IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1679 of 2024 and
Crl.M.P.No.13862 of 2024

Ravi Pacha Muthu ... Petitioner

Vs.

State of Tamil Nadu,
The Inspector of Police,
CCB – Team – 17,
Vepery,
Chennai – 600 007. ... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to allow this Revision Petition and set aside the order passed in Crl.MP.No.26212/23 in C.C.No.5081/23 on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating cases in Chennai) and CBCID Metro Cases Egmore, Chennai – 600 008 dated 13.09.2024 and discharge the 5th Accused from the case.

For Petitioner : Mr.K.Suresh Babu assisted by
Mr.Navin Suresh for Mr.C.K.M.Appaji

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner/A5 in C.C.No.5081 of 2023 has filed discharge petition in Crl.M.P.No.26212 of 2023 in C.C.No.5081 of 2023 before the learned CCB & CBCID Metropolitan Magistrate, In the Court of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating cases in Chennai) and CBCID Metro Cases Egmore, Chennai (Trial Court). The Trial Court *vide* impugned order, dated 13.09.2024 dismissed the discharge petition. Against which the present criminal revision case is filed.

2.The learned counsel for the petitioner submitted that the defacto complainant *viz.,* Vijaya lodged a complaint to the Commissioner of Police, Chennai which was forwarded to the respondent Police. The complaint is that by fabricating and producing forged patta, A1 and A2 made a claim and forcibly took the property of the defacto complainant in survey No.19/2 in Koyambedu, Chennai. Using the forged revenue records, A1 and A2 executed power of attorney in favour of A3, General Manager of M/s.SRM Travels who in turn entered into lease agreement with A4. A4 is closely related to the petitioner/A5. The petitioner/A5 is the Managing Director of M/s.SRM Travels who parked his vehicles in the said property. This act is based on the conspiracy hatched by all the accused to forcibly encroach the property of the defacto complainant. The petitioner brought the JCB vehicle, demolished the compound wall of the defacto complainant and others and parked SRM Travels Company buses in the encroached land. When the defacto complainat and others questioned the same, they were abused and threatened. Left with no other option, a complaint filed. He further submitted that the petitioner/A5 falsely implicated in this case on presumption and assumption and there is no record or any document or statement to show that the petitioner/A5 had any knowledge about forging of documents by A1 and A2 and the power of attorney executed in favour of A3. The case projected is that it is M/s.SRM Travels who encroached the property of the defacto complainant and others and the vehicles parked. Admittedly, M/s.SRM Travels not arrayed as accused in this case. The petitioner being a Managing Director of M/s.SRM Travels arrayed as accused for the act committed by the Company. The petitioner in his individual capacity cannot be made as accused mechanically when there is no specific overtact against him in a criminal case.

3.The learned counsel further submitted that there are two FIRs, one is

Crime No.72 of 2016 and another is Crime No.349 of 2016 since two sets of people lodged complaints on the same cause of action with regard to adjacent property which is claimed to be encroached by the accused. As regards the case in Crime No.72 of 2016 is concerned, this Court on 16.06.2023 in Crl.O.P.No.20570 of 2020 recorded the compromise entered between the defacto complainant and the petitioner, quashed the FIR in Crime No.72 of 2016. As regards the FIR in Crime No.349 of 2016 is concerned, the petitioner filed quash application in Crl.O.P.No.20468 of 2020 but the same was closed since the investigation completed giving liberty to challenge the final report taken on file as C.C.No.1 of 2023. Hence, the petitioner filed discharge petition, but the Trial Court without considering the subsequent development, dismissed the discharge petition merely based on the charge sheet.

4.The learned counsel for the petitioner referred to the order passed by this Court in Crl.O.P.Nos.20468, 20579, 20467, 20570 of 2020 and 2251 of 2021 wherein this Court referred to an earlier order passed in Crl.O.P.No.25525 of 2016 and observed that "*In response to the above* *order, the petitioner filed an affidavit dated 15.10.2020, wherein, he has given all irrelevant stories, but has not stated the extent of land belonging to Umapathy that is in the occupation of SRM and whether the land belonging to Vijaya was handed over to her. There is no answer to this simple and straight forward question posed by this Court. Had the petitioner satisfied this Court that he had handed over Vijaya's land to her, this Court would have had no hesitation in quashing the FIR as against the petitioner, and directing the police to proceed with the investigation as against the other accused who are involved in the crime of fabricating the land records. In the counter filed by the police, it is stated that the police are in the process of conducting a thorough investigation in this case in order to find out whether the petitioner was the brain behind the criminal activities of IndiraniGopinath duo for fabricating the land records. The police have collected sufficient materials to show that the accused had created a fake patta by manipulating the survey numbers. The direct and ostensible beneficiary of the fabrication of the documents is the petitioner, because he is parking his buses in the lands that are not under his ownership and is reaping benefits.*". This Court in Crl.O.P.No.25525 of 2016 on 28.10.2020 directed the petitioner to vacate the property involved in Crime Nos.349 of

2016 and 72 of 2016. After handing over the property, nothing survives in both the criminal cases. He further submitted that the FIR in Crime No.72 of 2016 quashed, but charge sheet filed in Crime No.349 of 2016. In view of the order passed by this Court in Crl.O.P.No.25525 of 2016 on 28.10.2020, charge sheet ought not to have been filed and FIR ought to be closed by the respondent Police. On the other hand, for the reasons best known the respondent Police filed the charge sheet before the Trial Court which is not sustainable. In the event of the petitioner's company M/s.SRM Travels removing the buses/encroachment and the defacto complainant and other owners of the property restored back with their property, the petitioner facing trial would amount to exercise in futility and abuse of process.

5.In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of "***Sheila Sebastian v. R.Jawaharaj and another*** reported in ***(2018) 7 Supreme Court Cases 581***" wherein it is held that the one who makes a false document alone can be made as accused and prosecuted for offence of forgery and further referred to the decision of the Hon'ble Apex Court in the cases of "***S.K.Alagh v. State of Uttar Pradesh and others*** reported in ***(2008) 5***

Supreme Court Cases 662" and "***Sharad Kumar Sanghi v. Sangita Rane*** reported in ***(2015) 12 Supreme Court Cases 781***" for the point that vicarious liability cannot be cast on the Managing Director for alleged offence committed by the Company more so when there is no specific allegation against the Managing Director in his individual capacity. In the case of "***K.Bharathi Devi and another v. State of Telangana and another*** reported in ***2024 SCC OnLine SC 2695***", the Hon'ble Apex Court finding that the loan availed by the accused therein repaid to the bank and compromise arrived between the Company and Bank, observed that the technicality should not stand in the way in quashing of the criminal proceedings and quashed the proceedings.

6.Making the above submissions and relying upon the decisions, the learned counsel for the petitioner prays for discharge and to set aside the impugned order of the Trial Court.

7.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that A1 and A2 are the persons in whose name bogus patta created, A3 is the General Manager of M/s.SRM Travels and A4 is the relative of the petitioner/A5 and A5 is the

Managing Director of M/s.SRM Travels. By forged patta, A1 and A2 executed power of attorney in favour of A3, in turn A3 executed lease agreement in favour of A4. The petitioner knowing about the forged documents and false claim clearly kept away from the documents but used his relative and others to perpetuate forgery and fraud and the ultimate beneficiary is the petitioner herein. Using these forged documents, the compound wall of the defacto complainant and others in the property demolished using muscle men and JCB vehicle. The petitioner was very much present when the demolish took place and thereafter M/s.SRM Travels buses parked and thereby the petitioner benefited. It is not a case of mere encroaching the property, in this case forged revenue documents created to claim over the property of defacto complainant.

8.It is further submitted that in this case, LW1 is the defacto complainant who clearly stated about the property purchased by her and thereafter other owners purchasing adjacent land and the petitioner herein came with muscle men along with JCB vehicle demolishing the compound wall, forcibly entered into the property and parked the buses. When LW1 questioned the same, she was threatened and intimidated for which a complaint given by her brother-in-law A.V.K.Raja earlier and CSR.No.448 of 2015 assigned on the complaint given by one Daisy Rani, all called for enquiry. At that time, one Sivaraman representing A1 and A2, produced the copy of the patta, town survey extract and claimed the property belongs to A1 and A2. The respondent Police conducted enquiry and registered the case. After registration of the case, the documents produced on behalf of A1 and A2 forwarded to the revenue authorities. LW6 and LW7/Tahsildar verified the documents and gave report that the patta in the name of the defacto complainant and her brother-in-law are genuine and the patta in the name of A1 and A2 are forged. Further, the Sub Registrar, Anna Nagar/LW8 produced the certified copy of the document Nos.1720, 1709, 1719, 2174, 1839 of 1996 to the Investigating Officer. LW8 also produced the power of attorney document in No.1723 of 1996, pending document in P.No.312 of 2015 and document No.2967 of 2012 verifying documents, the investigation confirmed documents revenue and public records produced by A1 and A2 are forged and using the same, they made claim over the property of the defacto complainant and others made using force. Added to it, the statements of LW2 & LW3 supported the statement of the defacto complainant/LW1. On conclusion of investigation, charge sheet filed listing ten witnesses and several documents. On perusal of the charge sheet, the Trial Court took cognizance of the offence and issued summons to the accused. Thereafter, the petitioner filed discharge petition and the same was dismissed.

9.He further submitted that the Trial Court passed a detailed order dismissing the discharge petition and found the petitioner's contention cannot be decided at this stage and the same to be decided during trial since the petitioner's defence is based on the subsequent development which is beyond the scope of the discharge. Hence, he prays for dismissal of the revision.

10.This Court considered the rival submissions and perused the materials available on record.

11.In this case, the petitioner's main contention is that he has no knowledge of alleged forgery if at all any forgery committed by A1 and A2 and the role played by A3 and A4. It is for the concern to give explanation and reasoning. For the adjoining property, FIR in Crime No.72 of 2016 quashed by this Court in Crl.O.P.No.20570 of 2020 on 26.06.2023 based on the compromise entered between the defacto complainant therein and the petitioner herein. The FIR in Crime No.72 of 2016 is for offence under Sections 147, 148, 427 and 506(i) of IPC. As regards the FIR in Crime No.349 of 2016 is concerned, the offence are under Sections 465, 467, 468, 471, 420 and 120B IPC *i.e.,* forgery, forgery for the purpose of cheating, using forged documents as genuine for the purpose of cheating with criminal conspiracy. In this case, the forgery by the accused confirmed by LW6 to LW8 in their evidence. A1 and A2 who are total strangers and nothing to do with the property, created forged documents and using the same executed power of attorney in favour of A3. On the power of attorney, A3 executed a lease agreement in favour of A4. A3 is the General Manager of M/s.SRM Travels and A4 is the relative to A3. A5 is the Managing Director of M/s.SRM Travels. It is the case that the petitioner/A5 along with muscle men and JCB vehicle had gone to the defacto complainant's property and other adjacent owners property damaged the compound wall by force, removed the same, created way for M/s.SRM Travel buses to park the buses in the said place since the property is nearer to Koyembedu. The hub of passenger transport central bus stand used for parking the vehicles by

M/s.SRM Travels. After registration of the criminal case by the respondent Police, the petitioner approached this Court by filing Crl.O.P.No.25525 of 2016 to quash the FIR in which affidavit, dated 15.10.2020 filed and this Court specifically put a question to the petitioner whether the land of the defacto complainant handed back and if so the Court had no hesitation in quashing the FIR against the petitioner but no positive answer given, hence directed the Police to proceed with the investigation against all the accused who are involved. It is recorded that the respondent Police to conduct thorough investigation to find out whether the petitioner was the brain behind the criminal activities of A1 and A2 in creating forged documents. The respondent Police collected sufficient materials to show that fake patta created by manipulating survey numbers and hence, left the case at that stage. The respondent continued with the investigation and found the petitioner being the ultimate beneficiary, conspired with the other accused and being the fulcrum of the entire episode and filed charge sheet in C.C.No.1 of 2023 and thereafter renumbered as C.C.No.5081 of 2023.

12.The allegation in Crime No.72 of 2016 and Crime No.349 of 2016 are one and the same. The case in Crime No.72 of 2016 is for unlawful assembly, damage caused and criminal intimidation, but the case is Crime No.349 of 2016 involves forgery, creation of forged public documents/revenue records, knowingly used these forged documents and made claim over a property, demolished the compound wall using muscle power, men and machinery. In the present case (Crime No.349 of 2016), it involves creation of forged documents and used the same as genuine, cheated the defacto complainant and others. It is also seen that the offence under Section 120B IPC invoked. It is settled position that the conspiracy are hatched in secrecy in dark and there cannot be any direct evidence. The conspiracy has to be inferred and found with the attendant circumstances which can be done only during trial and not at the stage of discharge. In view of the same, the decisions referred by the petitioner in the case of "***Sheila Sebastian v. R.Jawaharaj and another*** reported in ***(2018) 7 Supreme Court Cases 581***" will not helpful to the petitioner. In ***Sheila Sebastian*** case, the Hon'ble Apex Court relied upon the decision of "***Mohammed Ibrahim v. State of Bihar*** reported in ***(2009) 8 SCC 751***". In this case, using the forged patta and town survey extract, claim was made by A1 and A2 over the property of the defacto complainant. Likewise, it is seen that the petitioner arrayed as A5 in individual capacity, since the petitioner in pursuant to the conspiracy claimed right over the defacto complainant and others property, engaged muscle men, machinery, present physically in the disputed property, ensured and overseen the demolition of the compound walls, made way for the movement of vehicles, thereafter parked the vehicle and buses of SRM Travels, ensured the Transport business put in place near the Central Bus Stand to reap benefit for the business. Hence the question of arraying M/s.SRM Travels Company would not arise. Added to it, the witnesses specifically confirmed the petitioner's presence at the time of demolishing the compound wall. The contention of the petitioner are disputed facts and these facts have to be necessarily decided during trial and not in a discharge petition.

13.In view of the same, this Court finds that the impugned order, dated 13.09.2024 in Crl.M.P.No.26212 of 2023 in C.C.No.5081 of 2023 passed by the learned CCB & CBCID Metropolitan Magistrate, In the Court of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating cases in Chennai) and CBCID Metro Cases Egmore, Chennai is well reasoned and detailed one and the same is hereby confirmed. Accordingly, this criminal revision case stands dismissed.

14.It is made clear that the observations made herein are only for the purpose of disposal of the present criminal revision case. The Trial Court shall proceed with the trial and dispose of the case on its own merits uninfluenced with the observation made in the present order. The petitioner is at liberty to seek any other remedy available to him. Consequently, connected criminal miscellaneous petition is closed.

17.10.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1.The CCB & CBCID Metropolitan Magistrate,
In the Court of the Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating cases in Chennai) and CBCID Metro Cases
Egmore, Chennai.

2.The Inspector of Police,
CCB – Team – 17,
Vepery, Chennai – 600 007.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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