



Crl.RC(MD) No.352 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.RC(MD) No.352 of 2019

and

Crl.M.P(MD) No.5310 of 2019

Muthuramalingam

... Petitioner

Vs.

The Inspector of Police
Thirumangalam Taluk Police Station
Madurai District

..Respondent

PRAYER: This Criminal Revision case has been filed under Section 397 r/w.401 of Criminal Procedure Code, to call for the records pertaining to the order dated 17.05.2019 made in Cr.M.P.No.1958 of 2016 in C.C. No. 326 of 2015 on the file of the learned Judicial Magistrate, Thirumangalam and set aside the same.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondent : Mrs.M.Aasha
Government Advocate(Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 17.05.2019 made in Cr.M.P.No.1958 of 2016 in C.C. No.326 of 2015 on the file of the learned Judicial Magistrate, Thirumangalam.



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2. According to the petitioner the respondent filed charge sheet as against the petitioner and others in C.C.No.326 of 2015 on the file of the learned Judicial Magistrate, Thirumangalam. The case of the prosecution is that the defacto complainant lodged complaint before the respondent on 02.03.2013 as against the petitioner and others alleging that in the year 1999, A1 and A2 said to have created a false document including bogus patta in respect of the property of the defacto complainant situated in T.Pudupatti Village, Punja Survey No.89/3 to an extent of 1 Acre 36 cents at Thirumangalam Taluk, Madurai District and sold away the property to the third party by house plots. Therefore the defacto complaint made appeal to the Revenue Divisional Officer, Usilampatti to cancel the patta and the same was allowed. As against the order passed by the Revenue Divisional Officer, Usilampatti A1 and A2 filed a revision before the District Revenue Officer, Madurai and the same is pending. Whiles the defacto complainant lodged complaint on 02.03.2023 and the respondent registered a case in Crime No. 38 of 2013 dated 02.03.2023 for the offences under Sections 420, 468 and 471 of IPC against the petitioner and four others. Aggrieved by the same, the petitioner filed a quash petition before this Court in Crl.O.P(MD) No. 21524 of 2015 and the same was disposed of on 16.11.2015 since charge sheet was filed before the concerned Magistrate.



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3. The charge sheet was taken on file in C.C. No.326 of 2015.

As per the charge sheet no offence is made out as against the petitioner and even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence under Sections 420, 468 and 471 of IPC. But the trial Court has not considered the above said facts and dismissed the discharge petition. In order to constitute the offence under Sections 468 and 471 of IPC condition precedent for forgery is making a false document. Therefore in executing the power of attorney in favour of the petitioner to sell a property cannot be said to have made and executed a false document. The trial Court failed to consider that patta transfer was effected in favour of A1 and A2 with the help of A3. The offence of cheating is not made out in this case and the trial Court failed to consider the same and dismissed the application.

4. The respondent filed counter stating that the defacto complainant lodged complaint before the respondent and thereby the respondent registered the First Information Report, investigated the case. As per the investigation *prima facie* materials available to proceed with the case as against the petitioner and thereby they filed final report and the same was taken on file by the learned Judicial Magistrate, Thirumangalam in C.C. No.326 of 2015. Already the petitioner filed quash petition and the same was withdrawn. Thereafter he filed a



petition in Cr.M.P.No.1958 of 2016 before the learned Judicial Magistrate, Thirumangalam to discharge the petitioner and the same was dismissed by the trial court since *prima facie* materials are available as against the petitioner.

5. The learned counsel for the petitioner would contend that the defacto complainant had given complaint before the respondent and they registered the First Information Report in Crime No.38 of 2013 and thereafter they conducted proper investigation and filed final report and the same was taken on file by the learned Judicial Magistrate, Thirumangalam in C.C. No.326 of 2015. The petitioner filed a petition in Cr.M.P.No.1958 of 2016 before the learned Judicial Magistrate, Thirumangalam to discharge the petitioner and the same was dismissed. The trial Court failed to consider that no offence is made out as against the petitioner and this petitioner has not committed any offence and for constituting the offence false document has to be created and the petitioner has not created any document. Mere execution of power deed will not constitute any offence and already this petitioner has got patta in his favour over the disputed property. The petitioner has not created any forged false document but the trial court without considering the same has failed to discharge the petitioner, hence he has filed the present petition.



6. The learned Government Advocate(Crl.Side) appearing for the respondent would contend that based on the complaint given by the defacto complainant they registered the First Information Report and then elaborate investigation was conducted by examining the witnesses and collecting documents. Thereafter they filed final report and as per the final report *prima facie* materials are available as against the petitioner and thereby the trial Court had dismissed the petition.

7.Heard both sides and perused the materials available on record.

8. In this case it is an admitted fact that already this petitioner filed quash petition before this Court to quash the First Information Report thereafter since the respondent police filed final report the same was dismissed as withdrawn. Thereafter the petitioner filed a petition to discharge this petitioner alleging that there is no *prima facie* materials as against the petitioner and none of the offence is made out and thereby the petitioner has to be discharged. This Court on perusal of the records and per the final report filed by the respondent police there are *prima facie* materials available as against the petitioner and the documents were also executed by parties and statements also reveals that some of the offences are made out as against this petitioner and veracity of the documents and statements of the witnesses cannot be looked into at this



stage and the lower court in the order had elaborately discussed about the materials available as against this petitioner and thereby there is no infirmity in the order passed by the trial Court and this petition has no merits and it deserves to be dismissed.

9.At this juncture the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of ***Mohammed Ibrahim and others .vs. State of Bihar and another*** reported in ***(2009)8 SCC 754***. On careful reading of the above judgment it will not be applicable to the present facts of the case, because in this case as per final report some *prima facie* materials available as against this petitioner to proceed with the case further.

10. Further the learned counsel appearing for the respondent represented that the case is pending from the year 2013 and hence some time may be fixed for speedy disposal of the case.

11. Considering the fact that the case is pending from the year 2013 and considering other facts and circumstances of the case the trial Court is directed to complete the trial proceedings as early as possible preferably within a period of four months from the date of receipt of a copy of this order.



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12. Accordingly with the above observation this Criminal Revision stands dismissed. Consequently connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police
Thirumangalam Taluk Police Station
Madurai District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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