



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Delivered on : 28.01.2022

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

WEB COPY

Cr1.OP(MD)No.2898 of 2017

State through
Deputy Superintendent of Police,
Melur Sub-Division,
Madurai.
Melavalavu P.S. Cr.No.152 of 2012 ... Petitioner/
Revision Petitioner/Complainant

Vs.

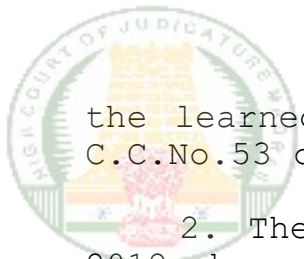
1.Dharmalingam Ambalam
2.Karuppanan Ambalam
3.Chandran Ambalam
4.Vellaiammal @ Velvili
5.Tamilarasi
6.Mallika
7.Subramani @ Velu
8.Muthukumar
9.Palanichamy ... Respondents 1 to 9/Accused
10.Gopalakrishnan ... 10th Respondent/
De-facto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records of the dismissal order in Cr1.R.P.No.35 of 2015, dated 03.08.2016, on the file of the I Additional Sessions Judge, Madurai, filed against the order in Cr.M.P.No.434 of 2015, on the file of the Judicial Magistrate, Melur and set aside the same.

For Petitioner	: Mr.Hassan Mohammed Ali Jinnah Public Prosecutor & Mr.A.Thiruvadikumar Additional Public Prosecutor
For R1 to R3 & R5 to R7	: Mr.AR.Jeyarhuthran
For R8	: Mr.J.Karthikeyan
For R9	: Mr.K.Veluchamy
For R10	: Mr.N.Dilipkumar

ORDER

The State has filed this Petition under Section 482 of Cr.P.C., being aggrieved by the order of the learned I Additional Sessions Judge, Madurai, in Cr1.R.P.No.35 of 2015, confirming the order of



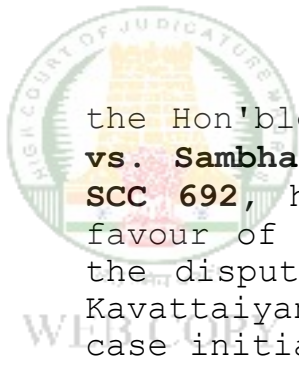
the learned Judicial Magistrate, Melur, discharging the accused in C.C.No.53 of 2013.

2. The petitioner herein registered F.I.R. in Crime No.152 of 2012 based on the complaint, dated 07.10.2012, given by one M.Gopalakrishnan. The content of the F.I.R. in nutshell is that the land measuring an extent of 10 Acres and 88 Cents in S.F.No.21 of Kavattaiyanpatti Village belongs to Elanthaikarai Ayyanar Temple and it is the property of the Village people consisting of three major communities, viz., Ambalam [Kallar], Konar [Yadhavar] and Adi-Dravidar. Respondents 1 to 9 herein have conspired to grab the Village land, had created sale deed executed by A1 to A3, in the capacity as Managers of the Village common property and A4 to A6 as the legal heirs of A1 to A3, sold the property to A9 through his Power Agent A8. Though the market value of the property was more than Rs.1.5 Crores, the transfer of property was for a sale consideration of Rs.1,57,800/-.

3. The 10th respondent herein lodged the complaint alleging act of fabricating false document, forgery, cheating and conspiracy and requested the Police to investigate. Accordingly, the petitioner herein registered a case in Crime No.152 of 2012, took up investigation and filed a final report on 08.05.2013 stating that A1 to A9 have committed the offences punishable under Sections 465, 467, 468, 471, 120-B and 420 of I.P.C.

4. On filing the final report, before framing the charges, A1 to A9 had filed a Petition in Cr.M.P.No.434 of 2015 to discharge them on the ground that there is no material to proceed against them for the alleged offences. It was contended that there is no *prima facie* evidence for the offence of criminal conspiracy, forgery and cheating in respect of the subject properties connected with this case. The complaint given by a stranger to the Village, alleging that the Village Temple property has been sold to A9, has been taken up for investigation and final report has been filed for the said offences, though the dispute at the most related to title over immovable property and purely a dispute civil in nature. A1 to A3, being the Ambalakarars of the Village and administering the festival of the Temple, had lawfully sold the property for the betterment of the Temple administration while the members of the other communities or Villagers of Kavattaiyanpatti had no grievance in alienating the property. While so, the de-facto complainant [10th respondent herein] has no locus to maintain the criminal prosecution being an outsider to the Village.

5. The State has filed counter and objected the discharge petition. However, the learned Judicial Magistrate has allowed the petition and discharged the accused holding that the dispute is purely civil in nature and therefore, relying upon the judgment of

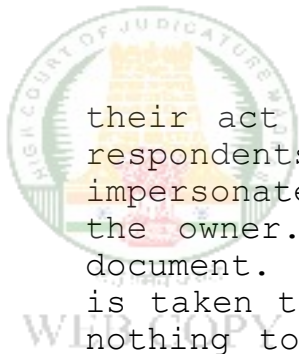


the Hon'ble Supreme Court in **Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others** reported in 1988 (1) **SCC 692**, held that though the sale deed executed by A1 to A6 in favour of A9 is not by the person, who has right to alienate, but the dispute can be agitated only through suit by the Villagers of Kavattaiyanpatti declaring their title and not through the criminal case initiated by a stranger to the Village.

6. Regarding the offence under Section 420 of I.P.C., the learned Judicial Magistrate has considered the entries in 'A' Register and Patta for the said property, which discloses that S.No.21 of Kavattaiyanpatti Village stood as 'Village Temple property' represented by Dharmakartha's till 2005. Thereafter, A1 to A3 had transferred the Patta in their names as its Managers and thereafter, in the year 2006, A1 to A3 along with A4 to A6, who are their legal heirs, had sold the property to A9 through his Power Agent A8. The revenue records indicates that the said property belongs to Kavattaiyanpatti Village property and not Kavattaiyanpatti Elanthaikarai Ayyanar Temple property. The Patta for the said property stood in the name of the Village Trustees. Therefore, alienation of the property by the Trustees in favour of A9 cannot be construed as cheating. Further, the learned Judicial Magistrate has gone to the extent of observing that the Village as such is not a juristic person, the Village Panchayat alone is the juristic person. Therefore, the Villagers of Kavattaiyanpatti alone can challenge the act of A1 to A3 by way of civil suit if they are aggrieved and in any event, criminal prosecution is not sustainable. Holding so, discharged all the accused from proceeding with trial.

7. The said order of discharge passed by the learned Judicial Magistrate, Melur, in Cr.M.P.No.434 of 2015, dated 13.05.2015, was challenged before the learned I Additional Sessions Judge, Madurai, by way of Revision Petition. In the Revision, the learned I Additional Sessions Judge had confirmed the order of the learned Judicial Magistrate holding that from the material evidence relied by the prosecution the ingredients of Sections 465, 468, 471, 120-B and 420 of I.P.C. are not made out.

8. The learned I Additional Sessions Judge had arrived at the said conclusion by referring 'A' Register, Patta and other revenue records, wherein, the names of A1 to A3 have been mentioned as Trustees for the said Village common property and they have sold the property describing it as Village common property and therefore, there is no impersonation or forgery or creation of false document to set the law in motion in criminal case. The learned I Additional Sessions Judge sitting on revision has concluded that the respondents 1 to 3/A1 to A3 have executed the sale deed in their names and the recitals indicate that they considered the property as their own. Therefore, even if the Court infers the execution of the document as dishonest and fraudulent, that is not sufficient for

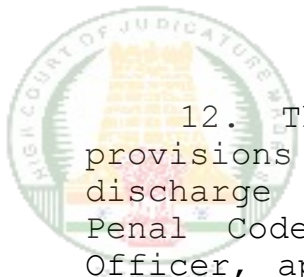


their act to fall within the realm of Section 464 of I.P.C. The respondents 1 to 6/A1 to A6 have not been alleged to have impersonated as the owner or acted as though they were authorized by the owner. Hence, the sale deed cannot be construed as a false document. Consequently, even if the statements of the prosecution is taken to be true, the Court cannot infer forgery, thus, there is nothing to show the commission of offence under Sections 465, 468 and 471 of I.P.C.

9. The State has preferred the Petition under Section 482 of Cr.P.C., assail the order of the Courts below discharging the accused persons against whom *prima facie* material has been placed for the offences of conspiracy, cheating and creating documents for title without any right to alienate. Further, the sale consideration received by the respondents 1 to 6, which exceeds Rs.1,50,00,000/- has been undervalued in the sale deed and mentioned as only Rs.1,57,800/-. The Courts below have misinterpreted the provisions of law and the judgments of the Hon'ble Supreme Court in order to favour the accused persons, against whom, a clear case of forgery, cheating and conspiracy have been made out. Even assuming they are the Trustees or Managers of the Village property, they can hold the property only as Trustees and not as owners of the property. Therefore, alienating the Village property entrusted to them, amounts to criminal breach of trust.

10. Records perused. Oral submissions made on either side heard. Law laid by Courts regarding scope of Section 239 of Cr.P.C. considered.

11. The Court can exercise the power under Section 239 of Cr.P.C., only in a case, where no *prima facie* material available to prosecute the accused persons. If the documents and the statements relied by the prosecution are presumed to be proved and criminal offence made out, Court cannot discharge the accused for the reason that the probability of conviction is doubtful. In the present case, the property, which was sold to the 9th respondent herein through the Power Agent 8th respondent herein, admittedly belongs to the Village and the persons, who have alienated the property in favour of the 9th respondent, are only Trustees. To alienate the Village common property, the alienor should have authority to alienate. Trustees *per se* without authorization cannot sell the property, which is common to the Villagers. Furthermore, the Courts below have miserably failed to consider the fact that the extent of the property is about 10 Acres and 88 Cents and worth about Rs.1,50,00,000/-, whereas the sale consideration shown in the sale deed is Rs.1,57,800/-, which is 1/10th of the actual value of the property. This singular fact is sufficient to prosecute the accused/respondents 1 to 9, who are parties to the alienation of the Village property for undervalue without any right to alienate.



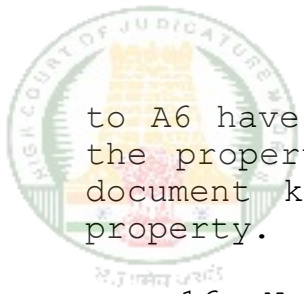
12. The Courts below have failed to understand the legal provisions enshrined under the Code of Criminal Procedure regarding discharge and framing of charges. Though several Sections under Penal Code mentioned in the charge sheet by the Investigation Officer, appropriate charges has to be framed by the Court against the accused persons based on the evidence collected. Charge framing is domain of the Court. Under the Code, charges framed can be altered or modified at any stage before judgment by the Court. In the case in hand, the Courts below instead of framing appropriate charges based on material evidence, had weighed the evidence *vis-a-vis*, the offences mentioned in the final report and without due application of mind, had discharged the respondents 1 to 9.

13. The rudimentary fact, such as S.No.21 of Kavattiyanpatti Village belongs to Village and classified as Village common property and A1 to A6 [Respondents 1 to 6] have no right to alienate were not at all taken note of by the Courts below. Ignoring the fact that A1 to A3 are only Administrators of the Village property and not the owners of the property, failed to appreciate the case of the prosecution that A1 to A6 have no authority to sell the Village property.

14. Section 464 of I.P.C., defines 'making a false document'. The two elements, which impress upon a document the character of a false document are,

- (1) it must be a document dishonestly or fraudulently made; and
- (2) it should have been made with the intention of causing a belief that it was made or executed by or by the authority of a person, who did not make or execute it and with the knowledge that it was not so made or executed.

15. In the case in hand, the sale deed dated 12.12.2006, has been executed by the respondents 1 to 6 in favour of the 9th respondent through the Power Agent 8th respondent taking advantage of the Patta, which stands in the name of the respondents 1 to 3 as Managers of the Village common property. The property has been sold for a consideration of Rs.1,57,800/-. The sale deed strangely not only executed by A1 to A3, who are the Managers of the property, but also A4 to A6 their legal heirs, who are no way connected with the administration of the Village common property. Till 2005, the revenue records collected by the Investigation Officer indicate that the property is shown as Kavattiyanpatti Village property and the Trustees' names are mentioned. The very fact that the respondents 1 to 6 do not own the property and at the most, the respondents 1 to 3 were only the Managers of the property, lead to the *prima facie* conclusion that right to sell the Village common property by its Managers without due authorization is questionable. More so, when the recital of the sale deed does not disclose that they have executable right to sell the property in the capacity as Managers of the property and they are authorized to alienate the property. A1



to A6 have created a title document in favour of A9 as if they own the property and have right to alienate it. They have made this document knowing fully well that they are not the owners of the property.

16. Neither in the sale deed nor in the discharge petition, the accused have whispered how they derived the authority to sell the Village common property. Unless and until they have some semblance of authority to alienate the public property, the act of the accused persons clearly falls within the definition of 'making false document', dishonestly to cheat the Villagers and misappropriate the proceeds of sale, thereby, deprive the Villagers. This act clearly falls within the definition of 'false document' as said in Section 464 of I.P.C. and attract other penal Sections. The sale deed dated 12.12.2006 is a document created with an intention to deceive the real owner i.e. the Villagers and for the consideration, which has enriched the respondents 1 to 6.

17. The Courts below ought to have gone into the materials relied by the prosecution as a whole and if found that certain Sections referred to in the final report are not made out to have ignored those Sections and framed proper charges, contrarily, it has discharged all the accused for prosecution lock, stock and barrel.

18. Section 463 of I.P.C. defines 'forgery' as making of any false document with an intent to cause damage or injury to the public or any person or to support any claim or title with an intent to commit fraud. The prosecution through revenue records as well as the sale deed executed by the respondents 1 to 6 in favour of the 9th respondent, has *prima facie* made out that the sale deed is a false document to cause damage and injury to the public of Kavattiyanpatti Village by creating title in favour of the 9th respondent, for which, the respondents 1 to 6 themselves have no right to alienate. The Courts below had erroneously concluded that there is no forgery or impersonation in executing the sale deed dated 12.12.2006 and therefore, the charge under Section 465 of I.P.C. is not made out.

19. To say the least, the Courts below have failed to understand the definition of 'forgery' and 'making a false document'. The offence of forgery as defined under Section 463 of I.P.C. is very wide. The document if executed dishonestly or fraudulently with an intention of causing it to be believed that the said document was made, executed or transmitted by or by the authority of a person by whom or by whose authority, he knows that it was not made, will fall within the terms of 'making false document'.

20. Here, it is a case where the Managers of the Village property with an intention of causing it to be believed that the sale deed dated 12.12.2006 made by the person authorized to sell, dishonestly without any lawful authority, had



transferred the property in favour of the 9th respondent. For the said illegal act, the parties have met and conspired. The statements of the witnesses *prima facie* disclosed necessary ingredients to frame charges against all the accused persons. While so, the Courts below had considered the facts on a wrong premise that it is civil in nature and no criminal offence committed, in spite of the fact that the Village property has been sold to the 9th respondent dishonestly by persons, who were only the Managers of the property and not the owners of the property. There is no material placed by the accused persons that they *bona fide* believed that they have authority to sell the property and as a *bona fide* purchaser, 9th respondent purchased the Village common property through its Managers or Trustees.

21. Further, the learned Judicial Magistrate has erred in holding that the de-facto complainant, the 10th respondent herein has no *locus standi* to initiate criminal prosecution. The learned Judicial Magistrate has oblivious of the law that criminal law for investigating cognizable offence can be set into motion by any person. Here, it is a case of alienating the Village common property by creating false document and misappropriation of the sale proceeds. The criminal investigation set into motion by the 10th respondent, who claims himself a community member of the said Village.

22. The conclusion of the Courts below that the allegation of the prosecution only leads to violation of civil right and the aggrieved party is entitled only to approach the civil forum to substantiate the right and criminal colour cannot be given to the said facts is a patently illegal conclusion.

23. The Court cannot be a mute spectator when the public property is converted into private property by creating false document of title and usurped by individuals. If any cognizable offence brought to the light of the Police, it is their responsibility and duty to investigate and file final report. At times, the Villagers may be intimidated or threatened by powerful persons and or for any other reasons, they may not set the law into motion. In such circumstances, Court shall not find fault with the Law Enforcing Agency, which has taken up the investigation of a cognizable offence. More particularly, when the public property by false document is converted into private property to exploit the natural resources, the Courts cannot turn a nelson eye and sit on hyper technicalities give seal of approval and allow illegality to continue.

24. Regarding framing of charges, the Hon'ble Supreme Court in **Mauvin Godinho Vs. State of Goa** reported in **2018 (3) SCC 358**, has observed as below:-

'12. At the outset it would be pertinent to



note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. [Refer Sajjan Kumar v. CBI [(2010) 9 SCC 368], State v. A. Arun Kumar [(2015) 2 SCC 417] and State v. S. Selvi [(2018) 4 SCC 641]]''

25. At this juncture, it is also appropriate to refer the subsequent judgment of the Hon'ble Supreme Court in **Saranya Vs. Bharathi and another** reported in **LL 2021 SC 402**, wherein the Hon'ble Supreme Court after referring its earlier judgment rendered in **State of Madhya Pradesh Vs. Deepak** reported in **2019 (13) SCC 62**, has observed as below:-

''7.1. In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of



the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.''

26. The Court in a discharge petition cannot make a roving enquiry and conduct mini trial, which the Courts below have unfortunately done in this case. Whether it is done due to ignorance of law or for extraneous consideration, is not the concern of this Court for disposing the Petition. To say in short, on evaluating material and documents on record, a *prima facie* case is disclosed constituting a criminal offence of conspiracy, forgery, breach of trust and cheating by persons, who are bound to protect the Village common property. The material placed before the trial Court by the prosecution *prima facie* make out a case for trial and sufficient to frame charges against the respondents 1 to 9.

27. As a result, this Criminal Original Petition is allowed with a direction to the trial Court to frame appropriate charges and resume the trial and complete the same as expeditiously as possible.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn2

To

- 1.The I Additional Sessions Judge, Madurai.
- 2.The Judicial Magistrate, Melur.
- 3.The Deputy Superintendent of Police,
Melur Sub-Division,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-3216[F] dated 31/01/2022)

order in
Crl.OP(MD)No.2898 of 2017
28.01.2022

SR (CO)

GC (09.02.2022) 9P 6C

<https://hcservices.ecourts.gov.in/hcservices/>