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Crl.R.C.No.158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2023

PRONOUNCED ON: 24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.158 of 2023

and

Crl.M.P.Nos.1237 & 1239 of 2023

D.Raja ... Petitioner
/vs/

State Represented by,
Inspector of Police,
Central Crime Branch,
Tiruppur City, Tiruppur. ... Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 r/w 401 of Code of Criminal Procedure to set aside the order dated 01.12.2022 made in C.M.P.No.8192 of 2022 in C.C.No.301 of 2017 on the file of the Judicial Magistrate Court No.I, Tiruppur and to allow the above criminal revision case.

For Petitioner ... Mr.R.John Sathyan,
Senior counsel
for Mr.C.Prabakaran

For Respondent ... Mr.V.Meganathan
Govt. Advocate (Crl.side)



CrI.R.C.No.158 of 2023

ORDER

The criminal revision case has been filed to set aside the order dated 01.12.2022 made in C.M.P.No.8192 of 2022 in C.C.No.301 of 2017 on the file of the Judicial Magistrate Court No.I, Tiruppur.

2.The learned counsel for the petitioner submitted that the petitioner was charged for the offences punishable under Sections 467, 468, 471, 120(B), 447, 466 and 109 of IPC r/w 82(d) of the Registration Act, 1908. The property in survey Nos.756 and 94/4 situate at Thottipalayam Village, Palladam Taluk, Tiruppur town, measuring an extent of 14.47 acres. Out of which, the lands measuring an extent of 11.58 acres was given court delivery to the father of L.W.1. Thereafter, there are several proceedings including L.P.A. before High Court and S.L.P. before the Hon'ble Supreme Court, which are ended in favour of the L.W.1's father Shanmuga Chettiyar and his possession and enjoyment of the property. One Palani Boyan son of Nayunda Boyan, the original owner of the property to an extent of 7.09 ½ acres of land and the same has been claimed by his legal heirs Chinna Mara Boyan and Thimma Boyan and his legal heirs based on a Will. Another group of legal heirs viz., the 1st accused, who is the legal heir of



CrI.R.C.No.158 of 2023

Palani Boyan son of Naidu Boyan claiming right over the very same property based on a Will executed by Masiriammal. The 2nd accused, who is the daughter of 1st accused, has filed a suit for partition and compromised the same by allotting the share of the subject land in favour of the 2nd accused and obtained the decree in O.S.No.326 of 2013 before the Hon'ble Sub Court, Thiruppur for the purpose of said suit legal heir certificate of Masiriammal and Palani Boyan are fabricated and claiming the right over the property. Subsequently, power of Attorney Deed was executed in favour of this petitioner/A3 and all are jointly fabricated the document and thus, an offence was committed as charged thereon.

3.The learned counsel for the petitioner further submitted that the petitioner is an utter stranger to the property and even as per the charges, the alleged legal heirship certificates are created much prior to the partition suit, filed by the 2nd petitioner against the 1st petitioner in O.S.No.326 of 2013 and the same was decreed as compromised and final decree was passed on 21.04.2014. The documents referred in the charge sheet are all part of the documents in the said suit. Even as per the prosecution case,



CrI.R.C.No.158 of 2023

the General Power of Attorney deed was executed only on 03.06.2014 for the purpose of Developing the said property as they are unable to deal with the property. Therefore, the petitioner came into picture and made application to the Revenue Authorities and contesting various cases against the defacto complainant and another to retrieve the said property. When the matter stood thus, the FIR was registered only on 01.06.2016 after filing 2 Civil Suits by the said Latha/A2 through the petitioner as Power Agent, based on the document handed over to him. At this juncture, the charges levelled against the petitioner would not attract at all against him. In fact, there was two Wills relied upon by each of the rival parties are still put into test about its genuineness by the Civil Court. Only then the issue of commission of cognizable offence of those documents would arise. Now admittedly more than 3 suits are pending between all the parties and none of the Wills are tested as required under Section 68 of the Evidence Act. At this juncture, the entire charges levelled against the petitioner is baseless and the ingredients to constitute the offences are not made against the petitioner. Moreover, the subject matter in issue is purely a civil in nature and the petitioner being a mere power agent of A2 cannot be



prosecuted as there is no individual involved of commission of offence was made out by the prosecution. Therefore, the trial Court failed to appreciate the materials on record properly. Hence, the impugned order has to be set aside and the petitioner has to be discharged from the criminal proceedings.

4.The learned Government Advocate (crl.side) supported the order of the trial Court and contended that while framing a charge, the Court has to see a prima facie case against the accused. For framing of charge need not weigh the evidence meticulously in this case. The materials placed before the Court disclosed grave suspicion against the accused. He got power of attorney from the second accused Latha, daughter of the first accused and prepared all documents for getting Court decree as well as the revenue documents, electricity connection. In this regard, Tiruppur Thasildhar Murugadoss and Deputy Thasildhar Ganesan, Executive Engineer electricity board Sivasamy gave statement that this petitioner applied for electricity connection and for legal heir certificate and other things. Therefore, his participation is prima facie spoken by the prosecution witnesses, Hence, the truthfulness has to be tested before the trial Court.



In this regard, the order passed by the trial Court is sustainable. No ground for interference with the order passed by the trial Court and hence, pleaded to dismiss the criminal revision case.

5.I have considered the case in the light of the submission made by the learned counsel for the petitioner as well as the learned counsel for the respondent.

6.On perusal of the records, it is seen that the petitioner is the third accused in C.C.No.301 of 2017 on the file of Judicial Magistrate Court No.1, Tiruppur. The respondent police registered a criminal case in Crime No.9 of 2016. In pursuance of the complaint given by one N.S.Sugumaran S/o.N.Shanmuga, it is alleged that the property was purchased by his father N.Shanmugam and he has been enjoying the same. The accused by preparing false documents obtained a decree in a suit in O.S.No.326 of 2013 with regard to S.F.Nos.755, 756 to the extent of 7.9 ½ cents. The total extent is 11.58 acres. In this regard, decree for 7.9 ½ cents. This petitioner is the third accused in this case and he got power from the second accused



CrI.R.C.No.158 of 2023

Latha on 03.06.2014 for developing the property. This petitioner is doing the real estate business. Based upon the power of attorney executed by the second accused Latha on 03.06.2014, he applied for electricity connection by enclosing legal heir certificate and death certificate. In this regard, it was found that the death certificate of Raja in Tiruppur issued by the Thasildhar by proceedings g/K/337/2015/m5 ehs; 21/01/2015 which was given to one Ramani, who is the wife of Raja and this petitioner produced another certificate [மு.மு.337.2015.அ2](#) நாள் /02/2015 is not issued by the office as well as the Assistant Executive Officer, Electricity Board also gave statement to the Inspector of Police that this petitioner applied for electricity connection by producing the legal heir certificate [மு.மு.337.2015.அ2](#) நாள் /02/2015. which is a fabricated one. This petitioner applied for electricity connection by giving the disputed document of legal heir certificate. Under these circumstance, prima facie case is made out to proceed against the petitioner/the 3rd accused. In this regard, The Hon'ble Supreme Court in **Union Of India vs Prafulla Kumar Samal & Anr. (1979 AIR 366,)** laid down the general principles that when charge should be framed or an order of discharge can be passed



Crl.R.C.No.158 of 2023

by the Court, the case on hand does not meet the parameter laid down by the Hon'ble Supreme Court in the abovesaid case for discharge. Therefore I find no infirmity in the impugned order passed by the trial Court and no merit in this criminal revision case.

7. Accordingly, the criminal revision case is dismissed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
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To

24.02.2023

1. The Judicial Magistrate Court No.I, Tiruppur.

2. State Represented by,
Inspector of Police,
Central Crime Branch,
Tiruppur City, Tiruppur.

3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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