



Crl.R.C.(MD).No.719 to 721 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	11.10.2023
Pronounced on	:	15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). Nos.719 to 721 of 2023

Crl.R.C(MD). Nos.719 to 721 of 2023:

C.Sakthi Ganapathy

... Petitioner/Petitioner

Vs.

1. The State rep by
The Inspector of Police,
Nanguneri Police Station,
Cr.No.217/2022.
Respondent/Complainant

... 1st Respondent/1st

2. Assistant Director of Mines and Minerals,
Department of Geology, Collectorate,
Kokkirakulam, Tirunelveli.

... 2nd Respondent/ 2nd Respondent

3. S.Jegatheesan

... Proposed Respondent

(R3 is impleaded as per order of the Court dated 11.10.2023 in Crl.M.P.(MD)10567, 10571, 10573 of 2023 in Crl.R.C.(MD).No. 719, 720, 721 of 2023)

PRAYER in Crl.R.C(MD). No.719 of 2023: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 03.06.2023 in Crl.M.P.No.12960/2022 on the file of the Principal Sessions Judge, Tirunelveli, and to allow the above Criminal Revision Petition.



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PRAYER in Crl.R.C(MD). No.720 of 2023: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 03.06.2023 in Crl.M.P.No.12959/2022 on the file of the Principal Sessions Judge, Tirunelveli, and to allow the above Criminal Revision Petition.

PRAYER in Crl.R.C(MD). No.721 of 2023: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 03.06.2023 in Crl.M.P.No.12961/2022 on the file of the Principal Sessions Judge, Tirunelveli, and to allow the above Criminal Revision Petition.

For Petitioner : Mr.V.Raghavachari, Senior Counsel
for Mr.J.Kingsly Solomon (in all cases)

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor,
for R1 and R2 (in all cases)
: Mr.R.Anand for R3 (in all cases)

COMMON ORDER

These Criminal Revision Cases have been filed to set aside the order dated 03.06.2023 passed in Crl.M.P.No.12960, 12959 and 12961 of 2022 on the file of the Principal Sessions Judge, Tirunelveli.

2. Brief facts lead to file this Criminal Revision:-

For better appreciation of the facts, herein after the petitioner is referred to as “Vaikundarajan group” and the 3rd respondent is referred to as “Jegatheesan



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group” .

V.V. Minerals is a partnership firm. There are 11 partners in the “Vaikundarajan group” and they are from the family of the two blood brothers, Vaikundarajan and Jagatheesan. The said partnership dissolved as per Kaithadi Partition deed dated 31.12.2018. The movable and immovable properties were allotted to each group.

2.1. In all the above cases, the Manager of M/s.V.V.Minerals representing Vaikundarajan group has filed petitions under Section 451 Cr.P.C., seeking interim custody of the respective vehicles. According to the respondent police, on 18.08.2022, at around 02.40 am., they conducted vehicle check-up at Nanguneri Tollgate on the Kanyakumari-Tirunelveli National Highway. At that time, they found that three vehicles transported the stone pebbles without any permission and without any proper trip sheets and hence, they registered FIR in Crime No.217 of 2022 for the offences punishable under Sections 4(1)(1A) and 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. But, the vehicles were not produced before the Court and the same is kept in the police station without proper maintenance. Hence, the petitioner as a Manager of



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M/s.V.V.Minerals representing Vaikundarajan filed petitions seeking interim custody of the vehicles under 451 of Cr.P.C.

2.2. The respondent filed a counter stating that the above three vehicles had illegally transported stone pebbles without licence and permit and hence, *prima facie* offence is made out. He further submitted that if the vehicles are to be released, it will further indulge in such activities in future.

2.3. Another partner of M/s.V.V.Minerals, namely S.Jegatheesan, the blood brother of Vaikundarajan is the third respondent and he has filed intervening petitions in Crl.M.P.Nos.2873 to 2875 of 2023. In the intervening petitions, it is stated that M/s.V.V.Minerals originally registered in 1998 was reconstituted on 01.02.2012. In the partnership firm, there are 11 partners from the two blood brothers and the family members. The first part of the family members belong to Vaikundarajan and the second part of the family members belong to Jegatheesan. The said Vaikundarajan created two types of forged false documents, namely Kaithadi Partition Deed dated 31.12.2018 and the mediation proceedings document dated 02.01.2010. Through the said forged false documents, they took the profitable and major properties as their share and only minor properties were allotted to Jegatheesan. They wanted to grab all profitable majority properties, more particularly V.V.(Vetrivel) Group of Business Enterprises included in the



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Kaithadi Partition Deed.

2.4. Thereafter, Jegatheesan filed O.S.No.72 of 2022 on the file of the 3rd Additional District Court, Tirunelveli, to set aside the said Kaithadi Partition Deed dated 31.12.2018 and the same is pending. The jurisdictional police also registered a case in Crime No.7 of 2022 against Vaikundarajan and other family members for the offence punishable under Sections 408, 420, 465, 467, 468, 471, 477A and 120B IPC. In the said FIR, it is alleged that Vaikundarajan had forged and created false statement documents. In the said FIR, the petitioner is one of the accused. The intervenor stated that the petitioner is involved in number of cases, more particularly relating to the offence under Mines and Minerals (Development and Regulation) Act, 1957, and hence, he seeks for dismissal of the application.

2.5. He further submitted that the dispute between Vaikundarajan and Jegatheesan reached finality before this Court in CRP(MD)Nos.1797 to 1799 of 2019. The said CRPs., were filed by Jegatheesan, challenging the execution proceedings in E.P.Nos.61, 62 and 63 of 2019 in ACP.No.1 of 2019. In the said execution proceedings, Official Receiver was appointed and hence, Vaikundarajan has no right to file the petition seeking interim custody of the



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vehicles as absolute owner. He also submitted that before this occurrence, FIR was registered against Vaikundarajan and his son, Subramanian for the alleged illegal transmitting of 39 metric ton of ilmenite through 5 lorries. In all aspects, he opposed the grant of interim custody of the vehicles to Vaikundarajan. In sum and substance, he contends that Vaikundarajan has no right to claim custody of the vehicles and also his conduct is not good to get return of vehicles. The learned trial Judge after hearing the intervenor and the petitioner dismissed the petition by the impugned order dated 30.06.2023. Challenging the same, the petitioner filed these revision cases.

1. In the revisions, Jegatheesan, was not added as party and hence, Jegatheesan filed a impleading petition before this Court. The learned Senior Counsel appearing for the petitioner has no objection to allow the petition and even otherwise, this Court is inclined to allow this petition on the ground that he is a necessary party to contest the validity of the impugned order on the ground that he is the party to the proceedings before the trial Court. Hence, the impleading petitions were allowed by this Court.

2.



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4. Submission on behalf of petitioner:

4.1. The learned Senior Counsel appearing for the petitioner after reiterating the memorandum of grounds submitted that the intervenor failed to disclose one fact before this Court. The learned Senior Counsel further submitted that the intervenor in the petitions in E.P.Nos.61, 62 and 63 of 2019 and the subsequent challenge in CRP(MD) Nos.1797 to 1799 of 2019 failed to state that Jegatheesan filed Crl.O.P.(MD) Nos.372 to 374 of 2019 before the Principal Bench under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking to appoint Justice Shivaraj V.Patil, retired Judge of the Hon'ble Supreme Court as the sole Arbitrator to decide the dispute.

4.2. In the said application, this Court held that execution of Kaithadi Partition Deed dated 31.12.2018 was validly proved and the allegation of fraud was not accepted and the prayer for appointment of the Arbitrator was negatived. This Court has specifically stated that unless and until, the said Kaithadi Partition Deed dated 31.12.2018 is set aside in the manner known to law, Jegatheesan group cannot attack the validity. Against the dismissal of said O.P.No.372 to 374 of 2019, 380 to 382 of 2019 and 384 of 2019 and O.A.No.543 of 2019 under the Arbitration Act, they filed SLP before the Hon'ble Supreme



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Court. The Hon'ble Supreme Court dismissed the same with liberty to work out the remedy in accordance with law. The review petition was filed and the same was also dismissed. Thereafter, execution proceedings were filed in E.P.Nos.61, 62 and 63 of 2019. During the course of hearing, it is argued that the order passed in O.P.No.372 to 374 of 2019, 380 to 382 of 2019 and 384 of 2019 and O.A.No.543 of 2019 under the Arbitration Act, is liable to be set aside. The same cannot be relied upon. The Kaithadi Partition Deed dated 31.12.2018 is unstamped and cannot be executed. Hence, they filed CRP.Nos.1797 to 1799 of 2022 to strike off the execution proceedings. The said petition was dismissed, affirming the above said finding of the O.P and O.A. proceedings, but after dismissing the civil revision, this Court in order to bring peace in the family appointed Mrs.Justice DR.S.Vimala (retired Judge of this Court) to look into the over all administration of the properties and mediate the both parties within an outer limit of 3 months with rider clause that if mediation fails, the execution proceedings should not be stalled. To complete the mediation process, three months period was fixed.

4.3. The order passed in civil revision petition, it is stated that the mediation was failed and the respondent/ Jagetheesan group was are at liberty to



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raise all the issues in the execution proceedings. After the said order, there was no progress in the mediation. The said order was also challenged before the Hon'ble Supreme Court by two persons belonging to Jagadeesan group and the same was also dismissed. Thereafter, miscellaneous review petition was filed and the same was also withdrawn. In the said circumstances, except the filing of the suit to set aside the Kaithadi Partition Deed as null and void, the intervenor has no point to oppose this application. As on date, Kaithadi Partition Deed was dealt with by the Hon'ble Supreme Court on two occasions and the same was also confirmed. In the said circumstances, the finding of the learned trial Judge that the petitioner has not established his right over the vehicles is perverse and the act of the learned trial Judge to sit over the findings of this Court amounts to review of the judgments of this Court as well as the Hon'ble Supreme Court. The said attitude of the learned trial Judge is to be dealt with appropriately. The finding of the learned trial Judge that this Court gave an opportunity to agitate the validity of the Kaithadi Partition Deed is not factually correct. In the order, the learned single Judge of this Court has not given any liberty to challenge the same. The learned Judge gave his finding on the validity of the Kaithadi Partition Deed dated 31.12.2018. He has not accepted the fraudulent representation to the partition deed and has not accepted the plea of fraud projected by the intervenor



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and the same was accepted by the Hon'ble Supreme Court. In the said circumstances, the observation of the learned trial Judge is not correct.

4.4 .Further, the finding of the learned trial Judge that the partnership between the intervenor and Vaikundarajan not dissolved is not correct. Since they are blood brothers, they entered into Kaithadi Partition Deed. There is a specific provision in the partnership deed. i.e In the partnership deed, it is stated that the dispute between the parties can be settled either as per the Arbitration Act or any other modes prevailed in the locality as a customary practise. Hence, Kaithadi Partition Deed was effected. Till date the Kaithadi Partition Deed is in operation, the learned trial Judge has no jurisdiction to state that the partnership is not dissolved. Hence, he seeks the indulgence of this Court to grant the interim custody of the vehicles, on the basis of Kaithadi Partition Deed dated 31.12.2018. As per the partition deed, he *prima facie* established that the partnership was dissolved, the property was appropriately allotted to Vaikundarajan and Jegadeesan, the same was accepted and acted upon. Hence, the finding that the petitioner is not entitled to get return of the vehicles is liable to be set aside.



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5. Submission on behalf of 3rd respondent:-

Per contra, the learned counsel for the intervenor submitted that this Court in O.P.Nos.372 to 374 of 2019 , vide order dated 06.09.2019, gave liberty to Jagadeesan to file a suit and hence, the intervenor filed the civil suit before the jurisdictional Court in O.S.No.72 of 2022 and the same is pending before the Court. In the said circumstances, the learned trial Judge correct in holding that the petitioner has not established his right over the vehicles and hence, he rightly dismissed the petitions.

6. Submission on behalf of the state:-

The learned Additional Public Prosecutor, on instructions, submitted that the dispute between the intervenor and the petitioner is one side of the case. Insofar as the other side of the case is concerned, the petitioner illegally transported the stone pebbles without any permission and without any proper trip sheets and hence, he committed the offence under Mines and Minerals (Development and Regulation) Act, 1957 and under IPC. So, he is not entitled to return of vehicles. Further, he stated that they are now ready to take steps to initiate confiscation proceedings against the vehicles, which are involved under Mines and Minerals (Development and Regulation) Act, 1957. Hence, he seeks



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for dismissal of the petitions.

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7.Issue:-

This Court considered the rival submissions, perused the documents and the impugned order passed by the learned trial Judge.

8. Discussions on Issue:-

8.1.The main question in this case is whether the learned trial Judge is correct in rejecting the prayer of petitioner to seek interim custody of the vehicle?

8.2.This is the issue between the petitioner and the intervenor ie., Vaikundarajan and Jegadeesan. Both of them are blood brothers. Even as per the pleadings of the intervenor, the blood brothers are unfortunately at war. Therefore, the intervenor has cast serious allegations against his own brother. Before deciding the said case, the following facts have to be discussed necessarily.

9. The parties entered into the partnership deed dated 01.02.2012. In the partnership deed, there is a relevant clause No.13. The clause 13 is as follows:-



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“all the difference and disputes relating to the partnership or dissolution can be resolved by the Arbitrator under the Arbitration Act or any other Acts. The decision of the Arbitrator shall be final and all the partners are bound by it.”

9.1. In this case, as per the pleadings, the parties may resolve the dispute through mediation by the elders. Therefore, the family members entered into the Kaithadi partition deed dated 31.12.2018. Subsequently, the Jegadeesan group filed O.P.No.372 to 374 of 2019, 380 to 382 of 2019 and 384 of 2019 and O.A.No.543 of 2019 under the Arbitration Act, to appoint Arbitrator irrespective of the stipulations of Kaithadi partition Deed dated 31.12.2018 and this Court passed the following order:

21. From the above discussions, it is clear that there is no such dispute between the parties. If there is no dispute, the other questions will not arise. If there is a dispute, it is only with respect to the execution of the Kaithadi Partition. Admittedly, both the parties have consented to the Partition Deed. The document also satisfies all the requirements of a conciliation or even a partition. Therefore, what is now sought to be agitated is only the misrepresentation by the first respondent and the inequality of partition effected in the said document.



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22.The only allegation is that the first respondent misrepresented and that the petitioners did not have time to verify the entire details of the Partition Deed. It is also not the case of the petitioners that they requested time to go through the Partition Deed and that they were refused the same. Non-availability of time and the length of the document would not constitute fraud or misrepresentation. Fraud has to be pleaded and proved. It must be proved that the first respondent made false representation to his knowledge. The level of proof required is much higher in these cases, as a mere ambiguous statement per se cannot make the allegation of the misrepresentation true. Unless knowledge is attributed to the person making misrepresentation, it is difficult to prove the same.

23....Having admitted the execution, but pleaded undue influence and misrepresentation, the document is only voidable, which has to be set aside in a manner known to law before the civil court after trial.

24....

9.2. Thereafter, execution proceedings in E.P.No.61, 62, 63 of 2019 in A.C.P.No.1 of 2019 have been filed by the Vaikundarajan group and to strike out the same, Jegadeesan group filed the CRP(MD)Nos.1797 to 1799 of 2019, before this Court and this Court disposed the same with the following terms:

11.The learned counsel for the respondents would



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seek for appointment of Receiver alleging that the petitioners are encumbering the properties removing the machineries etc., for which, the learned Senior Counsel Mr.V.Sathish Parasaran vehemently opposed for the appointment of Receiver. Admittedly, the KBPP is considered to be a valid document unless it is challenged in the manner known to law. He would state that the judgment of Justice Pushpa Sathyanarayana is not a conclusive decision. He would further state that though the respondents have stated that the revision petitioners are removing the machineries and goods from the companies, but had not given the precise details of the amount and machineries removed etc. He would state that a Receiver is sought even for the companies which are artificial legal entities and therefore, the remedy open to the respondents is only by way of oppression and mismanagement and not by way of execution. The learned Senior Counsel Mr.Sathish Parasaran would further state that the respondents ought to have moved the NCLT if the materials and stocks are moved from V.V Marine. Mr.Isaac Mohanlal, the learned Senior Counsel arguing for the petitioners would state that the appointment of Receiver will hinder the process of mediation. Mr.A.V.Arun adopted the arguments of Mr.V.Prakash. He would state the procedure followed



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under section 31 will have to be read with Section 74 as the award does not comply with the provisions of Section 31, and therefore, the conciliation award is not a decree and hence cannot be executed, as no stamps have been affixed under schedule I Class 12 of the Indian Stamp Act by which it has already been stated if it is so the petitioners can challenge the same only under section 13 of the Arbitration and Conciliation Act. Thus, all the counsels who appeared for the petitioners would reiterate the same arguments and the same grounds which was raised before the High Court and the Supreme Court and by Mr.V.Prakash.

12.For all the reasons stated above, particularly, paragraph 10, the present CRPs and all the petitions filed by the petitioners are not maintainable. This Court while admitting the revisions taking into consideration that the petitioners and the respondents are brothers thought it fit that if the matter is referred to mediation, there could be some amicable settlement and accordingly, the matter was referred to mediation and Mr.Justice Shivraj Patil(Retired Judge of the Hon'ble Supreme Court) and Mr.Justice K.K.Kannan(Retired Judge of this Court) were appointed as mediators and it is stated that the mediation is under process.



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10. In all the above proceedings, execution and validity of the Kaithadi Partition Deed dated 31.12.2018 is affirmed in favour of the Vaikundarajan group and the same was confirmed by the Hon'ble Supreme Court. As per the Kaithadi Partition Deed, the vehicles in questions are allotted to the Vaikundarajan.

11. Till date, there is no decree from the competent Court to set aside the said partition deed. Hence, the finding of the learned Judge that the petitioner has not established the *prima facie* case is erroneous one. Even Jegadeesan group admitted the execution of Kaithadi Partition deed, but they claim that they were misrepresented and that there was no sufficient time to verify details of the properties transferred in the deed, but the same has not been accepted by this Court on the earlier two occasions. Therefore, this Court gave finding that Vaikundarajan is the absolute owner unless the misrepresentation alleged has been pleaded and proved in accordance with law. The same was confirmed by the Hon'ble Supreme Court. The finding of the learned trial judge that partnership between Vaikundarajan group and Jagadeesan group is not dissolved is not correct and is erroneous. As on date, Vaikundarajan is the absolute owner



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of the property mentioned in Kaithadi Partition Deed for all purposes and hence, the petitioner is entitled to claim return of vehicles.

12. Under Section 451 of Cr.P.C., the petitioner in Crl.R.C.(MD).Nos.719 to 721 of 2023 has *prima facie* established the title to the vehicles and hence, they are entitled to interim custody of the vehicles. Accordingly, these Criminal Revisions are allowed in the following terms:

(i) The order passed by the trial Court in Crl.M.P.Nos.12960, 12959 and 12961 of 2022 passed by the learned Principal Sessions Judge, Tirunelveli dated 03.06.2023 are hereby set aside.

(ii) This Court hereby directs the release of vehicle. The petitioners shall execute a bond to the value of the vehicle mentioned in the certificate of insurance policy that was in existence on the date of occurrence and the petitioners shall deposit a sum of Rs.1,00,000/- to the credit of the respective crime numbers and on such deposit, the Courts below shall re-deposit the same in fixed deposit in any one of the nationalized bank.



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(iii) The petitioner shall file an affidavit with specific undertaking that they shall not involve in any illegal mining or any other offence and vehicle also will not be used in the illegal mining or any other offence.

(iv) The photograph of the vehicles and panchanama is to be prepared and the petitioners shall produce their vehicles as and when required by the Courts below.

(v) The petitioners shall deposit a sum of Rs.50,000/- in each case within a period of two weeks from the date of receipt of a copy of this order, to the Credit of Environmental Committee, Madurai Bench of Madras High Court (Account No:-7633863037, IFSC Code:-IDIB000H040, Indian Bank)

(vi) The petitioner shall not alienate the vehicle till the disposal of confiscation proceeding.



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(vii) The investigating agency shall initiate the confiscation proceedings within a period of 10 days from the date of receipt of a copy of this order before the Courts below and the Courts below shall dispose of the same within a period of six months thereafter.

(viii) The petitioner shall co-operate with the trial Court to complete the confiscation proceedings.

15.02.2024

NCC : Yes/No

Index : Yes/No

mm/sbn

To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Nanguneri Police Station, Tirunelveli.
3. Assistant Director of Mines and Minerals,
Department of Geology, Collectorate,
Kokkirakulam, Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

mm/sbn

Pre-delivery Common Order made in
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and
Crl.M.P(MD).Nos.10567, 10571 and 10573 of 2023

15.02.2024