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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

DELIVERED ON : 20.03.2023

CORAM

THE HON'BLE MR. JUSTICE G.ILANGOVAN

Crl.O.P.(MD).No.18454 of 2019

and Crl.M.P.(MD).Nos.10833 & 10834 of 2019

Samsudeen ... Petitioner/Accused No.3

Vs.

1.The Inspector of Police,
Vachakarapathy Police Station,
Virudhunagar District.
(Crime No.118 of 2012)

2.Mary Glara ... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the Charge Sheet in C.C.No.152 of 2014, pending on the file of the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District and quash the same against the petitioner alone.

For Petitioner : Mr.G.Karuppasamy Pandian

For Respondents : Mr.B.Nambiselvan for R1
Additional Public Prosecutor

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ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.152 of 2014, pending on the file of the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District.

2.The case of the prosecution in brief:

The defacto complainant lodged a complaint stating that she was working as Revenue Tahsildar, Virudhunagar. One Ramakrishnan sent a complaint stating that the Legal Heirship Certificate for the deceased Palaniammal has been issued by the Revenue Department, dated 29.11.2011 in Pa.Mu.A3/4520/11. But, the numbers mentioned in the above said Legal Heirship Certificate are not pertaining to the subject. Both the above said numbers namely Pa.Mu.A3/4520/11 and 193/2011 are relating to Survey Department and Legal Heirship Certificate issued for the death of one Kaliappan, dated 25.03.2011. Both the above said numbers are not related to the Legal Heirship Certificate of Palaniammal. It is only a copy, not original. In the above said copy of the Legal Heirship Certificate, the Regional Deputy Tahsildar, Virudhunagar, has signed. So on the basis of the above

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complaint, the case was registered and after completing the formalities, final report was filed against two persons for the alleged offences under Sections 420, 465, 468, 471 r/w 34 IPC. The trial was commenced; PW1 was examined and identified the disputed document, which was signed by the Deputy Tahsildar. During the course of cross examination, he has stated that in the above said document, the proposed accused namely Samsudeen signed, but, no departmental action was initiated against him. But, however, report was submitted to the Revenue Divisional Officer, District Collector. At the conclusion of the above said cross examination, the trial Court on its own took proceedings to implead this petitioner as a third accused by invoking the power under Section 319 Cr.P.C. Later, this petitioner was also arrayed as third accused.

3.Challenging the same, this petition has been filed on the ground that neither in the complaint nor in the course of investigation, the involvement of this petitioner was noticed and a suggestion was made by the defence counsel during the cross examination of PW1. So on the basis of the above said stray answer given by PW1, this petitioner has been added as additional accused, which, according to him, is not legal.

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4.For that proposition of law, he would rely upon the Judgment of the Honourable Supreme Court in the case of ***Periyasami and others Vs. S.Nallasamy*** reported in ***(2019) 4 SCC 342***, wherein, it has been held that, by following the Judgment of the Honourable Constitutional Bench in the case of ***Hardeep Singh Vs. State of Panjab*** reported in ***(2014) 3 SCC 92,*** the additional accused cannot be summoned in a casual, cavalier manner and what is required is cogent evidence.

5.According to the Honourable Supreme Court, the *prima facie* evidence must be brought on record, which must be more than required for framing of charges, but, less than the satisfaction required at the time of conclusion of the trial convicting the accused. Therefore, the point is that when additional accused is added during the course of trial, required evidence lies in between framing of charge stage and conclusion of the trial convicting the accused. For convicting the accused, what is required is, beyond reasonable doubt establishment of the case; for framing of charge what is required is, *prima facie* materials or evidence; for adding the additional accused what is required is more than a *prima facie* case, which is required for framing of charge. So it stands in between the

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framing of charge and convicting the accused.

6.Now keeping in mind this preposition of law, let us go further as to find out whether the above said requirement of law has been satisfied.

7.It is the allegation to the effect that without any proper original Legal Heirship certificate, this document has been created as if it is the copy of the Original Legal Heirship Certificate issued by the Revenue Department. The numbers mentioned in the disputed document are not relating to the subject. One revenue official signed in the above said disputed document, as if it is a copy of the original. No such original was available. But, only copy has been created as if original was issued. In that copy, this petitioner alleged to have signed. His signature has been identified by PW1. He was shown as 7th witness in the final report.

8.The counsel for the petitioner would submit that adding a witness as accused is not at all permissible. But, there is no such broad preposition of law. A witness cannot be criminally prosecuted for his answer during the course of evidence. But, such an argument is not

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available when a *prima facie* evidence has been brought on record in the form of identification of the signature by one of the witnesses.

9.Therefore, I find that no reason has been made out by the petitioner to interfere into the order. He has to face the trial to its logical conclusion, since the allegation are serious to the effect that the Government Records have been fabricated and forged. No reasons are made out by the petitioner to quash the proceedings.

10.Accordingly, this criminal original petition is **dismissed.** Consequently, connected miscellaneous petitions are closed.

20.03.2023

Index : Yes/No
Internet : Yes/No
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To

1.The Judicial Magistrate No.I, Virudhunagar, Virudhunagar District.

2.The Inspector of Police, Vachakarapathy Police Station,
Virudhunagar District.

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

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G.ILANGOVAN,J.

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