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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1175 of 2017 and
CrI.M.P.No.11210 of 2017

A.Pushparaj

...Petitioner/Accused-6

Vs.

1.State By,
The Inspector of Police,
CBCID, Kancheepuram,
Kancheepuram District.

2.R.Ravichandran

...Respondents/Complainant

[R2 is impleaded as per the order
of this Court, dated 22.01.2018
in CrI.M.P.No.13804 of 2017 in
CrI.R.C.No.1175 of 2017.]

PRAYER: Criminal Revision Petition filed under Sections 397 (1)
of Criminal Procedure Code, to call for the records in
C.C.No.8640 of 2010 on the file of XI Metropolitan Magistrate at
Saidapet, Chennai 600 015 and set aside the order dated
26.07.2017.

For Petitioner : Mr.K.Balu

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.C.Christopher

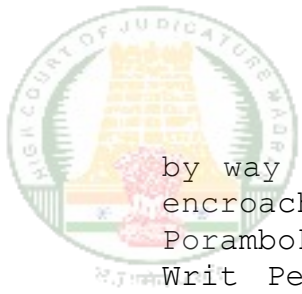
ORDER

This Criminal Revision Case has been filed to set aside
the order, dated 26.07.2017, passed in C.C.No.8640 of 2010 by
the learned XI Metropolitan Magistrate, Saidapet, Chennai (trial
Court).



2.The petitioner is A6 in C.C.No.8640 of 2010 and he is facing trial for offence, under Sections 120(b) and 468 of IPC. During trial, the trial Court on perusal of subsequent documents filed by the prosecution, invoking Section 216 Cr.P.C., in the midst of arguments, added charges under Sections 417 and 468 of IPC against the petitioner/A6, by order, dated 26.07.2017. Aggrieved over the same, the petitioner is before this Court, by way of the above Criminal Revision Case.

3.The learned counsel for the petitioner submitted that the trial Court had erred in directing the charges to be framed under Section 468 IPC, when there is already charges framed by the learned District Munsif-cum-Judicial Magistrate, Thirukazhikundram on 18.04.2009. He further submitted that the trial Court suo-motu exercised its power under Section 216 of Cr.P.C., and singled out the petitioner alone to frame charges against him for offence under Section 417 and 468 of IPC, when there is no legally acceptable materials, whatsoever, on record. There is no material to show that the Writ Petition in W.P.No.20506 of 2007 formed a part of records furnished under Section 173(2) of Cr.P.C., till date no copy of the said petition was filed in the Court as document or exhibits and served on the accused. The trial Court in the impugned order in paragraph No.8 had observed that "coming to the discussions, related to consequential effect, it is seen from the evidence that the factum of filing writ petition was discussed relevant witnesses during trial and it will not new to the litigants". This observation is without any material. Further, in paragraph No.1 of the impugned order, the trial Court referred page No.2 of the final report in Crime No.289 of 2007. The reference to the Writ Petition is only a passing reference and no charge was framed earlier, since there was no material against the petitioner. The petitioner, who being the Ex-Panchayat president of the village, objected the 2nd respondent to fence the land in Survey No.320/2 for the reason that the land belongs to 'Kuttai Poramboke' and hence, he filed a Writ Petition in W.P.No.20506 of 2007 before this Court. This Court, by order, dated 15.06.2007 directed the District Collector, Kancheepuram to submit a report about the possession and entries of the said land, within a period of three months. Thereafter, the enquiry was conducted by the Revenue Divisional Officer, Kancheepuram, who was examined as PW11 and his report marked as Ex.P15. Based on which, the trial Court added the charges under Section 417 and 468 of IPC against the petitioner, which is not proper. Further, giving reason that the petitioner approached this Court



by way of W.P.No.20506 of 2007 restraining the 2nd respondent to encroach the subject land, since it is classified as 'Kuttai Poramboke' land and subsequent to the order of this Court in the Writ Petition, the petitioner joining with A7 to A10 obtained the sale deed in their favour from A1 to A5, vide document No.7157 of 2007, dated 12.07.2007, is without any material. Further, the trial Court referred that subsequent conduct by obtaining sale deed on the very same property from A1 to A5 amounts to conspiracy entered between the petitioner and the other accused.

4.He further submitted that no doubt the trial Court has got ample power under Section 216 of Cr.P.C., to alter or add charge at any point of time till pronouncing of judgment. But it must be based on material available on record. In this case, nothing is available against the petitioner. The trial Court had erred in adding charge against the petitioner, knowing well that no material with regard to the same. Hence, he prayed for setting aside the order of the trial Court, dated 26.07.2017.

5.Per contra, the learned Additional Public Prosecutor appearing for the 1st respondent Police made his submissions that on 16.07.2007, the 2nd respondent lodged a complaint to the Inspector of Police, Mamallapuram Police Station, which was assigned as C.S.R.No.309 of 2007 and later, a case in Crime No.289 of 2007 was registered. The complaint is that the 2nd respondent purchased the property of 4 acres and 80 cents of land at Vada Nemmeli Village in survey No.320/2 from one Thilagaraj on 22.12.2006, vide registered document No.11345/2006. When the 2nd respondent attempted to fence the above property, the petitioner/A6, Ex-Panchyat President of the Village objected fencing of land claiming that this land classified as 'Kuttai Poramboke' land and thereafter, on the intervention and with the aid of local Police, he fenced the above land. The petitioner/A6 filed a Writ Petition in W.P.No.20506 of 2006 stating that the land in survey No.320/2 of Vada Nemmeli Village is classified as 'Kuttai Poramboke' land and prayed to restrain the 2nd respondent not to encroach the above land. This Court, by order, dated 15.06.2007 directed the District Collector to submit a report about the possession and entries of the land, within a period of three months. This being the case, the petitioner/A6 with the help of other accused Thangaraj/A7, Raj/A8, Neelakandan/A9 and Murugesan/A10 got executed a sale deed in document No.7157 of 2007 as though the property was purchased from their lawful owners viz., A1 to A5.



One Chandrasekar also lodged a complaint on the similar line and hence, a case in Crime No.290 of 2007 was registered.

6.He further submitted that on the direction of the Director General of Police, Tamil Nadu, the above two cases in Crime No.289 & 290 of 2007 were transferred to the Additional Director General of Police, CB-CID, Chennai. The Additional Director General of Police, CB-CID passed orders to investigate the two cases by the 1st respondent Police. As per the direction, the investigation was taken up by the 1st respondent Police on 10.01.2008 and on completion of investigation, charge sheet filed against the petitioner and 9 others before the trial Court. In this case, several witnesses were examined and documents marked during trial. At the stage of arguments, the trial Court suo-motu invoking Section 216 of Cr.P.C., added charges under Section 417 and 468 of IPC against the petitioner. The petitioner, who is A6, already facing charge under Section 120(b) and 468 IPC along with nine other accused. He further submitted that the petitioner claimed that it is a 'Kuttai Poramboke' land and on the same breadth, he purchased the said property from A1 to A5 along with A7 to A10. Thus, the petitioner took dubious stand. In this case, one Rajaraman, District Revenue Officer, Kancheepuram was examined as PW11, through whom, his enquiry report in Na.Ka.No.60383/2006-H-1, dated 15.03.2017 was marked as Ex.P15.

7.It is further submitted that in the enquiry report (Ex.P15), PW11 gave details about the petitioner acting with criminal intent and committed the offence of false representation, execution of false documents with the help of other accused. The enquiry conducted by PW11 was on the directions of this Court in W.P.No.20506 of 2007, dated 15.06.2007. The enquiry conducted by PW11 is a detailed one, wherein the 2nd respondent as well as some of the accused appeared and submitted their documents and gave explanation. As regards, the petitioner and some of the accused are concerned, they failed to appear before the enquiry officer (PW11), despite notice served to them. The dual stand taken by the petitioner, exposed his criminal intent and fabrication of document. Finding the criminal intention of the petitioner in this case, the trial Court suo motu altered the charges, knowing well the petitioner facing two charges under Sections 120(b) and 468 IPC. Due to the above alteration of charges by the trial Court, no prejudice is caused to the petitioner. In the interest of justice, the trial Court, in its order, dated 26.07.2017 had



given liberty to the parties to file list of witnesses to be recalled as per Section 217(a) Cr.P.C and also given liberty to file further witnesses, if any, on the proposed charge, as per Section 217(b) of Cr.P.C. Therefore, the petitioner and others in this case, have got right to recall or examine any witness to putforth their case.

8.He further submitted that due to pendency of revision, the case has been pending, without any progress, for the past five years. In this case, the offence committed in the year 2007, charge sheet filed in the year 2010 and after seven years, in the year 2017, the trial Court added charges against the petitioner, as against the same, the present revision has been filed and it has been pending for five years. Hence, he prayed for dismissal of the revision with a direction to conclude the trial, within a stipulated period.

9.The learned counsel for the 2nd respondent submitted that the petitioner/A6 being the Ex-Panchayat President of the Village is very much aware about the classification of the land in dispute. In the affidavit filed in W.P.No.20506 of 2007, the petitioner by his sworn statement stated that right from his birth, he is residing in Vada Nemmeli Village. The said village consists of 500 families and most of the families in the aforesaid village depend for their livelihood on agriculture. The agricultural operations hit by the successive droughts, since the main source of water are used for agricultural from the lakes, ponds, tanks, and other water bodies are now not fulfilled due to encroachments made by some miscreants in the water roots. The Government made arrangement through local body authorities to dig and arrange drinking water wells, bore wells etc. He further stated in the affidavit that the petitioner understand the said land in survey No.320/2 belongs to one Thamburam, S/o.Mari of Vada Nemmeli Village. In the said survey number, there also exist two temples in one of the banks of the said pond. It is a natural pond with a shallow earthen surface with a depth of 5 to 10 feet in the middle. The said pond is full of water in rainy season. The said pond water is used by the villagers for their daily usages and also for irrigation purposes. The local body authorities made arrangements of two panchayat drinking water wells in the said pond to the entire village people for their drinking purpose. This pond is used by the public, for all purpose, from time immemorial. He also stated in the affidavit that on 07.05.2007, the 2nd respondent and one V.P.M.Thilagaram with the help of local Police attempted



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to fence the pond to prevent the villagers from having access to the pond and its usage and also attempted to fill up the pond by dumping it with sand, gravels and rubbish. Thus, the specific averment made by the petitioner in W.P.No.20506 of 2007 is that the land in survey No.320/2 is a water body.

10.He further submitted that the petitioner/A6 with the help of other accused Thangaraj/A7, Raj/A8, Neelakandan/A9 and Murugesan/A10 got executed a sale deed in document No.7157 of 2007 as though the property was purchased from its lawful owners viz., A1 to A5. On the direction of this Court, an enquiry was conducted by PW11, the District Revenue Officer, Kancheepuram. PW1 after enquiry gave finding that the petitioner being the Ex-Panchayat President of the Village, got executed a sale deed as though the property in dispute purchased from A1 to A5 and thereby, created forged document and cheated the 2nd respondent. During enquiry, the 2nd respondent appeared before PW11, produced all the relevant documents including the civil Court order and the order in W.P.No.20506 of 2007. Some of the accused partook during enquiry and made submissions orally and not produced any document, but the petitioner and other accused failed to appear before the enquiry. Thus, the enquiry report (Ex.P15) of PW1 is a detailed one. He further submitted that the petitioner during trial cross examined PW11 elaborately on 27.07.2015, 26.08.2015. The revenue records marked during trial also confirmed the 2nd respondent's rightful ownership of the land in survey No.320/3.

11.It is further submitted that the addition of charges during trial is permissible under Section 216 Cr.P.C. The trial Court has got ample power, on the materials found to alter or add the charges during trial. In this case, the trial Court added charges under Section 417 and 468 of IPC against the petitioner/A6. Already, the petitioner was facing charges under Section 120(b) and 468 IPC. The punishment given under Section 417 of IPC is much lesser sentence than the punishment under Section 468 of IPC. Further, the trial Court, in the impugned order, gave liberty to the petitioner to recall and examine further witnesses under Section 217 Cr.P.C. In view of the same, no prejudice would be caused to the petitioner. Hence, he prayed for dismissal of the present revision and sought direction for completion of trial, since the case has been pending from the year 2010.

12.In support of his contention, the learned counsel for the 2nd respondent relied on the decisions of the Hon'ble Apex Court in the cases of "Anant Prakash Sinha @ Anant Sinha Verus



State of Haryana & Anr., in Criminal Appeal No.131 of 2016 and in the case of Kamil Versus State of Uttar Pradesh in Criminal Appeal No.1568 of 2015" for the point that the trial Court has got ample power to alter or add any charge till pronouncing of the judgment.

13.This Court considered the rival submissions and perused the materials available on record.

14.It is not in dispute that the petitioner has filed a Writ Petition in W.P.No.20506 of 2007, wherein this Court, by order, dated 15.06.2007 directed the District Collector, Kancheepuram to submit a report about the possession and entries of the said land, within a period of three months. As per the direction, the District Revenue Officer, Kancheepuram (PW11) conducted enquiry and submitted a report in Na.Ka.No.60383/2006-H-1, dated 15.03.2017, which was marked as Ex.P15 during trial. During trial, PW11 was cross examined in detail by the petitioner. It is seen that two complaints were filed by the 2nd respondent and another, pertaining to cheating and forgery committed by the petitioner and 9 others. Both the complaints were clubbed together as per the order of the Additional Director General of Police, CB-CID, Chennai and the same were handed over to the 1st respondent Police, who conducted investigation and filed charge sheet before the trial Court along with documents. When the case is at the stage of arguments, the trial Court added charges under Section 417 and 468 of IPC, by order, dated 26.07.2017 and also gave liberty and right to the petitioner to recall or examine further witnesses to ensure fair trial in respect of added charges and also directed the parties to file list of witnesses to be recalled as per Section 217(a) of Cr.P.C., and to file list of further witnesses if any on the proposed charges as per Section 217(b) of Cr.P.C.

15.The contention of the learned counsel for the petitioner that without any materials, charges were added by the trial Court, cannot be countenanced on the materials and documents so far brought in the case. Thus, the trial Court had rightly added charges against the petitioner by giving appropriate liberty, in accordance with law and no prejudice would be caused to the petitioner. The order of the trial Court, dated 26.07.2017 in C.C.No.8640 of 2010 needs no interference and the same is confirmed. Accordingly, this Criminal Revision Case is dismissed.



16.The trial Court to complete the trial in C.C.No.8640 of 2010, within a period of three months, from the date of receipt of a copy of this order. This direction is necessary finding that the offence committed in the year 2007, charge sheet filed in the year 2010. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The XI Metropolitan Magistrate at Saidapet,
Chennai.

2.The Inspector of Police,
CBCID, Kancheepuram,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

+3 Ccs to Mr.C.Christopher, Advocate sr 17564.

Cr1.R.C.No.1175 of 2017

SR(CO)
SP(13/04/2022)