



Crl.R.C.No. 259, 260 of 2023 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2023

PRONOUNCED ON: 28 .06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.259 and 260 of 2023

and

Crl.M.P.No.2105 of 2023

Kumar

... Petitioner in Crl.RC.259/2023

1.Sivaraj

2. M.Anandan

3. Jayachandran

4. Jayaprakash

5. Suresh Kumar

... Petitioners in
Crl.R.C.260/2023

/vs/

1. The Inspector of Police,
Central Crime Branch,
Team-16,
Vepery, Chennai 600 017



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2. L. Chandrau

... Respondents in both CrlR.Cs

(R2 impleaded as per order dated 27.02.2023

in Crl.M.P.Nos.2905 & 2907 of 2023 in

Crl.R.C.Nos.259 & 260 of 2023)

Common Prayer : Both the Criminal Revision Cases had been filed under Sections 397 & 401 of Criminal Procedure Code, 1973, to set aside the order of the learned Special Judge, Land Grabbing Court II, Egmore, Allikulam, Chennai 600 003, dated 11.11.2022 in Crl.M.P.No.31 of 2022 in C.C.No.14 of 2021 by allowing the revision.

For Petitioner

in Crl.RC.259/2023

... Mr. J.Sudhakaran

For Petitioner

in Crl.RC.260/2023

... Mr. G. Arun Prasad

For Respondent

No.1 in both the
Crl.R.Cs

... Mr R.Vinothraja,

Gov. Adv. (Crl.side)

For respondent No.2,

in both Crl.R.Cs

... B.Kumar, Senior counsel

for Mr.P.K.Sabapathi



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COMMON ORDER

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Both the Criminal Revision Cases have been filed against the impugned order dated 11.11.2022 made in Crl.M.P.No.31 of 2022 in C.C.No.14 of 2021 on the file of the Special Court for Land Grabbing Court II Egmore, Allikulam, Chennai and to discharge the petitioners from the criminal proceedings in C.C.No.14 of 2021.

2. Since the issues involved in both the Criminal Revisions are arising out of C.C.No.31 of 2022, both the appeals have been heard together and disposed off by this Common Order.

3. The fact of the case is that the defacto complainant claims that the property in Paimash No.366/1, T.S.No.88, Reddy 1st street, Ekkattuthangal, Chennai, to an extent of 16,989 sq.ft., along with some other properties originally belonged to one Mr.K.Govindha Reddiar, S/o. Kandhappa Reddiar, which he inherited in the capacity of a legal heir. After the death of said Mr.K.Govindha Reddiar, his legal heirs Mr. Loganatha Reddiar, Krishna Reddiar, Balu Reddiar and Venu Reddiar, were enjoying the properties jointly. After the death of the aforesaid



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persons, the property devolved on the defacto complainant, who is the legal heir of his paternal uncles Krishna Reddiar, Balu Reddiar and Venu Reddiar and they are enjoying the same jointly. The defacto complainant is the son of Loganathan Reddiar. While so, Sivaraj, S/o. Varadha Reddiar, Kumar, S/o. Kannaiah and V. Anandan s/o. Venu Reddiar, who are all his neighbours with the intention to grab the property conspired together and involved in illegal activities. They dumped sand in the said property and put up fence and also removed the boundary stone laid by the Government Surveyor and also attempted to grab the property. A complaint in this regard has been lodged before J3 Guindy Police Station, Chennai, which was registered in CSR No. 641 of 2014, dated 19.08.2014. In the course of enquiry the aforesaid persons assured to demarcate the property with the aid of land surveyor and will not involve in any such act with regard to the property. But, again they dumped the sand and put up fence and took possession of the said property, for which, Sivaraj, Kumar and V. Anandan created several documents with an intention to grab the property from them and also attempted to sell the property to some third parties. Based on the complaint given by the defacto complainant, the respondent police



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registered a case and investigated the matter by enquiring the witnesses, recording their statements and after investigation, filed final report for the offences punishable under Sections 465, 468, 471, 489 r/w.34 of IPC and the same has been taken on file in C.C.No.14 of 2021 by the learned Special Judge, Land Grabbing Court II, Egmore, Allikulam, Chennai. In which, the petitioners in both the revision petitions filed a petition in Crl.M.P.No.31 of 2022 to discharge them from the criminal proceedings and the same was dismissed by the learned judge on 11.11.2022. Against which, the 2nd petitioner/A2 filed Crl.R.C.No.259 of 2023 and the petitioners 1, 3 to 6 filed Crl.R.C.No.260 of 2023 before this Court.

4. The learned counsel for the petitioner submitted that the Trial Court failed to consider the fact that no witnesses in their statement under Section 161(3) Cr.P.C spoke about the document said to be forged by the petitioners. Further, the prosecution also not specifically stated as to which document had been forged by the petitioners. Apart from this, the petitioners had already filed a suit in C.S.No. 182 of 2019 against the 2nd respondent herein for declaratory relief in support of the very same subject property before this Court. In the above said Civil Suit, the



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petitioners had also filed an application in O.A.No.243 & 244 of 2019 in

C.S.No.182 of 2019 seeking for injunction restraining the 2nd respondent

from alienating or encumbering the subject property and injunction

restraining the defacto complainant from interfering with the property

pending disposal of the suit and this Court by an order dated 03.06.2019

was pleased to allow the said applications. Further, there is no evidence

on record to show that the petitioners affixed the signature of the defacto

complainant forgedly or/and there is no allegation or evidence that the the

petitioners impersonated the defacto complainant and executed document.

Since the petitioners had not created any false documents in the name of

defacto complainant and no offence of forgery has been committed by the

petitioners, taking the allegations and statements as it is true, it will not

constitute any offence as prosecuted by the respondent police. The trial

Court overlooked these fact and dismissed the petition. Therefore, prayed

to set aside the impugned order and to allow the both the Criminal Revision

Cases by discharging the petitioners from the criminal proceedings in

C.C.No.14 of 2021 on the file of the Special Court for Land Grabbing

Court II, Egmore, Allikulam, Chennai.



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5. The learned Government Advocate (crl.side) appearing for the first

respondent supported the order of the Trial Court.

6. The learned counsel appearing for the defacto complainant submitted that the defacto complainant is owner of the property to an total extent of 39 cents with house and vacant place, situated at Town Survey No.87 (14 cents) and survey no.88 (25 cents) and it is an ancestral property. Subhareddiyar had executed the release deed vide Document No.776/1905, dated 15.05.1905. The property was partitioned by the legal heirs of Kanthappa Reddiyar, i.e., Govinda Reddiyar and Munusamy Reddiyar.

7. In order to grab the land, the petitioners/accused conspired together, fraudulently included the properties contained in Survey Nos.87 and 88 in the old settlement deed document No.1559 /1943 dated 24.07.1943 and registered at Sub Registrar Office, Saidapet and by using the false settlement as a genuine one, they created two sale deeds by document No.4305 of 1996 dated 20.09.1996, document no.4335/1996, dated 20.09.1996, document No.4362/1996, dated 23.09.1996 and



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registered at Saidapet, South Madras Sub-Registrar Office. Thus falsification of documents and the offence committed by the petitioners are proved by materials on records. The learned Trial Judge, after considering the case records and after hearing the submissions made on behalf of the prosecution and the accused, is of the opinion that there is a ground for presuming that the petitioners/accused had committed an offence. Therefore, there is no ground to interfere with the finding of the trial Court and thus, pleaded to dismiss the revision petition.

8. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records.

9. The Revision petitioners are accused in C.C.No.14 of 2020 on the file of the Special Court for Land Grabbing Court-II, Egmore, Allikulam, Chennai. The respondent police, in pursuance of the complaint given by the defacto complainant L.Chandru, registered a case in crime No.48 of 2019 for the offence under Sections 465, 468, 471, 489 r/w. 34 of IPC. The prosecution, after investigation, filed final report for the above said



offences. In the final report prosecution cited 13 witnesses, namely, L.Chandru, Devakiammal, K.Kanthan, C.Vijayabooshan, Gopinath, Ramkumr, Balasubramanian, Uma, V.Giridharan, S.Thangaraj, S.Anbazhagan, Nagalakshmi, Phemila Sherly. I have gone through the statement of the witnesses and the materials on record.

10. Section 227 of Cr.P.C. is intended to eliminate harassment to the accused when there is no prima facie case against him. The framing of a charge is not a mere formality, but a Judicial Act. It is required to be performed after application of mind. The Hon'ble Supreme Court in ***Union of India(UOI) /vs/ Prafulla Kumar Samal and ors.*** reported in ***AIR 1979 SC 366*** laid down general principles as to how charge should be framed or an order of discharge can be passed by the Court. HIS Lordship Justice Fezal Ali summarised the legal position and laid down correct law on the point, which runs as follows:

“ 10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

- 1. That the Judge while considering the question of framing the charges under Section 227 of the Code*



has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

2. *Where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained.the Court will be fully justified in framing a charge and proceeding with the trial;*

3. *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

4. *That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mount-piece of the prosecution, but has to consider the the broad probabilities of the case, the total effect of the*



evidence and the documents produce before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

11. The alleged false documents, i.e., (1) document No.4305/1996, dated 20.09.1996, document No.4335/1996, dated 20.09.1996 and document no.4362/1996 dated 23.09.1996 were not executed by any one of the petitioners by impersonating as defacto complainant or any other third persons.

12. I have considered whether the complaint averments and the statements recorded by the police, even assuming to be true, make out the ingredients of the offences punishable either under Section 465, 468, 471 and 489 of IPC.

13. Section 464 IPC defines about the making a false documents.

Section 464 IPC is extracted as under :-



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“ 464- Making a false document -[A person is said to make

a false document or false electronic record- First- who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

© affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature]

14. The condition precedent for an offence under Section 467 and 471 is forgery. The condition precedent of forgery is making a false document.

15. It is to be noted that the first allegation to interpolating settlement deed dated 24.07.1943 is not done by the petitioners/accused. Thereafter, from the legal heirs of Venkatramareddiyar. executed other documents. Father of the accused Kumar, purchased the disputed property. Further, it



is not disputed that this Court in O.A. Nos.243 & 244 of 2019 and A.Nos.2499 and 2500 of 2019 in C.S.No.182 of 2019 discussed about the disputed property and hold that the plaintiffs therein, i.e. Sivaraj(A1) S/o. Varada Reddy and K.K.Kumar(A2) S/o. Kanniah, as a joint owner of land in respect of survey nos.87 and 88. For better appreciation, it is extracted as under:

“ 64. The defendant is unable to substantiate his claim that the paimash No.366 which ws assigned S.No.157 was subsequently assigned T.s.No.88, Though Mr.B.Kumar, learned Senior Counsel would contend that T.S.numbers came into exitence only in the yar 1971, no supporting documents have been produced to substantiate the said contention. Though, the respondent has produced the xerox copy of the plan of Block 4 of Alandur Village to contend that the T.S.Numbers were assigned only in1971. A perusal of the same shows that the T.S. Has been done in 1955 and the plan has been prepared on 15.03.1971. Therefore, it cannot be safely concluded that there were no T.S.numbers



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in the year 1960.

65. *Of course, there is some difference in the hand writing found in pages 10 and 17 of the settlement deed dated 1932.*

But the settlement deed being a registered instrument having continuous pages, I am unable to, prima facie, accept the contention of the learned Senior Counsel to the effect that there had been alterations or manipulation in the said document. IT is also seen from the evidence of the respondent in O.S.No.5009 of 2004 that the respondent has atleast admitted that Venkatarama Reddiar has lands in S.No.88.

66. *The settlement deed dated 05.11.1932 ha been produced along with the plaint in the said suit. The copy of the T.S. Land registers relating to the suit Survey numbers i.e., S.Nos.87 and 88 would show that the name of the vendor of the plaitniffs as joint owner of the land both in respect of S.Nos.87 and 88. These document have been issued even in the years 1986 and 1993. Therefore, it cannot be gain said*



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that these document are also been procured for the purposes of the present suit.

67. The property tax assessments have also been made in respect of the building situate in the suit property in the name of the plaintiffs. I am therefore of the considered opinion that the plaintiffs have made out a prima facie case of possession and title in respect of the suit properties.

68. The balance of convenience is also in their favour as I find that the defendant has attempted to coerce the plaintiffs to execute the documents of his choice by using threat through police. It is rather unfortunate that the police officials have colluded with the defendant and attempted to enter upon a civil dispute under the guise of enquiry into the land grabbing complaint. I also find that the defendant/respondent has miserably failed to prove the case pleaded by him in his counter affidavit.

69. To a specific query by the Court, Mr.B.Kumar, learned Senior counsel appearing for the respondent would submit



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that he is not justifying the action of the police in obtaining the memorandum of understanding dated 14.02.2019. He would try and establish his title to thte suit property dehors the said memorandum of understanding .

70. I must also record that Mr.B.Kumar, learned Senior Counsel made a valiant effort to establish that the plaintiffs do not have title to the suit property. But, I am unable to agree with his contentions regarding lthe validity of the settlement deed of the y ear 1932 and the order of the settlement officer dated q29.11.1960. I therefore conclude that the balance of convenience is in favour of the plaintiffs and the plaintiffs would be put to irreparable loss and hardship if their possession is not protected by an interim order of injunction pending suit.

71. The plaintiffs have also sought for injunction restraining the defendant from alienating or encumbering the property. Whatever I have observed with reference to the possession would equally apply to the relief of injunction restraining



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alienation.

72. In view of the above, I find that the applicants are entitled to succeed in both the Original Applications viz., O.A.Nos.243 and 244 of 2019. Hence, the order of injunction grnted on 08.03.2019 in O.A.No.243 of 2019 is made absolute and O.A.No.243 of 2019 is allowed. O.A.No.244 of 2019 will also stand allowed granting an order of injunction restraining the respondent from in any manner alienating or encumbering the suit property pending disposal of the above suit.

73. The applications for vacating the injunction in A.Nos.2499 and 2500 of 2019 shall stand dismissed. However, in the circumstances of the case, there will be no order as to costs. “

The above the judgment reveals that the accused V.Sivaraj and K.K.Kumar, plaintiffs therein, are having right over the property. Therefore, there is no material in this case that the petitioner's made or executed a document claiming to be some one else or authorised by some one else or altered or



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tampered a document or obtained a document by partition. In these circumstances, no evidences are made out against these petitioners. The Trial Court overlooked the fact and erroneously dismissed the petition. Hence, it is liable to be set aside. Applying the parameters laid down by the Hon'ble Supreme Court in the above mentioned ***Union of India /vs/ Prafulla Kumar Samal and Ors case***, the petitioners are entitled for discharging from the criminal proceedings.

16. In the result, both the Criminal Revisions are allowed and the impugned order is hereby set aside and the petitioners are discharged from the case in C.C.No.14 of 2021 on the file of the Special Court for Land Grabbing Court II, Egmore, Allikulam, Chennai, Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes/No

Internet : Yes/No

28. 06.2023

mrp

Note : Issue Order copy today



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To

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1. The Special Judge,
The Special Court for Land Grabbing Court II,
Egmore, Allikulam,
Chennai

2. The Inspector of Police,
Central Crime Branch,
Team 16, Vepery,
Chennai 600 007.



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V.SIVAGNANAM ,J.

mrp

Pre-delivery order made in
Crl.R.C.No.259, 260 of 2023

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