



WEB COPY

Crl.O.P.(MD)No.254 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.254 of 2019

and

Crl.MP(MD)No.105 of 2019

Ayyadurai : Petitioner/A3

Vs.

1.State through its Inspector of Police,
Kulathur Circle,
Kulathur Police Station,
Tuticorin District.

2.A.Perumal : Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.25 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Vilathikulam, Tuticorin District and quash the same.

For Petitioner : Mr.Ka.Ramakrishnan

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

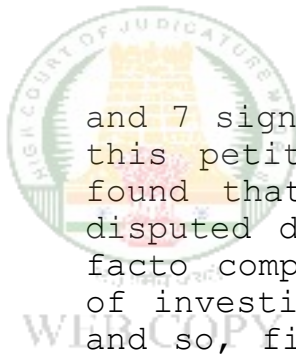
For 2nd Respondent : M/s.Baskar Mathuram
for M/s.Mathuram Law Associates

O R D E R

This criminal original petition is filed seeking quashment of the CC No.25 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Vilathikulam, Tuticorin District.

2.The case of the prosecution in brief:-

The property situated in survey Nos.242, 340/6, 349/4, 385/1-B, 383-ID, 387-5, 390-4 belonged to the de-facto complainant. By impersonation, A1 executed a sale deed, on 11/04/2008 in favour of one Coastal Energen Private Limited. During the process of impersonation, A1 photo has been affixed as if he is the de-facto complainant. He put his thumb impression in the document. A2, A3, A3 and A5 having known that the property belonged to the de-facto complainant, colluded, conspired together and also actively took part in the above said transaction of impersonation. The accused 6



and 7 signed as witnesses in the document. The thumb impression of this petitioner was sent to the forensic science lab and it was found that it tallies with that of the thumb impression in the disputed document. On the basis of the complaint given by the de-facto complainant, investigation was undertaken. During the course of investigation, the involvement of the petitioner came to notice and so, final report was filed in CC No.25 of 2012 on the file of the trial court.

3. Seeking quashment of the same, the 3rd petitioner has preferred this quash petition mainly on the ground that the disputed document, as mentioned by the de-facto complainant, is not a sale deed, but actually it is a power of attorney deed and his involvement is not found out during the course of investigation, he is a practising Advocate, his name has been wrongly included in the final report and no materials have been collected during the course of investigation to show his involvement.

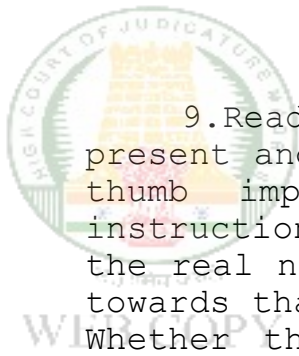
4. Heard both sides.

5. It is a case of impersonation, as mentioned above, it is a specific case of the de-facto complainant as well as the respondent police that by impersonating the de-facto complainant, A1 executed a sale deed in favour of the above said company called 'Coastal Energen Private Limited'. But it is seen that the disputed thumb impression was sent to the forensic science laboratory, Madurai and it was found that it tallies with that of the thumb impression of A1. Prima facie materials have been collected during the course of investigation. Now the petitioner says that actually the document in dispute is not a sale deed and actually, it is only a power of attorney as mentioned above. The copy of the document is also produced in the typed set of papers. It is a registered power of attorney deed. No doubt that there is some doubt with regard to the nature of the document.

6. The learned counsel appearing for the petitioner, on the basis of the above said document, would submit that mere power of attorney will not create any right in favour of any one. The document reads that it was executed by one A. Perumal.

7. According to the de-facto complainant, he has been impersonated. But whether this document is the disputed or not is not clear on record. It is a matter for trial and this document was not also seized or recovered during the course of investigation.

8. On the basis of the argument now advanced, this court cannot record any finding or observation to the effect that what was executed was only the power of attorney and not a sale deed. The involvement of the petitioner has been spoken by A1 in the course of his confession statement.



9. Reading of the statement shows that this petitioner was also present and asked him to go to the Sub Registrar Office and put his thumb impression and only in pursuance of the above said instruction, he went to the Sub Registrar office and without knowing the real nature of the transaction, he put his thumb impression and towards that he was also paid Rs.1,000/- by the 4th accused Madasamy. Whether the confession statement of A1 is reliable or not is a matter for consideration during the course of trial.

10. When a serious allegation of impersonation has been made and A1 has also spoken about the involvement of this petitioner, more particularly, when he has stated that only at the instigation and advise, he put the thumb impression in the disputed document, it will not be proper on the part of this court to quash the criminal proceedings, simply because the petitioner is a practising Advocate

11. The learned counsel appearing for the petitioner would rely upon number of judgments for the purpose of argument that the power of attorney deed will not create any right in favour of any one.

12. This is the settled position law in the celebrated judgment of the Hon'ble Supreme Court in the case of **Suraj lamb & Industries (P) Limited Vs. State of Haryana (SLP(C) No.13917 of 2009, dated 11.10.2011)**. The matter under discussion was, whether a power of attorney, sale agreement which are usually executed between the parties in the course of sale transaction or developmental transaction is valid under law. But here, we are concerning about the impersonation. Similarly the issue involved in **Mohammed Ibrahim and others Vs. State of Bihar and another (2009)3 SCC (Cri) 929**, which is also a celebrated case. But it is not relevant for discussion.

13. Absolutely, it is a case of impersonation herein. So the petitioner cannot take advantage of the observation of the Hon'ble Supreme Court in the case of **Mohammed Ibrahim and others Vs. State of Bihiar**. The only point to be decided, as mentioned earlier, during the course of trial is whether this petitioner is involved in the above said conspiracy, abetment, instigation etc.

14. The learned counsel appearing for the petitioner would straightaway rely upon the judgment of the Hon'ble Supreme Court in the case of **Asoke Baskar Vs. State of Maharashtra and others (CDJ 2010 SC 912)** for the purpose of argument that in the facts and circumstances of the case, either 120-B or section 34 of IPC are not attracted. The case of impersonation cannot be lightly taken that it is a civil dispute.

15. At no stretch of imagination, the allegation of impersonation can be construed as 'civil dispute'. So this is not a fittest case to exercise the jurisdiction under section 482 Cr.P.C.



So absolutely, I find no merit in this petition. Accordingly, this criminal original petition is **dismissed**. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

er

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO:

1.The District Munsif-cum-Judicial Magistrate,
Vilathikulam ,
Tuticorin District.

2.The Inspector of Police,
Kulathur Circle,
Kulathur Police Station,
Tuticorin District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.MATHURAM LAW ASSOCIATES, Advocate (SR-14618[F] dated 25/03/2022)

Crl.O.P. (MD)No.254 of 2019
23/03/2022

RD(04.04.2022) 4P 5C