



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.19192 of 2018

and

Crl.MP(MD)Nos.8625 and 8626 of 2018

P.Shanmugam

: Petitioner/Accused No.4

Vs.

1.Soliammal

2.R.Shanthi

: Respondents/Complainants

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to CC No.269 of 2018 on the file of the Judicial Magistrate No.1, Karur.

For Petitioner

: Mr.K.Balasubramani

For Respondents

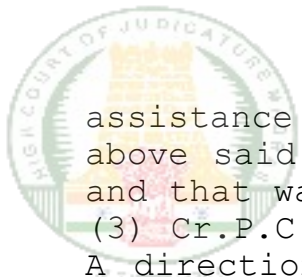
: Mr.P.Murugesan

O R D E R

This criminal original petition has been filed by the petitioner seeking quashment of the CC No.269 of 2018 on the file of the Judicial Magistrate No.1, Karur.

2.The case of the prosecution in brief:-

The respondents are the complainants in CC No.269 of 2018.They filed the complaint with the following allegations. The property in Door No.10 situated in Puliyur, Karur District, originally belonged to one Ramasamy. The said Ramasamy died, on 26/12/2009 leaving behind the complainant and his daughter and the first accused. They approached for transfer of the house tax assessment in their name. At that time, it was informed that the property was already transferred in the name of A1. The above said Ramasamy during his life time has not executed any document to any person in respect of any property. On information, which was obtained through the Right to Information Act, it was revealed that A1 has filed an affidavit as if the complainants and their daughters signed in the presence of the notary public. But actually, no such signatures were made by the complainants and their daughters in the affidavit. So, it is clearly a fabricated document. The document has been fabricated with the



assistance of this petitioner, who is a notary public. So for the above said criminal offence, the complaint was given, on 17/08/2011 and that was not properly enquired. So a petition under section 156 (3) Cr.P.C was filed in Crl.MP No.3614 of 2012 seeking a direction. A direction was also issued. But without any proper enquiry, that was also closed. Over which, a protest petition has been filed. With these allegations, they filed the criminal complaint and it was taken cognizance in CC No.269 of 2018 and summons were issued. Challenging the same, this petition has been filed by the petitioner, seeking quashment of the same.

3.Heard both sides.

4.A simple question of law has been raised by the learned counsel appearing for the petitioner on the ground that this petitioner acted in discharging his official duty as notary public and as such, before initiating any proceedings, sanction of the Central Government is required and for that purpose, he would straightaway rely upon the decision of this court in the case of C.Elangovan Vs. State, through the Inspector of Police, SPE:CBI:ACB: Chennai.(2017)1 MLJ (Crl) 475.

5.The brief facts in the above said case was that the co-accused in that petition, fabricated false records for the purpose of using the same before the court of law and that was attested by the petitioner therein and there is an allegation against him that he attested ante-dated agreement, knowing that the said agreement was not entered into between the parties in his presence and has also fabricated the notary register. This court keeping in view of the decision of this court in the case of K.Ramakrishnan Vs. Rajesh Kataria in Crl.OP No.25534 of 2007, dated 04/03/2010), which relied upon the judgment in the case of Chandmal Motilan Bora Vs. State of Maharashtra (CDJ 2003 BHC 214) has concluded that for initiating proceedings like nature compliance of section 13 of the Notaries Act is very much required.

6.As per section 13 of the Notary Act, the cognizance is barred, unless it is filed by the person authorised by the Central or State Government, as the case may be. Section 13 of the Notaries Act, 1952, runs thus:-

13.Cognizance of offence:- (1) No Court shall take cognizance of any offence committed by a notary in the exercise of purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

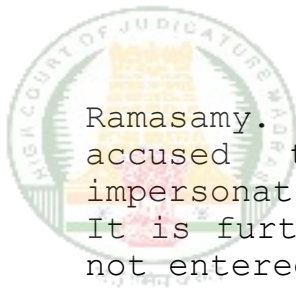


(2)No Magistrate other than a Presidency Magistrate or a Magistrate of the First Class try an offence punishable under this Act.

7. Here, not even an averment has been made in the complaint to the effect that he made representation to the competent authority to enquire about the affair and the offence and make the complaint, as per section 13 of the notaries Act.

8. The entire complaint reads that this petitioner colluding with the co-accused has attested, impersonated and forged the affidavit and over which, repeated complaints have been given by the complainant before several authorities and Cr.M.P No.3614 of 2012 was filed before the Judicial Magistrate No.1, Karur and that was enquired and that was also closed. Subsequent to that only, they made this complaint and during the course of cognizance, the trial court has not taken any steps, even to get the document in respect of which the alleged forgery has been committed. During the course of enquiry by the police, in response to the above said complaint in Crl.MP No.3614 of 2012, it has been observed that the parties have given a statement to the effect that A1, who is the brother of the complainant has subsequently given a consent letter and cancelled the house tax assessment, which was changed in his name and further, the report reads that after the death of the above said Ramasamy, dispute has arisen between his legal heirs namely wife, daughter and son. The wife and daughter are on the one side and the son is on the other side. Now after the death of the above said Ramasamy, they were enquired by the police and it was found that all the legal heirs of the above said Ramasamy are in possession of the above said house. This subsequent development has been noted and only on that basis, the complaint given the respondents came to be closed. Leaving all those subsequent developments as well as the legally factual issues, as mentioned earlier, section 13 of the notaries Act bars the prosecution.

9. Per contra, the learned counsel appearing for the respondents would rely upon the decision of this court in the case of Gananathyvaratha Subramanian Vs. State (Crl.OP(MD)No.2669 of 2020, dated 09/03/2020) for the purpose of argument that it is a factual issue, which can be taken into account only during the course of trial. But in that case, there was prima facie material and finding by this court to the effect that the document, which was under dispute was a rank forgery and this court has taken note that one of the signatories to the disputed document, even before the execution of the above said document died, finding the prima facie ground, this court directed the prosecution to go on. But here, there is no such prima facie ground to show that this petitioner also joined and colluded with the co-accused, assisted them to impersonate and creating the forged document by impersonation. Absolutely there is no averment in the complaint to the effect that this petitioner was known to the legal heirs of the above said



Ramasamy. Having not known all those persons, he allowed the co-accused to commit the offence of conspiracy, forger of impersonation, absolutely, there is no allegation in the complaint. It is further noticed in that case that the particular document was not entered in notary register. But here it is not the case.

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10. In that context, we go into the enquiry officer report wherein he made the enquiry with regard to the affairs, both the witnesses identified the presence of all the accused persons by the petitioner. So noting the above said factual issue only the complaint given by the respondents came to be closed on 02/01/2013. Subsequent to that, this complaint came to be filed. Even on the factual issue also, even when we take the subsequent development also, I am of the considered view that absolutely I find no merit in the prosecution that has been alleged against this petitioner. So the prosecution against this petitioner is liable to be quashed.

11. In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.269 of 2018 pending on the file of the Judicial Magistrate No.1, Karur is quashed as against this petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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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

The Judicial Magistrate No.1, Karur.

+1 CC to M/s.K.BALASUBRAMANI, Advocate (SR-12564[F] dated 16/03/2022)

Crl.O.P. (MD)No.19192 of 2018

15/03/2022

MGJ(30.03.2022) 4P 3C