



Crl.O.P.(MD)No.13546 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13546 of 2023

and

Crl.M.P.(MD) No.10575 of 2023

Subramanian

... Petitioner

Vs.

1. State through,
The Inspector of Police,
District Crime Branch PS,
Sivagangai.
(In Crime No.10/2011)

2.Alagammal

3.Murugapandi

4.Pandiyammal @ Akkini Pandiyammal

5.Muthupandi

6.Krishnan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records of Cr.M.P.No.3704 of 2023 in C.C.No.122 of 2012 dated 05.06.2023 passed by the learned Judicial Magistrate No.II, Sivagangai and set aside the same.

For Petitioner : Mr.A.Balaji

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)
for R1



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ORDER

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This Criminal Original Petition is filed questioning the order passed by the learned Judicial Magistrate No.II, Sivagangai in Cr.M.P.No.3704 of 2023 in C.C.No.122 of 2012 declining to consider the request of the petitioner to summon certain documents.

2. It is submitted by learned counsel for the petitioner/defacto complainant that on a complaint given by the petitioner, respondent police have registered a case in C.C.No.122 of 2012 against the respondents 1 to 5/accused for the offences punishable under Sections 468, 471, 420 and 120 (b) of IPC.

3. According to the petitioner, respondents 2 to 5/accused have created a registered sale deed bearing Document No.3170 of 2010 dated 14.07.2010 by way of forgery in favour of the sixth respondent. The registered forged document has been annulled by the District Registrar under Section 49 of the Registration Act, 1908 and that 'A' Register in respect of Survey No.374/1 is relevant for the prosecution to prove



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charges against the accused and therefore application was filed under Section 91 of Cr.P.C. to permit the prosecution to produce the documents, but the said petition was dismissed. Aggrieved by the same, the present petition is filed.

4. It is submitted further by learned counsel for the petitioner that documents can be marked at any stage of the trial and thereby, the trial Court should have permitted the documents to be marked. It is submitted further that at the time of filing of documents, relevancy of such document need not necessarily be explained in detail.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl. Side) and perused the record including the orders passed by the learned trial Judge.

6. Section 91 of the Code of Criminal Procedure runs as under:-

"Summons to produce document or other thing:

(1) Whenever any Court or any officer in charge of a



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police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or



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(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

7. On going through the above, it is clear that the Courts are having ample powers to summon any documents if it is necessary or desirable for the purpose of trial. Only rider is that the petitioner is expected to make out that the documents that are sought to be summoned are necessary for the purpose of trial of the charges that are framed against the accused.

8. According to the petitioner, the respondents 2 to 5/accused were charged for the offences under Sections 468, 471, 420 and 120 (b) of IPC. The respondents 2 to 5/accused have executed registered sale deed in favour of the sixth respondent in respect of the property belonging to the petitioner. According to the petitioner, respondents 2 to 5/ accused have executed the registered sale deed in favour of the sixth respondent showing respondents 2 to 5 as the owners of the property. It is not the case of the petitioner/defacto complainant that the respondents 2 to



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5/accused have impersonated the petitioner and executed the registered sale deed in favour of the sixth respondent as if the sale deeds were executed by the petitioner/defacto complainant or other family members of the petitioner/defacto complainant. When the respondents 2 to 5 executed documents mentioned themselves as the owners of the property, the petitioner cannot allege that respondents 2 to 5/accused have committed offence of forgery by executing the sale deeds.

9. If at all the respondents 2 to 5/accused have executed any document in favour of the sixth respondent in respect of the land belonging to the petitioner, it may be an offence under Section 420 of IPC. Thereby summoning the documents to prove that the respondents 2 to 5/accused have committed offence of forgery cannot be considered.

10. Further, even if entire contention of the petitioner is accepted that the respondents 2 to 5/accused have committed offence of forgery by executing the registered sale deed bearing Document No.3170 of 2010 on 14.07.2010, in order to prove the offence of forgery the disputed document bearing No.3170 of 2010 and the document having admitted



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signatures of the real owners have to be sent to the handwriting expert.

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11. The proceedings in Na.Ka.No.5565/A1/2011 dated 25.07.2012 are in respect of cancellation of sale deed bearing No.3170 of 2010 executed by the respondents 2 to 5/accused in favour of the sixth respondent. Merely because the Registrar concerned has cancelled the document under Section 49 of the Registration Act, it cannot be concluded that the respondents 2 to 5/accused have committed the offence of forgery. It can be concluded that the respondents 2 to 5 have executed the document without valid title. The proceedings passed by the Registrar under Section 49 of the Act cannot be the basis to prove the charges of forgery framed against the respondents 2 to 5/accused. Even otherwise the petitioner can get a certified copies of proceedings and file before the Court or obtain the proceedings under RTI Act and file the same before the Court. In view of the above, issue of summons under 91 of Cr.P.C. is not required.

12. Further, the proceedings of the District Registrar were issued in the year 2012 and this case was also registered in the year 2012.



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Prosecution has examined all the witnesses and marked 19 documents.

The petitioner should have taken steps to file this petition much earlier.

Once the charges have framed basing on certain documents, the prosecution/defacto complainant cannot bump up or file any other documents to strengthen the case of the prosecution. The accused shall defend the charges framed basing on certain documents filed before the Court along with the charge sheet. Once the charges have been settled in order to prove the charges, the prosecution cannot file documents which have not become basis for framing the charges.

13. Considering from any angle, though the trial Court has not given any reasonings for the dismissal of the petition, this Court is in agreement with the trial Court so far as the final conclusion is concerned. There is no merits in this petition and accordingly, it is dismissed.

08.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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- To
- 1.The Inspector of Police,
District Crime Branch PS,
Sivagangai.
 - 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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