



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Fifth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.VIJAYAKUMAR

CMP(MD) No.7319 of 2020

IN

CRP(MD) No.2399 of 2015

K.G.RAJENDRAN @ ELEPHANT G.RAJENDRAN, ... PETITIONER/RESPONDENT

Vs

SHANMUGAM(DIED),

1.S.PONNAMANI,

2 S.PRAVEEN,

3 S.THENMOZHI,

4 S.DHANASEKAR,

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to initiate action against the respondents/the CRP petitioners in the above CRP No.2399 of 2015 for the offences of perjury and under section 195 Read with Section 340 of CRPC and Under Section 465,468 and 471 IPC and punish fraud documents as a genuine documents before this Honble Court.

Prayer in CRP(MD)No. 2399/ 2015 :

Pleased to set aside the order passed in CMA No.28/2014 dated 08.06.2015 on the file of the II Additional District Judge, Thanjavur confirming the fair and decreetal order made in I.A.No.288 /2013 in O.S.No. 30/2012 on the file of the I Additional Subordinate Judge, Kumbakonam, dated 06.06.2014 by allowing the CRP.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of ELEPHANT G.RAJENDRAN Party in person and of MR.H.LAKSHMI SHANKAR, Advocate on behalf of the Respondents, the court made the following order:-



ORDER RESERVED ON : 10.02.2023

ORDER PRONOUNDED ON : 05.04.2023

The present application has been filed by the respondent in CRP(MD).No.2399 of 2015 under Section 195 read with Section 340 of Cr.P.C to punish the respondents in the petition who are the revision petitioners for their illegal acts/offences of using fraudulent document as genuine documents before the High Court.

2.Factual Matrix:

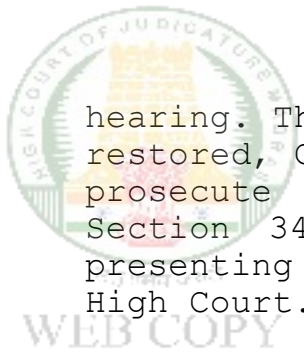
(i).One Shanmugam had filed O.S.No.30 of 2012 on the file of the Additional Subordinate Court, Kumbakonam as against one Rajendran (who is the petitioner in the present application) for the relief of specific performance of a sale agreement. The said suit was dismissed for default on 01.08.2013. The restoration petition had been filed by the said Shanmugam in I.A.No.288 of 2013. Pending the said application, the plaintiff had died on 25.09.2013. The legal heirs of the said Shanmugam have filed an legal heir application in I.A.No.288 of 2013 on 02.01.2014. However, the same was not numbered. In view of non taking of steps to implead the legal heirs of the plaintiff, the suit came to be dismissed as abated on 09.06.2014. The legal representative of the plaintiff had filed an application to condone the delay in filing a restoration application on 23.06.2014. However, the said application was returned by the trial Court on the ground that the suit cannot be restored.

(ii) Challenging the order of dismissal of I.A.No.288 of 2013, the plaintiff had filed CMA.No.28 of 2014 before the First Additional District and Sessions Court (FTC), Thanjavur and the appeal was dismissed on 08.06.2015. Challenging the same, the plaintiff had filed CRP(MD).No.2399 of 2015 before this Court.

(iii).When the revision was listed for admission, the learned Single Judge allowed the revision petition and set aside the order passed in I.A.No.288 of 2013 and remitted the matter back to the trial Court. In the said order, the plaintiff was directed to represent the application along with an petition under Section 5 of the Limitation Act. The trial Judge was directed to dispose of the same on merits.

(iv).According to the learned counsel appearing for the respondent in the revision petition, he had already filed a Caveat and suppressing the said Caveat, an order has been obtained at the admission stage in the civil revision petition. Therefore, the respondent in the revision had filed Review Application in Rev.Apl (MD).No.232 of 2017. The learned Single Judge of this Court found that the respondent in the revision had filed a Caveat even before filing of the civil revision petition which was returned for some corrections but the said Caveat was not mentioned in the cause list.

(v).In view of the above said fact, the learned Single Judge https://www.hc.madras.judicis.org/ to allow the review and restored the revision for fresh



hearing. This order was passed on 02.07.2018. After the rev. is restored, CMP(MD).No.7319 of 2020 was filed on 14.08.2020 seeking to prosecute the revision petitioners under Section 195 read with Section 340 of Cr.P.C. to punish the revision petitioners for presenting fraudulent documents as a genuine documents before the High Court.

3.The main allegations of the petitioner are as follows:

(i).The second petitioner in the revision petition is an Advocate and when the civil revision petition was listed for admission on 03.11.2015, it was allowed in the admission stage without giving any opportunity to the respondent even though the Caveat Petition No.1892 of 2015 was pending. Thereafter, Review Petition No.332 of 2017 was filed and the same was allowed on 03.11.2015 and thereafter, restored the civil revision petition. Hence, according to the petitioner, the Caveat Petition pending before this Court was suppressed and an order was obtained in the civil revision petition in the admission stage.

(ii).In the typed set of papers filed along with the civil revision petition, the petitioners have enclosed a forged document as if it is the original affidavit and the petition in I.A.No.288 of 2013 filed before the Additional Subordinate Court, Kumbakonam. In fact no such affidavit was filed in I.A.No.288 of 2013. Therefore, it is nothing but creation of false records and using the same in the judicial proceeding knowing fully well that they are false and forged documents.

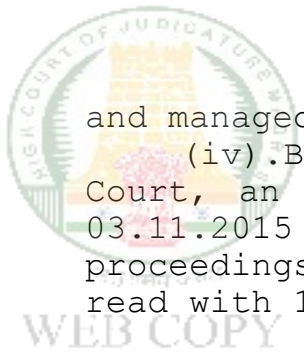
(iii).The revision petitioners have filed a second typed set of papers in October 2015 which does not have the seal of the Registry. Apart from that, the revision petitioners have played fraud even before the trial Court.

4.Contentions of the Party-in-person/ petitioner:

(i). The party-in-person had contended that in Page No.18 of the typed set of papers filed along with revision, it is shown as if I.A.No.288 of 2013 was filed by the legal heirs of the plaintiff. In fact, I.A.No.288 of 2013 was filed by the original plaintiff and after numbering the said application, he had passed away. Therefore, the affidavit at Page No.18 of the typed set has been wrongly projected before the High Court as if it was filed before the trial Court.

(ii).He had further contended that an additional typed set of papers has been filed by the revision petitioners in October 2015 which does not contain the seal of the High Court. Therefore, it is clear that the said document has been inserted by playing fraud upon the Court.

(iii).Though he had filed Caveat before the High Court even before filing of the revision petition, his name was not reflected in the cause list. The revision petitioners have made an endorsement to the effect that the Caveat is pending despite having received the Caveat notice



and managed to number the revision petition.

(iv). By projecting a false and fabricated document before the Court, an order was obtained by them in the revision petition on 03.11.2015 and therefore, this Court may be pleased to initiate proceedings as against the revision petitioners under Section 340 read with 195 of Cr.P.C.

5. Contentions of the learned counsel appearing for the respondents.

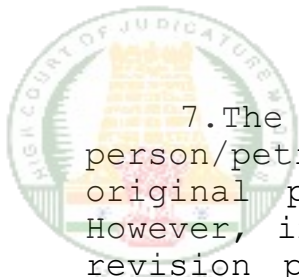
(i). In the trial Court, I.A.No.288 of 2013 was dismissed as against the dead person. So as per the advise of the counsel, the revision petitioners have filed a fresh application to condone the delay and to restore the suit. However, those applications were not numbered. While preferring the civil revision petition as against the order passed in I.A.No.288 of 2013, the revision petitioners' previous trial Court Advocate has given papers which contains the copies of the application filed in the name of the legal representatives. Due to advertent mistake, the application filed by the legal representatives was placed on record in the typed set of papers. However, this is only an inadvertent mistake and this document was not at all relied upon to obtain any orders in the High Court. The revision petitioners were not derived any benefit to mislead the Court.

(ii). The learned counsel for the respondents had further contended that as far as the typed set of papers filed in October 2015 is concerned, the additional typed set of papers were placed before the Court across the Bar and it was not filed in the Section. Therefore, there is no seal in the said additional typed set of papers. Merely because there was no seal in the said additional typed set of papers, the same cannot be construed to be in any way fraudulent act or amount to misleading of the Court.

(iii). The Caveat petition though it was filed, on verification it was found that the Caveat was returned for some corrections, and the said Caveat was not mentioned in the cause list. There is no fault on the part of the revision petitioners in not mentioning of the name of the Caveator in the cause list. Therefore, the same cannot be considered to be suppression of any fact. In fact, on the review application filed by the respondent in the revision petition, the order passed in the revision petition has been set aside and the revision petition is restored.

(iv). According to the learned counsel for the respondents, no forged document was ever placed before the trial Court or the High Court warranting initiation of proceedings under Section 340 read with Section 195 Cr.P.C. as against the revision petitioners. The respondent in the revision is only attempting to drag on the proceedings without facing trial in the specific performance suit. Hence, he prayed for dismissal of the said application.

6. I have considered the submissions made on either side and perused the materials available on record.



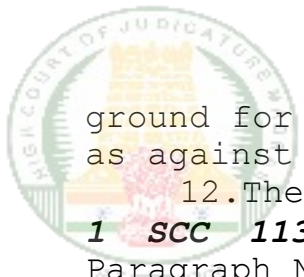
7.The primary issue raised on the part of the person/petitioner is that I.A.No.188 of 2013 was filed only by the original plaintiff before the trial Court to restore the suit. However, in Page No.18 of the typed set of papers filed along with revision petition, the affidavit in I.A.No.288 of 2013 discloses that as if I.A.No.288 of 2013 was filed by the legal heirs of the deceased sole plaintiff.

8.The respondents had contended that this application was prepared by the trial Court counsel, but it was not numbered and it was forwarded to the High Court Counsel. Only based upon the said inadvertent mistake, the said affidavit was enclosed in the typed set of papers.

9.A perusal of the order of this Court in CRP(MD).No.2399 of 2015, dated 03.11.2015 clearly indicates that the order was not passed relying upon the affidavit enclosed in Page No.18 of the typed set. The learned Single Judge of this Court has only found that the trial Court had dismissed the said application on the ground that it is filed 2 days after expiry of 30 days and the petitioner has not adduced any oral evidence. The learned Single Judge has directed the legal heirs of the plaintiff to file a condone delay application and thereafter, pass order in I.A.No.288 of 2013 on merits. Therefore, it is clear that the revision petitioners have not derived any benefit out of the enclosure of the affidavit in the typed set of papers or mislead the Court to obtain any favourable orders. It is a clear case of inadvertent mistake on the part of the trial Court counsel who had forwarded the papers to the High Court counsel.

10.As far as the contention that there was no seal in the additional typed set of papers filed by the revision petitioners in October 2015 is concerned, it is the specific case of the revision petitioners that the said additional typed set of papers was placed across the Bar to the Court for the reference of the Court. In fact, the affidavit filed in the said typed set of papers will clearly indicate that the petition for condonation of delay filed by the legal representatives has been returned by the trial Court. Therefore, it is clear that the absence of seal in the additional typed set of papers is only due to the above said circumstances and not as contended by the party-in-person.

11.As far as the issue relating to allowing of the revision petition without hearing the Caveator is concerned, the order in the review petition itself points out that the Caveat petition has been returned for some mistake and the office has not noted the pending Caveat. Therefore, the Caveat was not reflected in the cause list, when the revision petition was listed for admission. In order to set right the said mistake, the review petition was allowed and the revision petition has been restored for fresh hearing. Therefore,



ground for invoking Section 340 of Cr.P.C for initiating proceedings against the revision petitioners.

12. The Hon'ble Supreme Court in a judgement reported in (2017) 1 SCC 113 (**Amarsang Nathaji Vs. Hardik Harshadbhai Patel**) in Paragraph Nos.5 to 7 have held as follows:

"5. There are two pre conditions for initiating proceedings under Section 340 CrPC -

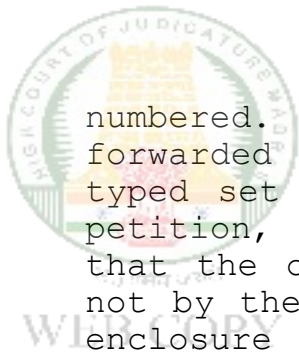
(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-Section (1) of Section 195 of the CrPC and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code, 1860 (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd. and Another v. Union of India*[1]). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish v. State of Maharashtra*)".

13. It is clear that the affidavit in I.A.No.288 of 2013 was preferred by the legal heirs of the plaintiff, but it was not



numbered. Inadvertently the office copy of the said paper is forwarded to the High Court Counsel and they found place in the typed set of papers. In fact in Ground No.3 in the main revision petition, the revision petitioners have categorically pointed out that the original application was filed only by the plaintiff and not by the legal representatives. Therefore, it is clear that the enclosure of the said affidavit in Page No.18 of the typed set of papers is only an inadvertent mistake and not warranting the invocation of the power of this Court under Section 340 of Cr.P.C, in view of the judgement of the Hon'ble Supreme Court cited supra. Therefore, there are no merit in the miscellaneous petition and the same stands dismissed. No costs.

sd/-

05/04/2023

/ TRUE COPY /

/04/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MSA

TO

1 THE II ADDITIONAL DISTRICT JUDGE, THANJAVUR.

2 THE I ADDITIONAL SUBORDINATE JUDGE, KUMBAKONAM.

ORDER

IN

CMP (MD) No.7319 of 2020

IN

CRP (MD) No.2399 of 2015

Date :05/04/2023

PKP/CG/SAR-4/10.04.2023/ **7P/3C**