IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	*23.02.2023*
Delivered on	*27.04.2023*

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl. O.P. Nos.16145 & 15366 of 2021 & 26905 of 2019
and Crl.M.P. Nos.12613 of 2022, 14348 of 2019 and 2865, 8402 & 8793 of 2021

Crl.O.P. No.16145/2019 & Crl.M.P. No.8793/2021

K.Rajasekar … Petitioner /Accused

Versus

1. State rep. by
The Inspector of Police,
Crime No.2 of 2018
CB-CID South,
Tiruppur District.

2. Mathiyalazhagan ... Respondents

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to quash the First Investigation Report in Crime No.2 of 2018 on the file of the first respondent.

For Petitioner : Mr.R.John Sathyan

For Respondent 1 : Mr. A.Gopinath
Government Advocate

2 : Mr.S.Thangavel

Crl.O.P. No.26905/2019
& Crl.M.P. Nos.14348/2019, 2865/2021 &12613/2022

K.Rajasekar …Petitioner /Accused-5

Versus

1. State rep. by
The Inspector of Police,
District Crime Branch,
Thirupur & Dist.

2. S.Mathiyazhagan
...Respondents

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the F.I.R. No.3 of 2015 on the file of the District Crime Branch, Thirupur & District in respect of the petitioner alone (A-5).

For Petitioner : Mr.P.Vijendran

For Respondent 1 : Mr. A.Gopinath
Government Advocate

2 : Mr.R.Karthikeyan

Crl.O.P. No.15366/2021
& Crl.M.P. No.8402/2021

S.Ramamoorthy … Petitioner /Accused-4

Versus

1. State rep. by
The Inspector of Police,
CBCID, Tiruppur,
Tiruppur District.
(Cr.No.3 of 2015)

2.S.Mathiyazhagan ...Respondents

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the entire records concerned in Cr. No.3/2015 on the file of the Inspector of Police, CBCID, Tiruppur, Tiruppur District and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.C.Prakasam

For Respondent 1 : Mr. A.Gopinath
Government Advocate

2 : Mr.S.Thangavel

COMMON ORDER

Criminal Original Petition in Crl.O.P. No. 16145/2021 has been filed to call for the records in Cr.No.2 of 2018 on the file of the Inspector of Police, CBCID South, Tiruppur District and quash the same.

Criminal Original Petition in Crl.O.P. No.26905/2019 has been filed to call for the records in Cr.No.3 of 2015 on the file of the Inspector of Police, District Crime Branch, Tiruppur and quash the same.

Criminal Original Petition in Crl.O.P. No.15366/2021 has been filed to call for the records in Cr.No.3 of 2015 on the file of the Inspector of Police, CBCID, Tiruppur District and quash the same.

2. The petitioner in Cr.No.2 of 2018 is the then Sub-Registrar No.2, Tiruppur. The case of the prosecution in Cr.No.2 of 2018 as per the complaint given by the second respondent in Crl.O.P.No.16145/2021 is that the textile mill by name "Nallam Textiles and Spinning Mills" belongs to himself and his family members and his parents were living within the premises of the Mill. The second respondent had stood as a personal guarantor for the loan availed by the said Mill but he had resigned from the administration of the Mill on 03.04.2002. By way of security for the loan availed by the Mill, the properties in S.F.No.459/No.15, Velampalayam, Tirupur Town measuring an extent of 2 acres 55 cents has been mortgaged on 07.07.2000 in favour of M/s.Catholic Syrian Bank. Due to the default in repaying the loan, the asset recovery agency by name M/s.ARCIL at Mumbai had taken custody of the property and the original title deeds are in the custody of M/s.ARCIL. In the meanwhile, the second respondent came to know that his father by name Subramaniam along with one Ramasamy, Ramamurthy, Manickam and Kumar who is a document writer, have conspired together and created forged documents in respect of the mortgaged property. In this regard the second respondent had already sent a letter to the Sub-Registrar No.2, Tiruppur on 21.12.2013. On enquiry with the second respondent, he came to know that the registration had taken place on 23.12.2013. Hence the second respondent informed the Sub-Registrar No.2, Tiruppur about the custody of the original title deeds with M/s.ARCIL. But the Sub-Registrar No.2, Tiruppur told the second respondent that the registration was done on the basis of the missing certificate. On these allegations a case has been registered in Cr. No.2 of 2018 for the offences under Section 420 & 468 IPC. The petitioner has also shown as one of the accused in this case.

3. The petitioner in Crl.O.P.No.16145/2021 is the fifth accused in Cr.No.3 of 2015 and the petitioners in Crl.O.P. No.15366/2019 and 26905/2019 are the fourth and fifth accused in Cr.No.3 of 2015 respectively. The case of the prosecution in Cr.No.3 of 2015 as per the complaint given by the second respondent in Crl.O.P. Nos.15366/2021 & 26905/2016 is that the spinning mills by name M/s.Nallam Textiles Pvt. Ltd and M/s. Nalla Maniam Textiles Pvt. Ltd were started by the father of the second respondent in the year 1995 and 1998 respectively. The second respondent's father was the Managing Director of both the companies and the second respondent was the Director of the companies till 03.04.2002.

3.1 The properties comprised in S.F.No.459 situated at No.15, Velampalaym Village, Palladam Taluk, Tiruppur District measuring an extent of 2 acres 55 cents belonged to the parents of the second respondent along with other property measuring an extent of 9.5 cent in S.F.No.461 situated at No.15 Velampalayam Village, Palladam Taluk, Tiruppur District. The said properties along with other properties were mortgaged to M/s.Catholic Syrian Bank, Coimbatore Branch in the year 2000 in respect of the loan availed by the Companies. The second respondent stood as a guarantor and he had given his personal properties as collateral security for the loan availed by the companies. Later, he came to know that the accused 1 to 4 were demanding money for the alleged cotton supplied by them. In this regard a civil suit has also been filed in O.S. No.207 and 208 of 2011 on the file of the Additional Senior Civil Judge, Raichur, Karnataka against M/s.Nallam Textiles Pvt.Ltd for recovery of money. In the said suit an attachment was also ordered on 11.01.2012 in respect of the property situated at Vellakovil, Dharapuram. The order of attachment have been sent from the Additional Senior Civil Court, Raichur directly to the District Munsif Court, Dharapuram and the District Munsif, Dharapuram has served the orders to the office of the Sub-Registrar Dharapuram. The said orders have been registered in Doc. Nos.L9 to 12 of 2012. The order of attachment sent to District Munsif, Kangeyam has been registered as Doc.No.L3 of 2012 at the office of the Sub-Registrar, Vellakoil. The order of attachment sent to the District Munsif Court, Tirupur has not been registered at the office of the Sub-Registrar Joint-II, Tiruppur for want of sufficient time. The Additional Senior Civil Judge, Raichur has not sent the order of attachment to the District Munsif Court, Tiruppur. Thereafter, the suit itself got decreed on 13.02.2012 basing on a compromise memo. Since the order of attachment has not been registered at the Sub Registrar Joint II, Tiruppur, the accused 1 to 4 have influenced their power to create forged documents and encumbrance over the said properties. They manipulated a xerox copy of the summons issued by the Additional Senior Civil Judge, Raichur on 10.01.2012 and registered in Doc.No.L25 and 26 of 2012 dated 31.12.2012 in order to show that it is an order of attachment passed by the Court. All these registrations have been done in connivance of the fifth accused who was the then Sub-Registrar Joint II, Tiruppur.

3.2 The comparison of the attachment orders registered as Doc.No.L3 of 2012 at the office of SRO Vellakovil and Doc. Nos.L9 to L12 of 2012 registered with the office of SRO Dharapuram with the Doc. Nos.L25 and L26 of 2012 at the office of Sub-Registrar Joint II, Tiruppur would show that the documents registered vide Doc.Nos.L25 and L26 of 2012 are not the orders of attachment. The above entries are made with the active cooperation of the then Sub-Registrar Joint II, Tiruppur (5th Accused in this case). Because of the persistent pressure, coercion and inducement made by the accused 1 to 4, the parents of the second respondent were forced to execute a sale deed in respect of the properties in their favour. An yet another document in Doc.No.L27 of 2013 has also been registered at the office of the Sub-Registrar Joint II, Tiruppur as if it was a genuine order raising the order of attachment. The second respondent suspected the above documents and clarified it with the Court and came to know that the attachment already ordered has not been raised. So the registration of the documents have been shown with the sole object of creating sale deeds in favour of the accused 1 to 4.

3.3 The schedule of properties in Doc.No.L 27 of 2013 is written in Tamil and the seal affixed in it would resemble the seal of Tamil Nadu Judicial Ministerial Services. Despite a complaint has been filed in this regard by the second respondent before the Commissioner of Police, Tiruppur dated 19.11.2014 no action has been taken. Hence the petitioner has filed a petition under Section 156(3) Cr.P.C in C.M.P. No.172/2015 before the Judicial Magistrate -I, Tiruppur and got an order on 09.09.2015 for registering the FIR. Despite the same the complaint was not registered. Hence the second respondent filed a petition in Crl.O.P. No.9542 of 2015 praying direction to register the complaint and start the investigation. In the order dated 01.06.2015 made in Crl.O.P. No.9542/2015, the second respondent was given with a liberty to file a fresh complaint. In compliance of the said order, the second respondent has given the complaint. On the basis of the above complaint, a case has been registered in Cr.No.3 of 2015 for the offences under Section 120(B), 466, 468 & 471 IPC.

4. So far as Cr. No.2 of 2018 is concerned, Mr.R.John Sathyan, the learned counsel for the petitioner in Crl.O.P. No.16145/2021 submitted that the registration of the sale deeds in P.127 of 2013 and P.128 of 2013 pertaining to the subject properties have been kept pending; in view of the doubt arose in the mind of the petitioner in respect of the non-traceable certificate dated 20.12.2013, the petitioner sent a request to the Sub-

Inspector of Police, Vellakovil and he came to know that non-traceable certificate was not genuine; in this regard a departmental action has also been initiated against the Sub-Inspector of Police, Vellakovil; the petitioner had also informed about the doubts he got over the missing certificates to the District Registrar and sought permission to lodge a complaint; pursuant to the order of the District Registrar, the successor of the petitioner had given a police complaint; the petitioner had acted with due diligence and hence no criminality can be attached against him; the Court has passed an order in Crl.O.P. No.490/2016 on 16.03.2018 by transferring the investigation to CBCID to investigate the case in Cr. No.2 of 2014 and 3 of 2015 together; the allegations that have been made in Cr.No.2 of 2014 forms part of the Cr.No.2 of 2018 and investigation has also been initiated; in fact the complaint in Cr. No.2 of 2018 is a second complaint.

4.1. No doubt Section 173(8) Cr.P.C. empowers the police to make further investigation but with the permission of the Court; in respect of the same occurrence no one should be subjected to repeated investigation and it is an abuse of process of law; the petitioner is in service for nearly 38 years and he has never come under any adverse notice of the authorities at any point of time; for the above stated reasons, the FIR should be quashed as against the petitioner.

5. As far as Cr.No.3 of 2015 is concerned, Mr.R.Karthikeyan, the learned counsel for the petitioner in Crl.O.P. No.26905 of 2019 / fifth accused submitted that as per the definition of Section 84 of the Registration Act, the petitioner at the earliest point of time had suspected the genuineness of non-traceable certificate and wrote letters seeking clarification from his superior; he also obtained permission to lodge the police compliant and in this regard a disciplinary action has been initiated against one Special Sub-Inspector of Police by name Chandrasekaran; the *de facto* complainant has filed a suit in O.S. No.249 of 2014 seeking for the relief of declaration; the occurrence is said to have occurred in the year 2013 and for the which complaint has been given in the year 2014; but no progress has been made so far; the petitioner has rendered unblemished service for thirteen years and he has attained the age of superannuation on 30.06.2020; the first respondent police had registered the FIR against the petitioner without application of mind.

6. Mr.C.Prakasam, the learned counsel for the petitioner in Crl.O.P.Nos15366 of 2021 / fourth accused in Cr.No.3 of 2015 submitted that the petitioner has a limited role of signing certain documents as a witness; he just accompanied his friend and stood as a witness for registering the document; no *prima facie* case has been made out against the petitioner; hence the FIR is liable to be quashed as against the petitioner.

7. Mr.A.Gopinath, the learned Government Advocate (Crl.side) appearing for the first respondent in all the petitions, Mr.S.Thangavel, the learned counsel for the second respondent in Crl.O.P.No.16145/2021 and Mr.R.Karthikeyan, the learned counsel for the second respondent in Crl.O.P. No.26905/2019 submitted that when the original documents are lying with the bank the father of the second respondent was made to execute the sale deed in respect of two properties and for the said purpose a false missing certificate was used; the suit filed by the first accused in O.S. Nos.207 and 208 of 2011 were disposed on 13.02.2012; Cr. No.03/2015 has been registered in pursuant to the directions of this Court in Crl.O.P.No.9542/2015; the second respondent has filed Crl.O.P. No.490/2016 for seeking transfer of investigation in Cr. No.2 of 2014 and the same was allowed and in which investigation is ordered to be done along with Cr.No.3of 2015 also; the fourth accused is a very close aid of third accused and he is aware of the dispute between the *de facto* complainant, his father, first accused and second accused; he had also played an active role in conspiring with other accused in doing registration of the false documents at the Sub-Registrar office; the father of the *de facto* complainant had filed a case against the fourth accused under Section 138 of Negotiable Instruments Act and hence the fourth accused also played an active role; there are several materials available on record to show that the accused have acted hand in glove in order to create false attachment raising orders in respect of the property and executed sale deeds in respect of the same; the fourth accused have filed an anticipatory bail application along with accused 1 and 3 in Crl.O.P. No.14335 of 2017 and that would show that he has collusion with other accused; for the foregoing reasons, the investigation should be allowed to go.

8. Some undisputed facts are that the second respondent's father had started two spinning mills by name M/s.Nallam Textiles Ltd. and M/s.Nallam Maniam Textiles. The father of the second respondent was the

Managing Director of the said companies and the second respondent was his Director. It is stated by the second respondent that he seized to hold any administrative power in the companies and resigned from his Directorship. Some of the properties belonging to the second respondent's parents have been offered as security for availing loan for the purpose of business pertaining to the companies. Since the loan was not repaid and it became due, the petitioner handed over the title deeds in favour of an asset recovery agent by name M/s.ARCIL.

9. Now the allegation of the second respondent is that even while the title deeds are under the custody of the asset recovery agent and the mortgage in respect of the properties are still subsisting, the accused along with the connivance of fifth accused namely the then Sub-Registrar Joint II, Tiruppur had created sale deeds in favour of the first accused dated 23.12.2013. On coming to know about the said attempts of executing sale deeds in respect of the property which have been offered as security in favour of the bank, the second respondent had sent representation on 21.12.2013. However the sale deeds have been presented for registration on 23.12.2013. On enquiry the second respondent came to know that the sale deeds were proceeded to be registered on the strength of missing certificate produced in respect of the title deeds. However the documents were not released and kept pending in view of the doubts raised about the genuineness of the missing certificate.

10. The fifth accused who was the then Sub-Registrar Joint II of Tiruppur had addressed the Inspector of Police, Vellakovil police station to ascertain the genuineness of the said sale deed. After receiving the report from the Inspector of Police that a non-traceable certificate was not a genuine one, he sought further instructions from his superior officers namely the District Registrar. On the orders of the District Registrar dated 11.02.2014, the successor of the fifth accused had given a complaint to the Inspector of Police, North Police Station, Tiruppur and the case has also been registered in this regard.

11. The facts are so with regard to the registration of the sale deeds dated 23.12.2013. The second respondent submitted that the fifth accused in his capacity as the then Sub-Registrar Joint II of Tiruppur had played an active role in connivance with the other accused to register the properties belonging to the parents of the second respondent in favour of the first accused. One of the essential fact that creates doubts about the genuinness on the part of the first accused and the father of the second respondent is that they have presented the sale deeds knowing well that the subject properties have already been offered as security for the loan availed by the father of the second respondent in connection with the business of his textile mills. For the said sale deeds the fourth accused had stood as a witness. In fact the second respondent's father had given a complaint on 18.12.2013 by stating that the original documents were missing. It is understandable that the father of the second respondent was convinced to give such a complaint with an idea to sell the property by utilizing the missing certificate.

12. It is stated by the second respondent that his father had dues to be paid to the first accused in connection with the materials purchased by him. Since he failed to pay the dues, the first accused pressurized the father of the second respondent to execute the sale deeds in respect of the properties which have been already offered as security in favour of the bank.

13. It is also brought to the notice of the Court that an order has been passed by this Court in Crl.O.P. No.490 of 2016 by transferring investigation from the Inspector of Police, District Crime Branch to CBCID Police and to do further investigation along with other case in Cr.No.3 of 2015. The other case in Cr. No.3 of 2015 has been given by the second respondent on the allegations that to facilitate the registration of sale deeds in respect of the subject properties, the accused have conspired together and with the cooperation of the fifth accused had registered the summons issued in I.A. Nos.1 of 2011 in O.S. No.208 of 2011 as document No.L25 of 2012 dated 30.01.2012 of the office of Joint II SRO Tiruppur. Despite there is no need to register the summons, it has been registered. In fact there are certain endorsement made as amendments pursuant to the order in I.A. No.1 dated 29.11.2012.

14. The other summons has been registered as document L.26 of 2012 dated 31.12.2012. The said document is not an order of the Court but still in all seriousness it has been registered. An yet another document in L.27 of 2013 is also registered and it pretends to be an order for raising the attachment. The attachment in the order could not have been raised because the loan was not yet repaid. However some documents have been created with an an intention to create an appearance that the attachment has been raised. There cannot be any quarrel on the falsity of the document that have been registered in this regard. The intention to register the document is apparently to get it reflected in the encumbrance certificate as though the attachment has been raised. But the contention of the second respondent is that all these activities have been done only with an active and intentional involvement of the fifth accused who was the then Sub-Registrar Joint II, Tiruppur.

15. The document which has been registered in L.27 of 2013 has got all the features of a forged document. It has a seal purported to be that of the Tamil Nadu Judicial Ministerial Service. A bare eye - examination of the document would show it is a dubious one. But the Sub-Registrar Joint II, Tiruppur without even clarifying the same had proceeded to register and consequently it was brought in the encumbrance certificate. The materials available on record would show some calculated attempts were made in a phased manner to facilitate the registration of sale deed in respect of the properties already offered as security to the bank.

16. If the order of attachment has been registered, it is understandable. But the summons sent by the Court has been registered as though they were orders of attachment. The particulars about the nature of the document as seen from the encumbrance certificate is "*Others Loan Orders*". The strange act on the part of the accused to get them registered and the indulgence shown on the part of the fifth accused to get them registered without seeking any clarification would create doubts about the connections between the fourth and fifth accused with other accused in the commission of offence.

17. Only if a detailed investigation is done, the real facts about the intention of each of the parties in getting the sale deed registered and causing registration of unnecessary and false documents, can be known. Without allowing a detailed investigation, it cannot be presumed that the accused 4 and 5 did not have any intention.

18. Since the materials available on record are sufficient to make out a *prima facie* case, I do not find any reason to quash the proceedings at the very inception. No doubt the power of the Court under Section 482 Cr.P.C. should be invoked in order to prevent the abuse of the process of the Court and to serve the ends of justice. Such power should be exercised sparingly, only if the materials available on record, even if they stand uncontroverted will not make out any case against the accused. The persons who have been implicated as accused are related to the transactions in question and hence due enquiry about the same cannot be considered as something unnecessary or not warranted.

18. It is also pertinent to note that the Government Advocate (Crl.side) has submitted that investigation in both the cases have almost been completed and final report can not be filed in view of the pending stay.

19. While dealing with the proceedings under Section 482 Cr.P.C. the Court cannot conduct a mini trial by evaluating the materials produced before the Court. Since the job of the investigation agency is very much needed in the light of the serious allegations made in both the complaints, I feel the process of investigation need not be stopped.

20. In view of the above stated reasons, these Criminal Original Petitions are dismissed. Connected miscellaneous petitions are closed.

27.04.2023

Index: Yes
Speaking order
Netural Citation : Yes / No
bkn

To:

1.The Inspector of Police,
CB-CID South, Tiruppur District.

2. The Inspector of Police,
District Crime Branch, Thirupur & Dist.

3. The Inspector of Police,
CBCID, Tiruppur, Tiruppur District.

4. The Public Prosecutor,
High Court of Madras.

R.N.MANJULA, J.,

bkn

Pre-delivery order made in
Crl. O.P. Nos.16145 & 15366 of 2021 & 26905 of 2019

27.04.2023