

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2022

CORAM :

THE HON'BLE MRS. JUSTICE V. THAMILSELVI

CrI.O.P.No.30556 of 2019

and

CrI.M.P.No.16568 of 2019

1. M/s.The Standard Textiles  
A Partnership Firm,  
Rep. by its partner Kumar,  
27, Duraisamy Line,  
Karur - 635 009.

2. Mr.V.Kumar  
S/o.Velusamy Chettiar,  
Partner,  
M/s.The Standard Textiles  
27, Duraisamy Line,  
Karur - 635 009.

...Petitioners/Accused 1 & 2

Vs.

A.Ayyasamy

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records relating to the order dated 05.01.2019 made in [CRP.No.20](#) of 2018 on the file of the Third Additional District and Sessions Court, Dharapuram reversal of the order dated 17.04.2018 made in [C.M.P.No.5950](#) of 2017 in [C.C.No.65](#) of 2019 on the file of the Judicial Magistrate, Dharapuram and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Sivakumar

O R D E R

This petition has been filed to set aside the order dated 05.01.2019 made in [CRP.No.20](#) of 2018 on the file of the learned Third Additional District and Sessions Court, Dharapuram reversal of the order dated 17.04.2018 made in [C.M.P.No.5950](#) of 2017 in [C.C.No.65](#) of 2019 on the file of the learned Judicial Magistrate, Dharapuram.

2. Brief facts of the case are as follows

The respondent/complainant belongs to agriculture family and does not possess sufficient education, an extent of 2.84 acres of land in Re-Survey No.580, , Patta No.875 of Narajnapuram Village, Dharapuram Taluk by virtue of registered Sale deed registered as Document No.2225 of 1996 dated 28.02.1996 belongs to him by way of purchase and he was in his possession and enjoyment of the property. The first accused herein is the partnership firm in which, the second is the partner, in order to run their business, the second accused approached the respondent/complainant in the year 2004, requested his land under lease and the respondent/complainant also agreed to lease out the said vacant land. Accordingly, they registered the lease deed in the month of September on 02.09.2004 and the said lease deed was registered at Registrar office, Dharapuram in the name of petitioners for a period of 25 years to carry on wind mill operation in the subject matter of property and the lease amount per year was fixed as Rs.200 from the date of order agreed to pay by the accused. The said lease deed was prepared by a Document Writer Sheikdawood, who was brought by the accused persons from Karur and the same was typed by one R.Gandhimathy at Sri Ganesha Type office & Computers, Dharapuram, and some persons of the accused have signed as witnesses.

3. Thereafter, the respondent had applied for encumbrance certificate for his property during the year 2013 and to his shock he found that the accused with the mala fide intention to grab his property, on the same date when the lease deed was registered a sale deed was also stood registered as Document No.2641 of 2004 in the name of the accused. The accused had fraudulently prepared the above sale deed along with the lease deed without the consent of the respondent and had obtained his signature and registered the fraudulently prepared sale deed in his name. Immediately, the respondent had preferred a complaint to the Dharapuram Police during the month of May 2013 against the petitioners and the respondent was summoned by the police for enquiry on 27.05.2013 and after enquiry, the complaint was forwarded to the Tiruppur District Land Grabbing Cell for further investigation. Thereafter, since the complaint was not enquired properly and no action was taken, the complainant sent petition to the District Collector for a direction to the police for taking action. The police authorities received the petition and no action has been taken by the police and the complaint was kept abeyance. Hence, he approached the learned Magistrate and preferred the complaint under Section 200 Cr.P.C.. praying to the learned Magistrate to take cognizance and issue process to the accused and to punish them for the alleged offences under Sections 120(b), 420, 468, 471 r/w 109 IPC & Land Grabbing Offences or the complaint may forward to the jurisdiction police

under Section 156(3) issue direction to the Investigating Agency and investigate the matter and to file a final report. Thereafter, the statement was recorded on 17.11.2017 and the complainant was examined as Pw1 on his side Pw2 to Pw5 were examined and Exs.P1 to P7 were marked.. Thereafter, on considering those documents, the learned Magistrate had dismissed the application concludes that he produced only xerox copy of the sale deed, which is not primary evidence, accordingly, the said application was dismissed.

4. Aggrieved that the order, the respondent/complainant preferred the Revision Petition in [CRP.No.20](#) of 2018 before the third Additional District and Sessions Judge, Tiruppur. The learned District and Sessions Judge hearing the complaint and also perused the order of the learned Magistrate concludes that the trial Court failed to consider the ingredients required for the proceedings under Section 202 [Cr.P.C.](#), The learned Magistrate bound to see only whether there is any prima facie case made out in the complaint to proceed further. But the learned Magistrate observed that documents are Xerox and primary evidence not produced which is beyond this scope of the trial Judge, as per provisions under Sections 202 of [Cr.P.C.](#) Accordingly, the learned Sessions Judge had allowed the Revision Petition and the matter was remitted back for fresh consideration to the trial Court in accordance with law.

5. Aggrieved the said order, the petitioners/accused preferred this petition.

6. The learned counsel appearing for the petitioners submitted that the order passed by the Revision Court is against law and contrary to the provisions of the Code of Criminal Procedure and prayed to set aside the order of the learned Sessions Judge and the following grounds.

(i) That the learned Sessions Judge has failed to given an opportunity of hearing to the petitioners as per the mandate of Sec. 401(2) [Cr.P.C.](#), Hence, the order is liable to be set aside for not giving an opportunity of hearing to the petitioners who were the respondents in [CRP.No.20](#) of 2018.

(ii) The disputed sale deed dated 02.09.2004. But the complaint was filed on 09.10.2017 i.e., nearly 13 years after the execution of the sale deed and in order to avoid huge delay since the matter is under civil nature. Hence, the complaint of civil profile has been given criminal colour in order to overcome bar of limitation. Without considering those aspects, the learned Sessions Judge allowed the revision, hence he prayed to set aside the order.

7. The learned counsel appearing for the petitioners/accused submitted that while disposing the [CRP.No.20](#) of 2018 , the

learned Sessions Judge ought to have given an opportunity of hearing to the petitioners instead of that he allowed the application and remitted back to the matter to the Magistrate is violation as per the mandate of Section 401(2) Cr.P.C. He further submitted that nearly 13 years after execution of the sale deed he filed the said application before the Magistrate by invoking under Section 200 Cr.P.C., and the same was dismissed by the learned Magistrate. He further submitted that the said deed dated 02.09.2004 has not been released in view of the pendency of the proceedings under Sec 47 A of the Indian Stamp Act. Further contend that respondent has executed the lease deed in Document No.2640 of 2004 and also the sale deed in Document No.2641 of 2004 dated 02.09.2004 with full knowledge and consent. He further submitted that the respondent has kept quiet for a period of 11 years and he never raised his little finger against the registration of both the document. Thus, the complaint is belated one with ulterior motive, he gave complaint to grab money from the petitioner.

8. By way of reply, the learned counsel for the respondent submitted that there is no necessity to sell the property on the same day when the lease deed was executed. He further submitted that the petitioners had forged the documents, defrauded and cheated the respondent with a malice intention of grabbing the property belonging to him, illegally created a Sale deed on 02.09.2004 and registered a Doc No.2641 of 2004 without his consent and thereby caused damage and encumbrance to him and his property. Moreover, the said documents also not released due to pendency of 47 A Proceedings. Further, submitted that the lease deed was executed on 02.09.2004 but he never gave the consent to execute the sale deed on that day itself. He also further submitted that the respondent had produced all the copy of the documents before the learned Magistrate but the same was not appreciated and erroneously dismissed the petition under Section 200 Cr.P.C., but however, the learned Sessions Judge rightly appreciated all those documents and passed the order.

9. On considering the submissions on either side and perusal of the material available on record, the complainant filed a private complaint under Section 200 Cr.P.C., before the Jurisdiction Magistrate, Dharapuram against the accused to take cognizance to issue fresh notice to the accused and punish them for the alleged land grabbing offence or he prayed to issue direction to the police to investigate the the matter and file a final report under Section 156(3) Cr.P.C. The respondent also produced the Xerox copy of his sale deed and the copy of the sale deed stands in the name of the accused 1 and 2 dated 02.09.2004. However, the learned Magistrate erroneously dismissed the complaint on the ground that the respondent had produced the Xerox copy of the sale deed and there is no sufficient ground for

proceeding further as original documents were not produced.

10. As discussed above, the respondent/complainant had produced the materials document along with applications more particularly copy of the lease deed and also sale deed which are registered document also available for verification in the Registrar Office, Dharapuram which are sufficient to take case on file. Indeed, the learned Sessions Judge rightly appreciated these aspects and allowed the revision petition except remitted the matter back to the learned Magistrate for fresh consideration, hence other findings of the learned Sessions Judge is hereby confirmed.

11. The authority relying upon a Judgment in (2012) 10 Supreme Court Cases 517 [Manharibhai Muljibhai Kakadia and another vs Shaileshbhai Mohanbhai Patel and others relied by the accused not squarely applicable of the facts of this case for the reason that only, it is a primary stage and the petitioner/accused need not be called for enquiry before taking cognizance either before the Magistrate or before the police.

12. Accordingly, this Criminal Original Petition is dismissed and the learned Magistrate is directed to take fresh consideration of the application as prayed by the respondent in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msrm

To

1. The Third Additional District and Sessions Court  
Dharapuram.
2. Do-Through,  
The Principal District and Sessions Judge,  
Coimbatore.
3. The Judicial Magistrate,  
Dharapuram.

4. Do-Through,  
The Chief Judicial Magistrate,  
Coimbatore.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.42278

+1cc to Mr.R.Prabakar, Advocate, S.R.No.41794

Cr1.O.P.No.30556 of 2019  
and  
[Cr1.M.P.No.16568](#) of 2019

GPL(CO)  
UMA(20/07/2022)