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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP (MD) No.555 of 2022

and

Crl.MP (MD) No.420 of 2022

Dhinesh : Petitioner/A5

Vs.

1.State of Tamil Nadu
Thro' Inspector of Police,
Land Grabbing Special Cell,
Thirunelveli,
(In Crime No.50 of 2021)

2.Karumuthu.T.Sundaram : Respondents/Complainants

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the charge sheet in CC No.154 of 2017 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same as illegal with regard to the petitioner alone and pass such other or others orders.

For Petitioner : Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.APN Law Associates

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For 2nd Respondent : Mr.S.R.Rajagopal
Senior Counsel
for Mr.T.K.Gopalan

**O R D E R**

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This criminal original petition is filed seeking quashment of the charge sheet in CC No.154 of 2017 on the file of the Judicial Magistrate No.1, Tirunelveli, in respect of the petitioner/A5.

2.The facts in brief:-

The de-facto complainant, who is the second respondent herein lodged a complaint stating that his father namely Thiyagarajan owned properties in Survey Nos.249, 251/1, 253/1, 383/3, 246/2A, 247/2, 248, 250/2A and 251/1A, measuring to an extent of 10 acres 13.31 cents situated in Ayiraperi village, Tenkasi district. His father died some four years back. He came into the possession and was enjoying, but shifted to outstation for the purpose business. Taking advantage of the above absence of the complainant, the accused conspired and created a false document as if he executed a power of attorney in favour of A1, on 17/10/2007. They also registered the same before the Sub Registrar, Eraniel, Kanyakumari District, by affixing some other photos. Later, A1 executed a sale deed in favour of A2, on



28/11/2007. Again A2, executed a sale deed in favour of A3, on 03/07/2008. Those things came to his knowledge, when he visited the property, on 11/06/2012.

3. Seeking action against four persons, the above said complaint was given, over which, a case in Crime No.50 of 2012 has been filed for the offences under sections 419, 465, 468, 471, 420 and 120(B) IPC. After completing the investigation process, final report has been filed against four persons charging them as stated above.

4. Pending above said trial process, the de-facto complainant moved Cr1.MP No.8177 of 2021 before the trial court under section 319 of the Criminal Procedure Code, to add this petitioner as additional accused. That was allowed by the trial court, on 12/11/2021 and summon was also issued to the petitioner.

5. Challenging the above said order, this petition has been filed by the petitioner/A5.

6. Heard both sides.



7.The factual backgrounds are relevant for further discussion. The date of the power of attorney alleged to have been created by the accused is 17/10/2007. The total extent covered in all survey numbers are 10 acres and 13.30 cents. There is no dispute on that. On the basis of the power of attorney, A1 sold a portion namely 7 acres 92.31 cents in favour of A2 namely K.Jesudasan, on 28/11/2007. A2 in turn sold 6.49 acres to A3 namely V.S.Arunachalam. That sale effected, on 03/07/2008. At that time, A2 appointed A3 as his power agent in respect of the remaining extent of the property purchased by him from A1.

8.On the basis of the above said power of attorney, A3 sold the property in favour of his son namely the petitioner herein on 31/07/2008. The present complaint was given by the de-facto complainant, on 08/10/2008. Before that, on 12/09/2012 A3 namely V.S.Arunachalam filed CrI.OP(MD)No.13493 of 2012 to register a case on his complaint, dated 21/08/2012. The above said petition was disposed on 15/10/2012 directing the DCP to complete the investigation and file a final report on the basis of the complaint given by the de-facto complainant. He was



also directed to look into the complaint given by V.S.Arunachalam on 28/01/2012. Later, V.S.Arunachalam filed CrI.OP(MD)No.13073 of 2017 seeking quashment. In that petition, this court directed this petitioner also to file an affidavit along with his father namely V.S.Arunachalam. In the above said affidavit, V.S.Arunachalam has stated that neither he nor his son namely the petitioner herein will claim any right over the property and also promised to execute the exchange deed. But that was dismissed as withdrawn on 21/06/2008. A direction was issued to the trial court to complete the trial process within a year.

9.Pending trial process, the present petition under challenge was filed by the de-facto complainant to add him as 5th accused. This is the history of the entire events.

10.Now in the final report along with other penal provisions, section 120-B IPC is also included. No doubt that the power of attorney which is the basic document for the present occurrence dated 28/11/2007 is challenged now. so the subsequent happenings took place in pursuance of the above said document.



11.As stated above, the case of the prosecution is that all the accused persons conspired together and created the above said false document and executed the sale deed encumbering the properties.

12.What happened to the complaint given by A3 at the earlier point of time seeking action against some persons is not known and it is a matter for consideration during the course of trial. Now as stated above A3 along with this petitioner filed an affidavit before this court stating that they will not claim any right over the property under dispute and in fact, they are ready to execute a exchange deed. But later that petition was withdrawn. An undertaking given by A3 and the petitioner now before this court has no effect at all. Whether A3 was also a party to the conspiracy is a matter for consideration before the trial court.

13.At this juncture, the learned Senior Counsel appearing for the petitioner would submit that this petitioner was not at all picture when the power of attorney was alleged to have been created in favour of A1 on 17/10/2007. No doubt that V.S.Arunachalam was not



15.The learned Senior counsel appearing for petitioner would rely upon various judgments for the purpose of argument that without any material adding him as additional accused is without jurisdiction and should not be permitted.

16.Per contra, as mentioned above, the learned Senior Counsel appearing for the de-facto complainant would submit that the circumstance under which the above said sale was effected in is favour and the undertaking affidavit filed by his father and by him before this court will show their involvement and all the above said conspiracy and creation of fake power of attorney document. So this according to him, is sufficient material to proceed against this petitioner under section 319 Cr.P.C.

17.The learned Senior counsel appearing for the petitioner would submit that the petitioner was not all in the picture when the alleged power of sale deed was created. The money was transferred from the account of this petitioner to his father's account, the sale consideration. So this money transaction is not related



to the occurrence that said to have been taken place in 2007 namely the date of creation of the power of attorney and the petition was filed by the de-facto complainant without any material facts. According to him, the petitioner is totally devoid of any factual aspect. Even the date of sale is not properly and correctly stated. more over subjective satisfaction of the trial Judge has not recorded as to the availability of the material against the petitioner to exercise the power under section 319 Cr.P.C.

18. So from the arguments advanced on either side, a point boils down to a single and simple issue. Whether sufficient material was available for the trial court to summon this petitioner as additional accused. What is sufficient material is a matter for subjective satisfaction of the court.

19. The learned Senior counsel appearing for the de-facto complainant would submit that enquiry that was undertaken by the trial court itself is a sufficient material. But this line of argument cannot be accepted for the simple reason that mere enquiry will not partake



the character of the materials. Whether any sufficient materials was available either in the form of evidence or circumstance is the only point to be decided.

20. The law on this point has developed has come to a stage as interpreted by the Constitution Bench of the Hon'ble Supreme Court in the case of Sukhpal Singh Khaira Vs. State of Punjab [(2023) 1 MLJ (Cri) 91 (SC)]. The compilation of the judgments cited by both sides are mentioned in the chronological order:-

(1) Kishun Singh and another Vs. State of Bihar (1993-2-SCC-16);

2. Dharm Pal and others Vs. State of Haryana and another [(2014) 2 SCC (Cri) 159];

3. Brijendra Singh and others Vs. State of Rajasthan (2017-3-MLJ(Cri) 178);

4. Shiv Prakash Mishra Vs. State of Uttar Pradesh and another [2019 Supreme 667];

5. Sartaj Singh Vs. State of Haryana and another [(2021) 2 MLJ (Cr1) 168 (SC)]



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*6.Sagar Vs. State of U.P and another
(2022-6-SCC 389);*

*7.Juhru and others Vs. Karim and
another (2003-0-Supreme (SC) 144);*

*8.Sukhpaj Singh Khaira Vs. State of
Punjab [(2023)1 MLJ (Crl) 91 (SC)].*

21.From the above said development of law, what emerges for our consideration is a single point as mentioned above.

22.Now let us decide, material upon which the power under section 319 Cr.P.C can be exercised is that it must stand between the material available for framing of charges and recording the finding of guilt. So the material must stand between these two events namely framing of charges and the conviction. So the question which arises for consideration is whether the material upon which this petitioner was called as additional accused is satisfying the requirement of law as stated above.

23.As pointed out by the learned Senior Counsel appearing for the de-facto complainant, this petitioner



and A3 are living under one roof. within a short period of time, sales come into effect; This will sufficient to prove the complicity of the petitioner; sufficiently are consideration at the conclusion of the trial process. As mentioned above, sufficiency of materials as rightly pointed out by the learned Senior counsel for the de-facto complainant for recording a conviction is entirely different from the exercise of jurisdiction under section 319 Cr.P.C. Now the above said circumstance is available against the petitioner and it is enough for calling the petitioner to be added as additional accused.

24.No doubt that the trial court has not recorded any subjective satisfaction with regard to the availability of material and this petition is also devoid of factual aspects. But for the reasons stated above, I find that no interference need be called for. So I find no merit in this criminal original petition. The trial court has to comply the conditions imposed by this court in the earlier order.



13

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25. In the result, this criminal original petition is **dismissed**. Consequently connected Miscellaneous Petition is closed.

19/04/2023

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To,

- 1.The Judicial Magistrate No.1,
Tirunelveli.
- 2.The Inspector of Police,
Land Grabbing Special Cell,
Thirunelveli,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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