



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2022
PRONOUNCED ON : 07.02.2022

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.11084 of 2019

and

Crl.M.P. (MD)Nos.6971 and 6972 of 2019

S.Rajendran : Petitioner/Accused No.6

Vs.

1.The Inspector of Police,
District Crime Branch,
Thoothukudi District,
Thoothukudi.
(Crime No.19/2015)

: 1st Respondent/Complainant

2.Karukkuvel : 2nd Respondent/Defacto complainant

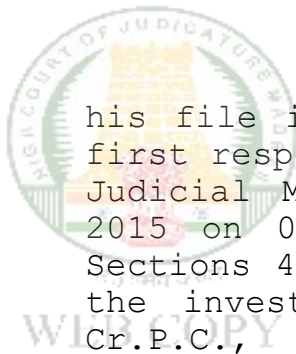
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for records in C.C.No.588 of 2017, on the file of the Judicial Magistrate Court No.III, Thoothukudi and to quash the same with regard to the petitioner/Accused No.6

For Petitioner : Mr.P.Balamurugan
For Respondents : Mr.R.Sivakumar
Government Advocate (Crl.Side)
for R.1
: No Appearance for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.588 of 2017, pending on the file of the Judicial Magistrate Court No.III, Thoothukudi and quash the same.

2. The petitioner is the sixth accused in C.C.No.588 of 2017, on the file of the Court of Judicial Magistrate No.III, Thoothukudi. The second respondent has filed a complaint before the Court of Judicial Magistrate No.I, Thoothukudi under Section 156(3) Cr.P.C.,
<https://hcservices.echips.gov.in/hcservices/> Judicial Magistrate, after taking the petition on

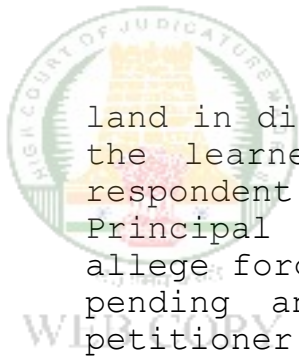


his file in Cr.M.P.No.1863 of 2015, has forwarded the same to the first respondent. On receipt of the complaint from the Court of the Judicial Magistrate, F.I.R. came to be registered in Cr.No.19 of 2015 on 08.03.2015 against four persons, for the offences under Sections 447 and 465 I.P.C. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C., dated 29.06.2016 against six persons arraying the petitioner as sixth accused for the offences under Sections 120(b), 465, 467, 468, 471, 447 r/w 34 I.P.C., and the case was taken on file in C.C.No.588 of 2017 and the same is pending on the file of the Judicial Magistrate Court No.III, Thoothukudi.

3. The case of the prosecution is that the property in Survey No.222/2 measuring 3.96 acres of land situated at Sangaraperi Village, Thoothukudi District originally belonged to one Janammal, that the said Janammal executed a registered sale deed in favour of one Veereaperumal on 28.05.1980, that the said Veeraperumal executed a sale deed in favour of one Sudalai Nadar - father of the defacto complainant, that the said Sudalai Nadar had been paying land tax regularly and the revenue records got mutated in his favour, that since the said Sudalai Nadar had died on 15.10.2009, the said property came to be owned by his legal heirs, including the defacto complainant and that they have been in enjoyment of the said property by having a joint patta in Patta No.4183.

4. Admittedly the first accused is the father of the second accused. The third accused was the then Deputy Tahsildar of Sangaraperi Village and the fourth accused was the then Village Administrative Officer of the said Village. It is the further case of the prosecution that the first accused using the document bearing D.No.1616/2009, obtained forgery patta in his favour with the help of the third and fourth accused on 20.02.2015, that the first accused using the forgery patta had executed a settlement deed in favour of the second accused, that the accused 1, 2, 5 and 6 had conspired together and in an attempt to grab the said land, had made advertisement for the sale of the said land, that they had trespassed into the said land on 01.03.2015 at about 10.00 a.m., and attempted to level the land using JCB and that thereby the accused 1 and 2 had committed the offences under Sections 120(b), 468, 471, 465 I.P.C., and accused 3 and 4 had committed the offences under Sections 465, 468, 471 r/w 34 I.P.C., and the accused 5 and 6 had committed offences under Sections 120(b), 447, 465, 467, 471 r/w 34 I.P.C.

5. The learned Counsel for the petitioner would submit that the learned Magistrate has failed to consider that the petitioner was neither present nor participated in the alleged occurrence, that the learned Magistrate failed to consider that there is no specific overt act or any specific averment made against the petitioner, that



land in dispute as per the statement of the second respondent, that the learned Magistrate has also failed to see that the second respondent had already filed a suit in O.S.No.113 of 2015 before the Principal District Munsif Court, Thoothukudi for cancelling the alleged forged documents created by the first accused and the same is pending and that the first respondent had wantonly roped the petitioner in the above case.

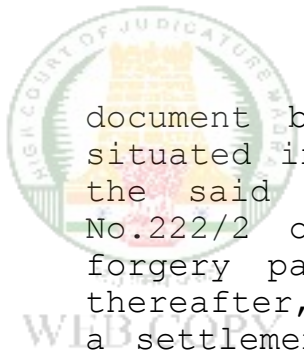
6. As rightly pointed out by the learned Counsel for the petitioner, the petitioner's name does not find place in the original complaint lodged by the second respondent, on the basis of which, F.I.R., came to be registered. As already pointed out, F.I.R. was registered against the accused 1 to 3 and 5 and after the investigation, two more persons including the petitioner have been added in the charge sheet.

7. Before entering into further discussion, it is necessary to see the ingredients for the offences alleged against the petitioner.

8. Section 465 I.P.C., prescribes the punishment for the offence of forgery, which is defined in Section 463 I.P.C., The two essential elements to constitute the offence of forgery are that there must be deceit or intention to deceive and secondly actual or possible injury caused to some person or persons. In order to constitute the offence of forgery, the document must be a false one and must have been made dishonestly or fraudulently as contemplated by one of the three modes explained in Section 455 I.P.C., and it must have been made with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with the property or with intent to commit fraud.

9. No doubt, the offence under Section 467 I.P.C., is an aggravated form of forgery, In order to attract the offence under Section 467 I.P.C., in addition of proving the elements required to be proved, for the offences under Section 465 I.P.C., the prosecution has to show that the document forged is one of the kinds mentioned in Section 467 I.P.C.. Section 471 contemplates the using as genuine of any document which is known or believed to be a forged document. In order to attract the offence under Section 471 I.P.C., the prosecution has to show that the accused is having knowledge that the document was a forged one and unless this awareness on the part of the accused is not proved, he cannot be roped under Section 471 I.P.C.

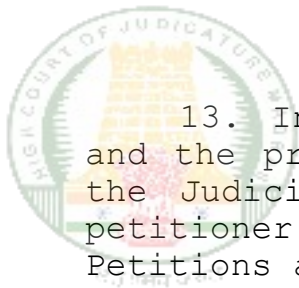
10. In the case on hand, as already pointed out, it is the prosecution that the first accused by using the



document bearing Document No.1616/2009 relating to the property situated in Survey No.150/2 of Iyyanadaippu Kovil Village, as if the said document relates to the property situated in Survey No.222/2 of Sangaraperi Village, the land in dispute, obtained forgery patta with the help of the accused 3 and 4 and that thereafter, with that forgery patta, the first accused had executed a settlement deed dated 20.02.2015 in favour of his son - second accused, vide document No.428/15 before the Joint Sub-Registrar No.I, Thoothukudi. No doubt, the name of the fifth accused has been shown as one of the accused in the F.I.R., by alleging that he had entered into sale agreement to purchase the said property and paid advance amount, but in the charge sheet, it has been alleged that not only fifth accused and also the petitioner had entered into the sale agreement by paying advance amount to the second accused. But as rightly pointed out by the learned Counsel for the petitioner, the witness Ponpandy, in the statement under Section 161 Cr.P.c., has stated that accused 5 and 6, who are the owners of Raj Group of Reals, had paid the advance amount and entered into the sale agreement and that the said accused along with the accused 1 and 2 had trespassed into the land in dispute and attempted to level the land by using JCB.

11. As rightly contended by the learned Counsel for the petitioner, even according to the prosecution, the petitioner herein had entered into the picture, only after getting the alleged forgery patta from the accused 3 and 4 by the accused 1 and 2 and thereafter only on the basis of the said forgery patta, the first accused had executed the settlement deed in favour of the second accused. It is not the case of the prosecution or the defacto complainant that the petitioner had allegedly involved in getting forgery patta and in execution of the settlement deed, with the help of the said forgery patta.

12. As rightly pointed out by the learned Counsel for the petitioner, even assuming that the case of the prosecution is true, it is not the case of the defacto complainant that the sixth accused had purchased the property from the accused 1 and 2 and the only allegation is that he had paid advance amount by entering into the sale agreement. Considering the above, there is absolutely no materials to implicate the petitioner with the alleged offences. Considering the above, this Court is of the view that permitting the prosecution to proceed against the petitioner is totally unwarranted and the same would amount to be an abuse of process of the law. Hence, this Court decides that the proceedings as against the petitioner in C.C.No.588 of 2017, pending on the file of the Judicial Magistrate Court No.III, Thoothukudi, is liable to be quashed.



13. In the result, the Criminal Original Petition is allowed and the proceeding in C.C.No.588 of 2017, pending on the file of the Judicial Magistrate Court No.III, Thoothukudi as against the petitioner is quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

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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 Judicial Magistrate No.III,
Thoothukudi
- 2.The Inspector of Police,
District Crime Branch,
Thoothukudi District,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
Crl.O.P. (MD)No.11084 of 2019
07.02.2022

RJ (CO)
GC(04.03.2022) 5P 4C