

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.NOS.29269 & 31122 OF 2019
AND
CRL.M.P.NOS.15788, 15790, 16924 AND 16926 OF 2019
CRL.M.P.NO.1781 OF 2020
AND
CRL.M.P.NO.8429 OF 2021

1. Sakthikumar

2. P.Mariammal

... Petitioners in
Crl.O.P.No.29269 of 2019

1. M.G.Dhamu

... Petitioner in
Crl.O.P.No.31122 of 2019

.Vs.

1. The State of Tamil Nadu
Represented by Inspector of Police,
Central Crime Branch,
EDF II Team IX A,
Vepery, Chennai - 600 007.

2. S.Subitha @ S.Shri Subitha

3. Vijayalakshmi Balaji

... Respondents in
both Crl.O.P's

R3 is impleaded as per order in
Crl.M.P.Nos.1195 & 1197 of 2019 in
Crl.O.P.Nos.29269 & 31122 of 2019
dated 17/03/2020.

COMMON PRAYER:-

The Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in C.C.No.169 of 2019 in Crime No.374 of 2016 on the file of the learned Judicial Magistrate, Alandur and quash the same.

For Petitioners : Mr.V.Raghavachari
(in CrI.O.P.No.29269 For Mr.M.Palanivel
of 2019)

For Petitioner : V.Ramanareddy
(in CrI.O.P.No.31122
of 2019)

For Respondents : Mr.N.S.Suganthan
Government Advocate
(Criminal Side)
For R1

Mr.J.Ashok
For R2

Mr.S.R.Ragunathan
For R3

C O M M O N O R D E R

These Criminal Original Petitions have been filed seeking to call for the records in C.C,No,169 of 2019 on the file of the learned Judicial Magistrate, Alandur and quash the same.

2. The present dispute between the family members of late Pichaimani. The defacto complainant/second respondent is the sister of the first petitioner and daughter of the second petitioner in CrI.O.P.No.29269 of 2019. The third respondent is the another sister of the second respondent. As per the complaint that the petitioners 1 and 2 in CrI.O.P.No.29269 of 2019 and Sub-Registrar, Neelangarai in another CrI.O.P.No.31122 of 2019 fabricated the settlement deed as if her father executed in his favour and claimed to register the same at father residence. According to the defacto complainant, on the relevant date of alleged registration viz., 09.10.2015, the defacto complainant father was taking treatment in intensive care unit at Fortis Malar Hospital, being a chronic and severe breath at the point of time. Based on the complaint given by the defacto complainant, the first respondent has registered the case against the petitioners. After investigation, the charge sheet has also been filed before the Judicial Magistrate Alandur, in C.C.No.169 of 2019 for the offence under Sections 465, 467, 468, 474, 420 read with Section 120(b) IPC.

3. The learned senior counsel appearing for the petitioners in CrI.O.P.No.29269 of 2019 submitted that the trial Court took cognizance in a casual manner when it is incumbent upon the

court to examine the charge sheet papers and thereafter, apply its judicious mind to find out whether the allegations are sufficient to constitute the offences alleged against the accused and by means of giving reasons howsoever short it may be, the court has to pass appropriate orders. But in the case on hand, the learned Magistrate has not recorded his satisfaction about the existence of prima facie case as against the petitioners and the role played by them. He further submitted that the allegations made in the police report and the materials produced before the learned Magistrate are not at all sufficient to form an opinion of prima facie case so as to summon the petitioners to face trial in respect of the offence under Sections 465, 467, 468, 474, 420 r/w 120(b) of IPC.

4. It is further submitted that the first petitioner's father namely late Pichaimani had executed the settlement deed dated 09.10.2015 in his favour and the second petitioner who is the mother of him and second respondent stood as witnesses. Even according to the statement of the defacto complainant (LW1) and statement of (LW2) (Vijayalakshmi), the execution of document was not denied. They categorically admit the execution of the settlement deed in favour of the first petitioner. Thus the settlement deed in favour of the first petitioner clearly and obviously does not fall under the category of false document. The only allegation in their statement is that the settler of the document viz., father of the first petitioner had put his thumb impression instead of signature. Such mere allegation will not constitute the offence of forgery.

5. The learned counsel further submitted that the validity and authenticity of the execution of the settlement deed has to be tested only in civil forum by appreciating the evidence and the respondent police have no authority to examine the same. It is not the case of the complainant that the thumb impression of late Pichaimani has been forged. Further, the defacto complainant has filed two writ petitions to restrain construction on the plot in question and the same was dismissed by this Court. Apart from that the defacto complainant has filed civil suit in C.S.No.682 of 2018 to declare the settlement deed dated 09.10.2015 registered as Doc.No.103 of 2016 on the file of the Sub Registrar, Neelangarai, as null and void, and the same is pending. He further submitted that the defacto complainant had wantonly suppressed all these materials facts i.e., the dismissal of the writ petitions and the pendency of the suits, and for obvious reasons with malafide intention, had lodged this frivolous complainant only to harass the petitioners. It is a clear case of arm twisting by the defacto complainant by implicating the brother and mother in criminal proceedings to achieve her things by coercion. It is case of pure civil dispute and a criminal colour is given by the complainant only to settle

her personal scores. Accordingly, he prayed to quash the proceedings.

6. The learned counsel appearing for the petitioner in Crl.O.P.No.31122 of 2019 submitted that the petitioner was working as Sub-Registrar, Neelangari, Chennai and presently he is under suspension. Further, the first accused/Sakthi Kumar approached the petitioner (Sub-Registrar) in Crl.O.P.No.31122 of 2019 for registration of a settlement deed executed in favour of first accused/Sakthi Kumar by his father during his life time. On the request made by the first accused, the petitioner/M.G.Dhamu registered the said settlement deed at his father's rental residence and the petitioner, after receipt of prescribed fee and on the request of the first accused along with family members, went to the first accused father's rental house at the time of execution of settlement deed in the presence of the accused 1, 2, 3 and other family members. He further submitted that after the perusal of all the original document, title deeds pertaining to the property registration of the settlement deed was made in the presence of accused 1. 2 and third accused who is the servant of the first accused. By complying all the legal procedure he discharged his duty but he is falsely implicated in this case, hence, he prayed to quash the proceedings.

7. The learned Government Advocate (Crl.side) appearing for the first respondent submitted that the petitioners with malafide intention to grab the entire family properties, conspired and fabricated the false document in favour of first accused. He further submitted that the investigation has been completed and the charge sheet has also been filed before the Judicial Magistrate, Alandur in C.C.No.169 of 2019 as the trial Court prima facie found materials to taken on file. Eventually there is no irregularities committed by the trial Court. Hence, he prayed to dismiss the petition.

8. The learned counsel for petitioners would submit that when the validity of the execution of a document is in question before the Civil Court, the proceedings under the Criminal Court has to be quashed, for that he drew the attention of this Court to the decision reported in Sardool Singh vs Nasib Kaur (1987) Supp. SCC 146 wherein the Hon'ble Supreme Court has observed as follows:-

'2. A civil suit between the parties is pending wherein the contention of the respondent is that no will was executed whereas the contention of the appellants is that a will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil Court is therefore seized of the

question as regards the validity of the will. The matter is sub-judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled Smt Nasib Kaur v. Sardool Singh. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts.''

9. By way of reply, the learned counsel for the defacto complainant/second respondent has submitted that the defacto complainant has filed Civil Suit in C.S.No.682 of 2018 to declare the settlement deed dated 09.10.2015 as forged and fabricated document and if the trial Court grants a decree in favour of the defacto complainant/plaintiff, she will be entitled to proceed against her right over the family properties. But so far the about the alleged execution of the settlement deed, the first petitioner knowing fully conspired and colluded with his father-in-law and Sub-Registrar created the false document of settlement deed when his father was in dead bed under the intensive care unit at Malar Hospital. Medical Records prima facie establish those facts. It is not a ordinary case of civil dispute, because of deceitful act of her brother, she was forced to approach the civil forum to cancel the document, thereby she is not able to get properties immediately after the demise of her father. The learned counsel for complainant further submit that she already on the face of record established the fraud and conspiracy committed by the first petitioner and as per investigation also commission of those offence were made out prima facie, based upon the material evidence, hence, the first petitioner has no right to say that he has to be prosecuted only after the disposal of the civil suit.

10. On seeing the fact of the case and perusal of the records, it is an admitted fact that the late Pichaimani father of the defacto complainant, being a chronic cancer patient, was admitted in the Fortis Malar Hospital as in-patient on 27.09.2015 and he was completely disoriented and that on 07.10.2015 his condition worsened and he was shifted to intensive care unit and he breathed his last on 11.10.2015. The cause of death was diagnosed as sever sepsis, septic shock and multi organ failure. But the settlement deed is said to have been executed on 09.10.2015. The details of the registration is at page No.21 of the registration book reads as follows;-

Mr.N.Pichaimani S/o.Late Narayanasamy, No.3/3B, Sivasamy Avenue, Dr.M.G,R Road, Pallavaram, Chennai, - 600 041 and fees of Rupees 5900/- paid between the hours of 9-10 on 9th day of October 2015 by Mr.Pichaimani.

11. As per the endorsement, the document was executed at No.3/3B Sivasamy Avenue, Pallavaram and fee also said to be paid by said Pichaimani on 09.10.2015 but as discussed above, on that date, he was in intensive care unit in Malar Hospital more particularly from 07.10.2015 onwards.

12. Furthermore, on perused of the said document, it reveals that the witnesses who signed in the document, are mother of the defacto complainant and one Arumugam who is the servant of the second petitioner. The fitness certificate issued by Dr.S.Radhakrishnan on 08.10.2015 is as follows:

'''Pichaimani aged 66 years is residing at 3/3B Sivasamy avenue, MGR Road, Palavakkam, Chennai - 600 041 and was suffering from de compensate liver disease due to lymphoma of liver and suffering from chronic renal failure, diabetes and vascular gangrene of the right leg he is emaciated and very weak. He is conscious and oriented but confined to his bed. He is not fit state to travel.''

13. Admittedly, on the date of issue of the above certificate dated 08.10.2015 issued by Dr.S.Radhakrishnan who is the father-in-law of the first petitioner herein, the said Pichaimani was in hospital and he was not in the residence. Hence, against whom complaint was given to the medical council for giving the false certificate and on inquiry, he was suspended for two years. The said order was challenged by said

Dr.Radhakrishnan in W.P.No.11983 of 2021 and the same was dismissed by this Hon'ble Court by confirming the suspension order of Medical council.

14. On perusal of the certificate dated 08.10.2015, it is seen that the late Pichaimani who is the father of the first petitioner was admitted in Fortis Malar Hospital as an inpatient on 27.09.2015 and was completely disoriented and that on 07.10.2015 his condition worsened and was shifted to intensive Care Unit and he breathed his last on 11.10.2015 at 11.23 p.m.. Even as per the discharge summary on the relevant date viz., 09.10.2015 two days prior to his death late Pichaimani was taking treatment in intensive care unit including ventilator support. That being the case, it is highly unbelievable that such a person, who was in ventilator support able to travel but as per the endorsement in the document that on 09.10.2015 jurisdictional of Sub-Registrar, Neelangarai went to the first petitioner's father residence and executed the alleged document in favour of the first petitioner in Crl.O.P.No.29269 of 2019. It is crestal cleat that the petitioners have conspired and created a false document and the petitioner (Sub Registrar) in Crl,O.P.No.31122 of 2019 was part of evil deed.

15. Therefore, based on the complaint preferred by the defacto complainant, the case was registered for the aforesaid offence and after investigation, charge sheet was filed against the petitioners before the Judicial Magistrate Alandur, in C.C,No.169 of 2019. The complainant disputed in its entirety the manner in which how the document was fabricated and obtained the thumb impression by following coercion methods. She has not admitted the execution of document as argued on the side of the petitioner.

16. To support their case, the petitioner relied proposition laid down in (2018) 7 Supreme Court Cases 581 para (e) is extracted here under:-

'Charge of forgery cannot be imposed on/ sustained against a person who is not the maker of false document in question.... Making of a document is different than causing it to be made ... As Expln. 2 to S.464 further clarifies, for constituting offence under S.464, it is imperative that a false document is made and accused person is maker of the same, otherwise accused person is not liable for offence of forgery.'

The above authority relied by the petitioner is not apply the facts of the case rather it support the case of the respondent.

17. The arguments of the learned senior counsel for petitioners submitted that there was a civil dispute and the defacto complainant ought not have preferred the police complaint and she should have sought redressal before the civil forum is not acceptable by this Court. For the reasons that the first petitioner with malafide intention to grab the entire property stands in the name of his father Pichaimani for himself and also not intended to give legitimate share to his sister/daughter of Pichaimani. The defacto complainant is unnecessarily dragged to civil court because of creation of false document fraudulently by the petitioners conspired with his father-in-law and Sub-Registrar. Due to the fabrication of document, she is not able to enjoy the properties and make her wait for another decade due to pending of the civil suit. When the medical records prima facie proves the physical and mental condition of his father, furthermore when his father is intensive care unit, the first petitioner fabricated the document as if his father executed with free consent at his residence. It is a clear case of fraud, forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. For that the petitioners bound to face the criminal trial. He should not be permitted to keep out of the prosecution until the disposal of the civil suit. Due to his deceitful act, complainant was unnecessarily roped to civil Court. Hence, the authority (2019) 10 Supreme Court Cases page 37, (1987) (SUPP) Supreme Court Cases page 146, (2009) 12 Supreme Court Cases page 184 relied by the petitioners not apply to the facts of the case. On reading of entire materials, this Court is of the view that in order to defraud the claim/right of his sister's property, the petitioner knowing fully, fraudulently making a false document and it is a case of abuse of process of law. The learned Magistrate had found sufficient materials showing the complicity of accused in the crime. Inherent power under Section 482 Cr.P.C is with the purpose and object of advancement of justice, In case solemn process of Court is sought to be abused by a person with some oblique, motive, the Court has to invert the attempt at very threshold. Hence, this Court is not inclined to grant any relief to the petitioners as sought for in the present Criminal Original Petitions.

*** 17.(a) The trial Court also directed to dispose of the application filed by the petitioner to alter the charges on merits and in accordance with law as expeditiously as possible within a period of four months.**

18. Accordingly, these Criminal Original Petitions are dismissed as no merits with a direction to the learned Judicial Magistrate Court, Alandur, to expedite the trial in C.C.No.169 of 2019 and complete the same, within a period of four months

from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)
24/03/2022

*** Paragraph 17(a) included as per
Order of this Court dated 01/04/2022**

Sd/-
Assistant Registrar(CS III)
13/04/2022

//True Copy//

Sub Assistant Registrar

msrm

To

1. The learned Judicial Magistrate Court,
Alandur.
2. The Inspector of Police,
Central Crime Branch,
EDF II Team IX A,
Vepery, Chennai - 600 007.
3. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

*** Corrected Order
to be Substituted to
the Order already
despatched on
28/03/2022**

+2ccs to Mr.S.R.Ragunathan, Advocate, S.R.Nos.3852 & 3853
+1cc to Mr.J.Ashok, Advocate, S.R.No.22646

CRL.O.P.NOS.29269 & 31122 OF 2019

MT (CO)
GN(25/03/2022)
NRL (CO)
PBS/18/04/2022