



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.969 of 2022

and

Crl.MP(MD)Nos.13318 and 14759 of 2022

1.Hajanajmudeen
2.Bose
3.Dinakaran
4.Angusamy

: Petitioners/A1 to A4

Vs.

1.State thro'
The Inspector of Police,
District Crime Branch,
Ramanathapuram.
(In Crime No.10 of 2007): R1/Complainant

2.Sirajudin
3.Subuhanudeen : R2 and R3/De-facto Complainant
(R2 and R3 impleaded as per
the order, dated 11/11/2022 in
Crl.MP(MD)No.13244 of 2022 in
Crl.RC(MD)No.969 of 2022)

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed by the Chief Judicial Magistrate, Ramanathapuram, in Cr.M.P No.1179 of 2022 in CC No.43 of 2013, dated 16/09/2022.

For Petitioners : Mr.N.Ananthapadmanabhan
for M/s.APN Law Associates

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For R2 and R3 : Mr.P.V.Selvakumar



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This criminal revision has been filed in order to set aside the order passed by the Chief Judicial Magistrate, Ramanathapuram, in Cr.M.P No.1179 of 2022 in CC No.43 of 2013, dated 16/09/2022.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that he is the Power of Attorney of the following persons namely Badhurshaman, Sirajudeen, Bhurkhan, Subukhanudeen and Hindhayathul Nisha. They were residing in Malaysia. The averment is that Hajanajmudeen is one of the sons of Badhurshaman. He is managing the property, which belongs to the above said persons. Because of the above said execution of the Power of Attorney in favour of the de-facto complainant, who is the son of Badhurshaman was inimical. Since the above said persons are permanently living in Malaysia, he entered into a criminal conspiracy with other persons in order to grab the property situated in survey number, that was mentioned in the complaint. They created a Joint Power of Attorney as if the above said persons executed in his favour, on 25/09/2006. For registration, the above said Power of Attorney, he also created a forged document as if signed in the presence of a Notary Public in Malaysia and that was also presented before the District Registrar for



authentication. Pursuance of the above said forged document, A2, A3 and A4 purchased the properties. Later, they also obtained patta in respect of the properties purchased in their respective names. On the basis of the above said forged documents, all the accused persons are disturbing his possession. On that basis, complaint was given and a case was registered and after completing the formalities of investigation, final report was filed stating that all the accused persons committed the offence under sections 406, 420, 468, 477-A r/w 120B IPC @ 120(B), 420, 465, 468 and 471 IPC.

3. Now seeking discharge, all the accused persons moved the trial court, which ended in failure. Challenging the above said, this criminal revision has been preferred.

4. An elaborate argument has been advanced by the learned counsel appearing for the petitioners on factual and legal aspect. He went to the extent of stating that even the Power of Attorney Deed alleged to have been executed by the above said four persons namely Badrusman and others in favour of the de-facto complainant, itself is a questionable and is also a forged document, in the absence of any statement of executor of the Power of Attorney Deed in favour of the first petitioner and in the absence of any material collected during the course of



investigation to show that the above said document *prima facie* is a forged document, no proceedings will lie and they are entitled to be discharged.

5.Per contra, the learned Government Advocate (Criminal side) appearing for the first respondent would submit that it is a clear case of forgery and it came to be verified by the authorities in the course of investigation through proper channel. It is a clear case of creation of forged document, which must be tried to its logical conclusion. So according to him, the offence of such nature must be viewed seriously and no ground has been made out by the petitioners to discharge them.

6.At the time of argument, the learned Government Advocate (Criminal side) has also produced the order, that has been passed by this court in the subject matter.

7.Originally, all the accused persons filed Cr1.OP(MD)No.17660 of 2013 before this court seeking quashment of the proceedings. At the time of hearing, the petitioners requested the court to give a direction to the trial court to complete the trial within a time frame. So, that was also considered and the trial court was directed to complete the trial process within a period of three months from the date of receipt of a copy of this order.



The order, is dated 23/02/2018. Later, the de-facto complainant filed CrI.OP(MD)No.15695 of 2021 seeking a similar direction and that was heard by me and a report was called for from the concerned court. Perusal of the records shows the direction that was issued by this court in CrI.OP(MD)No.17660 of 2013 was not complied. Later, that was disposed of by this court with a direction to complete the trial process on or before 31/03/2022. What happened, after that is not clear on record. But however, it is seen that CrI.MP No.1179 of 2022 has been filed again before the trial court by the petitioners seeking discharge. So, I am not able to understand the conduct on the part of the revision petitioners. They have approached this court seeking quashment and instead of pressing for the main relief, sought for a direction and that was also complied by this court and later, also time was extended and since, there was no specific development, they filed a modification petition seeking discharge. They ought to have proceeded the quash petition before this to its logical end. Taking chances before the courts cannot be encouraged. So with these background, let us proceed to the issue.

8.The trial court has recorded a finding to the effect that the issue arising out of the documentary evidence and whether there was any impersonation, forgery,



etc., can only be found out during the course of trial.

The trial must be taken to its logical end, since sufficient materials have been collected during the course of investigation and placed before this court.

9.The admitted signature of the father of the accused was sent along with the disputed signature. So the contention on the part of the petitioners that no admitted signature of their father was available for the purpose of expert examination is not at all correct on record. So that contention is rejected.

10.The next contention raised on the part of the petitioners is that the letter, which was written by the Notary from Malaysia cannot be treated as an evidence and for that purpose, the learned counsel appearing for the petitioners would rely upon the judgment of the Hon'ble Supreme Court reported in the case of **Vinod Chaturvedi etc., Vs. State of M.P [(1984) 2 SCC 350.]**

11.But here, the factual issues are entirely different. On the basis of the official communication only, the above said Notary through the competent person on verification has sent the report. So it can be construed as 'report' and can be relied as document. Simply because the



above said reply is in the form of letter, cannot be discarded. The evidentiary value of the document cannot be considered at this stage.

12.As mentioned above, the petitioners are not *bona-fide* in their conduct. Repeatedly they approached the court for on or other grounds. They obtained a direction, now they turn around and say that they must be discharged from the criminal prosecution.

13.At one point of time, this court granted stay of the proceedings on the ground that the trial was stated to be proceeded by the trial court, even without insisting upon the presence of the complainant and all the documents have not been sent for expert examination. This stage was not brought to the notice of this court that already a direction was issued and the earlier petitions were dismissed. This sort of conduct on the part of the petitioners shows that they are not *bona fide* persons. On that ground also, the revision deserves no consideration. So, I find no merit in this criminal revision.



14. In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

10/01/2023

Index: Yes/No
Internet: Yes/No
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To,

1. The Inspector of Police,
District Crime Branch,
Ramanathapuram.
2. The Chief Judicial Magistrate,
Ramanathapuram.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.RC(MD)No.969 of 2022

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