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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 22.02.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**Crl.O.P Nos.926 & 1359 of 2024**  
**and Crl.M.P Nos.581 & 956 of 2024**

N.Syamasundara Naidu

Petitioner  
in both Crl.O.Ps

vs.

1.V.Dakshinamoorthy

2.B.H.Himagiribabu

3.The State Rep. by  
The Inspector of Police,  
DCB, Vellore

Respondents  
in both Crl.O.Ps

[R3 suo motu impleaded as per order of this Court dated 22.01.2024 made in Crl.O.P.Nos.926 & 1359 of 2024]

**PRAYER:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 05.12.2023 passed in Crl.M.P.Nos.15005 & 15007 of 2023 in C.C.No.10 of 2016 on the file of the Judicial Magistrate II, Vellore District to duly allow the Crl.MP.Nos.15005 & 15007 as prayed for in the interest of justice.



For Petitioner : Mr.N.Pavan Kumar

For Respondents : Mr.G.Vinodhkumar for R1 & R2

A.Gopinath  
Government Advocate for R3

### **ORDER**

These criminal original petitions have been filed challenging the order passed by the Court below in CrI.M.P.Nos.15005 & 15007 of 2023 in C.C.No.10 of 2016, dated 05.12.2023, dismissing the applications filed for recalling PW7, PW8 and PW13 and sending for the original Agreement of Sale, dated 05.11.2012 that is available before the Additional District Court-I, Vellore in O.S.No.130 of 2014.

2.To appreciate the issue that is involved in these petitions, it is necessary to take note of certain earlier events and orders passed by this Court.

3.The petitioner is the *defacto* complainant. He gave a complaint to the effect that the accused persons created forged and fabricated unregistered Agreement of Sale, dated 05.11.2012, and attempted to grab the agricultural land belonging to the petitioner. The investigation was conducted by the 3<sup>rd</sup> respondent and a final report came to be filed before the Court below and the same was taken



on file in C.C.No.10 of 2016. The petitioner who is the *defacto* complainant was not satisfied in the manner in which the proceedings were progressing and hence, he engaged a counsel and filed certain applications. In the meantime, the witnesses on the side of the prosecution were examined and by then, fourteen witnesses were examined. All the applications filed by the petitioner was dismissed on 24.02.2022.

4.The petitioner filed Crl.R.C.No.605 of 2022 before this Court challenging the order passed by the learned Judicial Magistrate-II, Vellore in Crl.M.P.No.9152 of 2021, dated 24.02.2022. This Court on considering the entire facts and circumstances and the grievance expressed by the petitioner, allowed the criminal revision in the following terms:

*21.Thus, the Criminal Revision Case is allowed on the following terms:-*

*(i) The order of the learned Judicial Magistrate No.II, Vellore, dated 24.02.2022 in Crl.M.P.No.9152 of 2021 in C.C.No.10 of 2016 is set aside;*

*(ii) The Crl.M.P.No.9152 of 2021 in C.C.No.10 of 2016 is partly allowed to the extent indicated above by directing the learned Judicial Magistrate No.II, Vellore to frame additional charges under Sections 34, 109 and 467 of the Indian Penal*



*Code, question the accused and thereafter, proceed with the trial as if the additional charges were also originally framed;*

*(iii) On the basis of the answers of the accused on the newly framed charges, if the accused choose to contest the said charges and if they request for recalling any of already examined witnesses to be cross examined for the purpose of further cross-examination regarding the newly framed charges, the same shall be permitted;*

*(iv) It is seen that already a direction has been given to the Trial Court to expeditiously complete the Trial and therefore, the Trial Court is requested to take up this matter preferably on day to day basis and complete the same expeditiously;*

*(v) The petitioner/de-facto complainant shall also, without fail, cooperate with Trial Court for expeditious disposal of the case.*

*(vi) Consequently, Crl.M.P.No.6368 of 2022 is closed.*

5.The other criminal revision that was filed by the petitioner in Crl.R.C.No.1164 of 2022 against the order in Crl.M.P.No.4962 of 2022 by the learned Judicial Magistrate-II, Vellore, dated 14.07.2022, came to be disposed of by an order dated 06.09.2022, and the relevant portions are extracted hereunder:

*7. Normally, if any complaint is lodged before the respondent police, the respondent police would take the cognizance of the case and register F.I.R and they would investigate the matter and file the charge sheet to proceed with*



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*the case. Normally, the defacto complainant will not be allowed to prosecute the case parallely, but he can assist the prosecution. If the prosecution is not fairly conducting the trial or the police officer is not conducting the investigation properly, the defacto complainant can always approach the Court to set right the issues. Therefore, in this case, the third respondent registered the case and investigated the matter and laid the charge sheet. Since it is the case of forgery of the document, the forged document is a material evidence to prove the case of the prosecution. Though the document is very much available with the Civil Court, the prosecution has not taken any effective steps to mark the same during trial. The original forged document is a material document to prove the case and therefore, apprehension of the petitioner is justifiable. In this case most of the official witnesses and the private witnesses have turned hostile, still the prosecution has not taken any effective steps to bring the original document and also has not summoned the report of the expert. Therefore, this Court finds that the apprehension of the defacto complainant is reasonable. Even though the decision referred to by the learned counsel for the petitioner are not applicable to the present case on hand directly, however reading of section 302 Cr.P.C and reading of the materials and considering the conduct of the prosecution as well as the investigating officer, this is a fit case to invoke Section 302 Cr.P.C.,*



*the learned Judicial Magistrate No.II, Vellore in Crl.M.P.No.4962 of 2022 in C.C.No.10 of 2016 is set aside and the Revision is allowed. The trial court is directed to permit the defacto complainant to appoint a private counsel on his own choice. Consequently, connected miscellaneous petition is closed.*

6.It is to be noted that the Additional Public Prosecutor who was conducting the case before the Court below had filed Crl.M.P.No.6306 of 2021 under Section 91 of Cr.P.C., to summon the disputed document from the Civil Court. This petition was dismissed and aggrieved by the same, the petitioner filed Crl.O.P.No.20868 of 2022, before this Court. This petition was disposed of by an order dated 12.10.2023 and the relevant portions are extracted hereunder:

*9. Be that as it may. As far as the issue now involved is regarding whether the disputed documents which is a subject matter in a civil Suit have validity in a criminal proceedings or to be once again put to test for an expert opinion and for that purpose the original document should be marked and part of the Court record in a civil proceedings is to be summoned.*

*10. The learned counsel appearing for the accused submitted that the certified copy of the document which is summoned and marked here is suffice for arriving at conclusion*

*and the disputed document need not be subjected to multiple*



*examination and expert opinion which at the most has no binding effect but only a suggestive nature for the Court to arrive at just conclusion. Expert opinion are not conclusive proof.*

*11. The perusal of the impugned order and the records indicates that the disputed document is in the custody of the Court in a civil proceedings and the document already been sent for expert opinion and one Mr. Alagesan, Deputy Director and document expert attached to SFL had given his opinion about the signatures after comparing the disputed signature found in the document with the admitted signatures. In the said circumstances, the present application under Section 91 of Cr.P.C., and rejection of the request by the trial Court with reasoning does not require any interference. For appreciation of the facts to prove the charges there is material for the trial Court namely the opinion of the expert and the certified copy of the disputed document. If at all the Court needs any further clarification, the original document which is already in the custody of the Court may be marked as Exhibit. The trial Judge has every right to call for the records and comparing it on her own or sent for another expert opinion and decide the matter since the act provides for such procedures. As of now, the trial Judge has rightly observed that the request of the petitioner to call for those documents are not necessary and the certified copy already been filed. In so far as the allegations about the manipulation of the Advocate Commissioner report is part of*



*civil proceedings.*

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*12. The trial Court in C.C.No.10 of 2016 is not testing the genuineness of the Commissioner's report submitted in the civil Court proceedings. If at all there is any manipulation of Commissioner's report, it is for the petitioner herein to agitate it before the civil Court and not in the criminal Court where the accused are tried for fabrication of unregistered agreement for sale deed dated 05.11.2012. It is obvious that since the defacto complainant been permitted to assist the prosecution, the petition under Section 91 Cr.P.C., to call the records from the civil Court was filed. While the purpose of examining the documents already been substantially served by marking certified copy Ex.P.21 and the opinion of the expert PW.13 if any further clarification required the trial Court will take appropriate measures. This Criminal Original Petition therefore, deserves to be dismissed.*

7.The petitioner had also filed CrI.O.P.No.19726 of 2022 before this Court under Section 407 of Cr.P.C., seeking for the transfer of the case and this petition was disposed of by an order dated 19.06.2023. While disposing of this petition, this Court had taken note of the various developments that took place in this case and for proper appreciation, Paragraph No.10 of the order is extracted hereunder:



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*materials, it is seen that the following petitioner's apprehension are sorted out which are as follows:-*

*1)Vakalat not available in the case bundle – It is now seen that the vakalath is very much available in the case bundle and the petitioner is permitted to be represented through his counsel and he is assisting the public prosecutor following Section 301 Cr.P.C.*

*2)All the Criminal Miscellaneous Petitions filed earlier are now reached its finality.*

*3)On the plea of the petitioner, this Court in Crl.R.C.No.605 of 2022 irected the trial Court to include Sections 34, 109 & 467 IPC, vide order, dated 21.06.2022.*

*4)PW13 is the Handwriting Expert through him Ex.P15 Handwriting Expert report marked.*

*5)The appearance of PW13 is only after issuance of summons from the trial Court. In view of the same, the appearance of PW13 before the trial Court cannot be attributed with any motive.*

8.The petitioner who was permitted to conduct the prosecution had engaged a counsel and two applications came to be filed. Crl.M.P. No.15005 of 2023 was filed to recall PW7, PW8 and PW13. Crl.M.P. No.15007 of 2023 was filed to send for the original document viz., the Unregistered Agreement of Sale, dated 05.11.2012, lying on the file of the I Additional District Court, Vellore.



These applications were contested by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and these applications came to be dismissed by the Court below by common order dated 05.12.2023. The same has been put to challenge in these petitions:

9. Heard Mr.N.Pavan Kumar, learned counsel appearing on behalf of the petitioner, Mr.G.Vinodhkumar, learned counsel appearing on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and Mr.A.Gopinath, learned Government Advocate appearing on behalf of the 3<sup>rd</sup> respondent.

10. It is clear from the above orders passed by this Court that the petitioner has virtually slogged to sustain the case and to keep it on track. It is only because of the earlier orders passed by this Court, the petitioner was able to get a semblance of control over the case which otherwise would have derailed by now. This backdrop must be kept in mind while dealing with these petitions.

11. There is no dispute with regard to the fact that the alleged forged document was already sent for expert opinion during the course of investigation and an FSL report has already been received. This report has also been marked through the expert who was examined as PW13. The grievance of the petitioner is that the FSL Report at the best can only be construed to be an opinion and it is



the criminal Court. This is in view of the fact that the certified copy of the document which has already been marked as Ex.P26, by itself will not serve the purpose and the Court has to satisfy itself by looking into the document along with the opinion given by the expert. That apart, if the accused persons question the opinion given by the expert, the certified copy of the document that has been marked will not help the Court in addressing the objections raised by the accused persons. Therefore, this Court even in the earlier order dated 12.10.2023 passed in CrI.O.P.No.20868 of 2022 observed that the original document itself can be brought into the custody of the Court and it can also be marked as an exhibit at the appropriate time. That appropriate time has been reached now and it is very important for the Court below to mark this original document which is in question as an exhibit in the criminal proceedings. Therefore, the application filed by the petitioner in CrI.M.P.No.15007 of 2023 ought to have been considered positively by the Court below.

12.Insofar as the other application filed in CrI.M.P.No.15005 of 2023, the petitioner only wanted to recall two attesting witnesses to the document and expert who was examined as PW13. The examination of these three witnesses will become important after the original document is marked before the Court.

This is in view of the fact that PW7 and PW8 are said to have attested the forged

document and therefore, questions will have to be put them by showing the



original document to them. Similarly, the original document has to be shown to the expert also who had given his opinion in order to bring more clarity to the opinion that has already been given and to explain before the Court as to why the expert came to such a conclusion after analyzing the original document. In view of the same, if the original document is brought before the Court, recalling PW7, PW8 and PW13 becomes essential and hence, this application also must have been allowed by the Court below.

13.The petitioner has now been allowed to conduct the prosecution. Therefore, on that strength, the petitioner has filed two applications and this Court does not find these two applications to be frivolous or has been filed to drag on the proceedings. After all, the petitioner is the complainant in this case and the petitioner will not stand benefited if he is going to drag on with the proceedings.

14.In the light of the above discussion, the order passed by the learned Judicial Magistrate-II, Vellore in CrI.M.P.Nos.15005 & 15007 of 2023 in C.C.No.10 of 2016, is hereby set aside. The Court below is directed to call for the original Agreement of Sale, dated 05.11.2012 and it shall be marked as an exhibit in the criminal case. The Court below shall also recall PW7, PW8 and PW13 in



appropriate questions to these witnesses. It goes without saying that the accused persons will have the opportunity to cross-examine the witnesses as and when they are being called.

15. In the result, these criminal original petitions are allowed.

16. The learned counsel for the petitioner submitted that already an application has been filed before the Court below to commit the case to the Sessions Court, since the offence under the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 is involved and this application filed under Section 323 of Cr.P.C., is pending before the Court below. It is left open to the Court below to independently consider that application and pass orders.

**22.02.2024**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
ssr

To

1. The Judicial Magistrate II,  
Vellore District.



2. The Inspector of Police,  
DCB, Vellore.

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3. The Public Prosecutor,  
High Court, Madras.



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**N. ANAND VENKATESH, J.**

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