuous possession and enjoyment with them. On 19.05.1983, for road formation to the extent of 87 cents was acquired by the Government, compensation paid to Ayyasamy, against which suits are pending, which we are not concerned now. With regard to the balance 58 cents, forged documents created, after the death of Kannammal and Ayyasamy, projecting as though Senthilvelayutham, husband of A1 purchased the property by Doc.No.2648/1964. After the demise of Senthilvelayutham, his wife Shantha/A1 settles this 58 cents of land to her son Kathiresan/A2, by Doc.No.4719/2005. Thereafter, this petitioner Boominathan/A3 purchased the property by Doc.No.5867/2005 for valid consideration, based on Doc.No.2648/1964 which is projected as destroyed in a fire. Later, it is found that Doc.No.2648/1964 is a mortgage deed registered in SRO, Pallavaram. Hence this petitioner is implicated for purchasing the property vide Doc.No.5867/2005. Since A1 and A2 have no right over the property and they have created forged documents, knowingly using the forged documents with false particulars had created Doc.No.5867/2005 and thereby created encumbrance, claiming right over the property. The petitioner using the



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forged documents filed civil suits. P.W.1 and P.w.2 deposed about property devolving on them from their ancestors. P.W.3/SRO, Neelankarai, P.W.4/District Registrar, Administration, Chennai Sought, P.W.5/Sub-Registrar, Joint Registrar Office, Saidapet, are the witnesses from the registration Department. P.W.6 is the stamp vendor, P.W.7 is the witness for arrest and recovery of documents from A1 and A2, P.W.8 and P.W.9 are the Investigating Officers. From the evidence and documents produced from these witnesses, nowhere it is seen that the petitioner/A3 had knowingly purchased the property, with forged documents, none of the witness spoken about the petitioner privy to the forgery, actively taken part along with other accused in execution of forged documents and thereby claiming right over the property. No document seized from the petitioner. The petitioner purchased the property for valid consideration. The registration authorities having no objection on the value of the property registered the sale deed vide Doc.No.5867/2005. The petitioner believing the same as genuine filed civil suit, now withdrawn the same, after coming to know that petitioner has been cheated by the other accused by representing as though they have legal right over the property and by producing registered settlement deed. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons, who were parties to the alleged conspiracy. Inference from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation, mere suspicion cannot take the place of legal proof.

10. In view of the above, the conviction of the Trial Court which was confirmed by the Lower Appellate Court is not proper. The petitioner is an innocent purchaser, not knowingly caught into the entanglement. The prosecution failed to prove the case against the petitioner beyond all reasonable doubts. The Trial Court has convicted the petitioner/A3 only on mere surmise and the Lower Appellate Court without independently assessing and weighing the evidence and materials confirmed the conviction and sentence. In view of the same, this Court is inclined to allow the revision petition setting aside the conviction of the petitioner in C.C.No.233 of 2006 by the learned Judicial Magistrate No.I, Poonamallee dated 27.03.2015, confirmed in C.A.No.35 of 2015 by the learned Principal Sessions Judge, Thiruvallur by judgment dated 05.07.2017. The petitioner is acquitted from all the charges levelled against him.

11. In the result, the judgment, dated 27.03.2015 in C.C.No.233 of 2006, passed by the learned Judicial Magistrate No.I, Poonamallee which was confirmed by the judgment dated 05.07.2017 passed by the learned Principal Sessions Judge,



Thiruvallur in C.A.No.35 of 2015 is hereby set aside.
Accordingly, this Criminal Revision Petition stands allowed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Principal Sessions Judge,
Thiruvallur.
2. The Judicial Magistrate No.I,
Poonamallee.
3. The Sub Inspector of Police,
Central Crime Branch.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Swami Subramanian, Advocate, S.R.No.24676

CRL.R.C.NO.1064 OF 2017

AD(CO)
PBS/02/05/2022