



Crl.O.P. No. 3342 of 2021

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Crl.M.P. No. 1927 of 2021

SUNDER MOHAN. J,

Today, the matter has been listed under the caption “*For Being Mentioned*”.

2. The learned counsel for the petitioners would submit that the suit filed by them in O.S.No.741 of 2010 was decreed in their favour. However, in the order, it is shown that the suit is “*still pending adjudication*”. He has also produced the Judgement of the Trial Court in O.S.No.741 of 2010.

3. The said error is rectified and the modified Paragraph nos.3 and 5 of the order would read as follows:

“3. The learned counsel for the petitioners would submit that the impugned final report alleging forgery is unsustainable. The proceedings have been pending since

<https://www.mhc.tn.gov.in/judis> 2010. However, the trial had not commenced, and the



Crl.O.P. No. 3342 of 2021

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respondent has no interest in pursuing the case. The

petitioners filed a suit before District Munsif Court, Salem,

in O.S.No.741 of 2010 to declare the petitioners as partners

and to further declare that the defacto complainant was not a

partner with the firm; that in the suit the alleged forged

retirement deed is also one of the documents and the said suit

is decreed in their favour. The learned counsel further

submitted that the first respondent had not filed the alleged

forged retirement deed along with the final report and hence,

no prosecution can be maintained in the absence of the same.

The learned counsel for the petitioner further submitted that

in any event that there is no evidence to show as to who

committed the alleged forgery. He relied upon the Judgment

of the Hon'ble Supreme Court in ***Sheila Sebastian vs.***

R.Jawaharaj and another reported in ***(2018) 7 SCC 581.***

The learned counsel would also submit that the impugned

final report does not contain any expert opinion to confirm if

the alleged forgery is true. Hence, the learned counsel prayed



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5. It is seen from the records that the allegation is that the second respondent's signature was forged by the petitioners to make it appear that she had retired from the partnership of a firm called Salem Constructions. No doubt, the petitioners have filed O.S.No.741 of 2010 on the file of District Munsif, Salem, which is *decreed in favour of the petitioners*. Merely because the document which is alleged to be forged is not part of the final report, the impugned proceedings cannot be quashed. It is reported that the document has been filed before the District Munsif Court, Salem in O.S.No.741 of 2010. It is also stated that the Investigating Officer had taken steps to call for the said document for the purpose of the trial in the instant case. As regards the submission that the prosecution has not stated who is the maker of the false document and hence, the proceedings have to be quashed as per the dictum of the Hon'ble Supreme Court in ***Sheila Sebastian vs.***

<https://www.mhc.tn.gov.in/judges> ***R.Jawaharaj and another*** (cited supra), it is seen that the



Crl.O.P. No. 3342 of 2021

WEB COPY

said question is a also factual in nature. The question as to whether there was a forgery or not and as to who committed forgery cannot be adjudicated in this quash petition. It is for the respondents to establish the same before the trial Court. It is needless to say that if the prosecution does not establish in trial the offence of forgery or who committed it, then its case has to fail. **The Trial Court shall consider the observation made in the Civil Suit to the extent it is relevant for the adjudication of the Criminal Trial.** The prosecution cannot be scuttled at this stage. Since there are allegations which attract the alleged offence, this Court is not inclined to entertain this quash petition. The learned Magistrate may however consider the evidence adduced in trial independently without being influenced by any of the observations made in this order. Since the case is pending from 2010, the learned Judicial Magistrate No.IV, Salem may complete the trial in C.C.No.158 of 2011 within a period of six months from the date of receipt of copy of this order. The appearance of the petitioners before the trial Court is dispensed with unless the



Crl.O.P. No. 3342 of 2021

learned Magistrate considers their presence necessary for the progress of the trial.

4. The Regisry is directed to carry out amendment in the order and issue fresh order copy to the parties.

27.04.2023

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Crl.O.P. No. 3342 of 2021

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Crl.O.P. No. 3342 of 2021 &
Crl.M.P. No. 1927 of 2021



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Crl.O.P. No. 3342 of 2021

27.04.2023