



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2023

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CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.16970 of 2019

Senthilkumar

...Petitioner

Vs

1.State Rep. by
The Inspector of Police,
Pudukkottai Town Police Station,
Pudukkottai District.
In Cr. No.234 of 2015

2.Thenmozhi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the impugned charge sheet in C.C.No.174 of 2019 pending on the learned Judicial Magistrate No.I, Pudukkottai and quash the same as illegal in so far as the petitioner's concern.

For Petitioner	: Mr.G.Mathavan
For 1 st Respondent	: Mr.R.M.Anbunithi Additional Public Prosecutor
For 2 nd Respondent	: Mr.T.Leninkumar

ORDER

This petition is filed to quash the charge sheet in C.C.No.174 of 2019, pending on the learned Judicial Magistrate No.I, Pudukkottai.



2. According to the petitioner, the second respondent has lodged a complaint alleging that A1 issued a legal notice through the petitioner dated 20.09.2014, alleging that the Marsraja entered into sale agreement with the defacto complainant and executed a deed dated 30.06.2012 for a sale of Rs. 30,00,000/-, on receipt of Rs.25,00,000/- as advance. Further it is alleged that the second respondent never received amount from A1 and she had not executed any agreement of sale and the alleged sale agreement is a forged one and the second respondent also issued a reply requesting the petitioner to send a copy of the sale agreement. The petitioner also sent a letter dated 07.10.2014 along with copy of the sale agreement dated 30.06.2012 but it was alleged that the petitioner send only three empty white papers as if he sent the xerox copy of the sale agreement. Hence on assumption, A1 along with the petitioner created a forged document and filed the case against the second respondent for which the complaint lodged by the second respondent. Initially it was enquired and closed as 'mistake of fact'. Thereafter, the petitioner approached this Court for registration of FIR in Crl.O.P.(MD)No.9077 of 2015. On the strength of the order, a case was registered against the petitioner for the offence under Sections 420, 465, 468, 471 of IPC.

3. In fact the petitioner is practicing as an advocate in Pudukkottai District and alleged legal notice was issued on 20.09.2014. Thereafter, the suit was filed before the learned Principal District Judge, Pudukkottai for the relief



of specific performance in O.S.No.54 of 2014 on 17.10.2014. But the aforesaid complaint was lodged by the second respondent on 29.04.2015 after eight months delay. In fact at the time of posting the letter dated 07.10.2014, the petitioner enclosed a copy of the sale agreement. In order to create defence case in the suit, the second respondent used his influence and registered a false case against the petitioner.

4.The veracity of the sale agreement is to be decided by the civil Court, which is pending. Without approaching the competent civil Court, the second respondent attempted to give criminal color to civil dispute by lodging the present complaint. The first respondent also without proper enquiry and without perusing the materials, registered the case and filed a final report for the offence under Sections 420, 465, 468, 471 of IPC. Hence, the impugned charge sheet is liable to be set aside.

5.The second respondent has filed a counter stating that she received a notice dated 20.09.2014 from the petitioner on 30.06.2012 stating that she entered into sale agreement with one Marsraja to sell the property for a sum of Rs.39,00,000/-, on receipt of Rs.25,00,000/- as advance. She was shocked and surprised on seeing the notice as she never entered into agreement with any one. Immediately after receipt of the said notice, she sent a reply notice to the petitioner alleged that she never executed any agreement with Marsraja and if



at all the said Marsraja possess any agreement, it was not executed by her. It was a forged one. Hence, she requested the petitioner to send so called agreement. The petitioner sent a postal cover dated 07.10.2014 containing handwritten letter and three blank white papers.

6.From the attitude of the petitioner, it is evident that the petitioner being an advocate colluded with Marsraja and fabricated the said agreement with an intention to grab her property. Thereafter on 13.10.2014, she sent a rejoinder of the petitioner calling upon him to send the said fabricated agreement. In turn the petitioner sent a reply on 18.10.2014, as if he already sent the agreement and he never sent any white papers.

7.Since the contention of the notice is not at all true, she sent reply notice dated 08.11.2014 calling upon the petitioner once again to send the fabricated agreement. Having receipt of reply notice, the petitioner did not come forward to send any rejoinder. As the petitioner and the said Marsraja committed the offence of forgery with an intention to cheat her on 12.11.2014, she filed complaint before the Superintendent of Police, Pudukkottai District, Pudukkottai. On 02.12.2014, in view of the summons issued by District Crime Branch, she appeared before them and narrated the entire history. Thereafter, the said complaint was forwarded to the first respondent and the first respondent without conducting any enquiry closed the complaint. The first



respondent closed the complaint and directed her to work out the remedy before the civil Court. While facts are being so, she received a notice dated 29.10.2014, from the Principal District Court, Pudukkottai that the said Marsraja filed a civil suit in O.S.No.54 of 2014.

8.Since the first respondent and the District Crime Branch by acting hand in glove of the petitioner and thereby, closed the complaint. In view of the judgment of the Hon'ble Apex Court as well as this Court held that if a document produced before the civil Court is a forged one, the affected party can very well make a complaint before the concerned police station. This is not a case of pure civil in nature. Hence, this petition is liable to be dismissed.

9.The learned Government Advocate appearing for the first respondent also contended that the based on the direction of this Court, only the FIR has been registered and the Police also investigated the matter and prima facie offence is made out against all the accused and now the case is pending for further proceedings.

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

11.It is admitted by both the parties that civil suit is pending before the

Principal District Court, Pudukkottai, in respect of disputed agreement dated



30.06.2012. The petitioner has produced the copy of alleged forged agreement.

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12.A perusal of the agreement, it reveals that this petitioner is neither party nor any attesting witness or scribe. The main contention of the second respondent is that the petitioner being an advocate while sending copy of the agreement without sending the agreement, he only sent three blank white papers and thereby, he colluded with the other accused and created the forged document. Apart from this, there is no allegation made against the petitioner in the complaint. The civil suit is pending between the Ist accused and second respondent. Mere allegation that this petitioner being an advocate had sent three blank white papers instead of sending the copy of the agreement alone is not sufficient to constitute the offence under Sections 420, 465, 468, 471 of IPC as alleged in the final report. Further from the available records, it is found that already a complaint was given before the police and the same was closed by the police and they advised to go to civil Court. Thereafter, the second respondent filed Crl.O.P.(MD)No.9077 of 2015 and based on the direction of this Court, only the present case was filed.

13.Even according to the final report, there is no specific allegation as against the petitioner and the allegation is that in order to cheat the witness

Thenmozhi, A1 and A2 forged the sale agreement and without sending the



copy of the document, they sent merely blank white papers. Further the said agreement itself pending before the Principal District Court, Pudukkottai for adjudication. Even according to the prosecution, the said agreement was forged one but there is no material as against this petitioner to involve in the said occurrence. Therefore, the available materials are not sufficient to prove the involvement of the petitioner in the alleged offence. The implication of the petitioner who is practicing as an advocate and his primary duty is to advice his clients and to act as instructed by clients is a pure abuse of the process of law. In view of the above discussion, this Court is inclined to quash the charges as against the petitioner and the same is quashed.

14.At this juncture, the learned counsel appearing for the second respondent represented that the case is pending for more than five years. Already interim stay was granted and thereby delay in trial proceedings and hence, he sought for a direction for speedy trial in respect of remaining accused.

15.Considering the nature and circumstances of the case and considering that the case is pending from the year 2019, it is appropriate to direct the trial Court to dispose of the case within a stipulated time. The learned Judicial Magistrate No.I, Pudukkottai, shall endeavour to expedite the trial process and complete the trial within a period of six months from the date



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P. DHANABAL,J.

Mrn

of receipt of a copy of this order. The learned Magistrate has to pass order without influencing any observation made by this Court.

16.Accordingly, this Criminal Original Petition is allowed and the charge sheet in C.C.No.174 of 2019 on the file of the learned Judicial Magistrate No.I, Pudukkottai as against the petitioner alone is quashed.

11.07.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.I, Pudukkottai

2.The Inspector of Police,
Pudukkottai Town Police Station,
Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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