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Crl.R.C.No.792 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.792 of 2023

and

Crl.M.P.No.6134 of 2023

1. P.N.Rethinakumar
2. Pattammal
3. Gomathi
4. Balakrishnan
5. K.Govindarajan

... Petitioners

..VS..

1. The State Rep.by
Inspector of Police,
District Crime Branch,
Nagapattinam.
2. M/s.AVC Trust
Akkur Road, Mannampanthal,
Mayiladuthurai – 609 305.
3. Mr.Senthilvel
[R2 and R3 are impleaded as per order
dated 22.06.2023 in Crl.M.P.No.8739 of 2023
in Crl.R.C.No.792 of 2023]

... Respondents



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Criminal Revision Case filed under Sections 397 Cr.P.C., to allow the revision petition by setting aside the order dated 24.03.2023 passed in Crl.M.P.No.457 of 2018 in C.C.No.311 of 2011 on the file of the Judicial Magistrate-I, Nagapattinam.

For Petitioner : Mr.T.Moorthy

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor for R1

Not ready in notice for R2 and R3

ORDER

This Criminal Revision Petition is filed against the order dated 24.03.2023 passed in Crl.M.P.No.457 of 2018 in C.C.No.311 of 2011 on the file of the Judicial Magistrate-I, Nagapattinam.

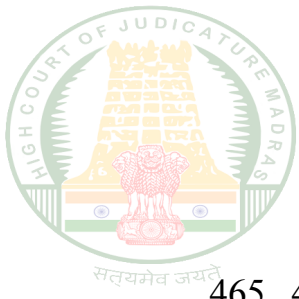
2. The petitioners herein are the accused A1 to A6 in C.C.No.311 of 2011. Pending the said calendar case, they filed a petition in Crl.M.P.No.457 of 2018 before the Judicial Magistrate-I, Nagapattinam, seeking to discharge them from the proposed offences, which came to be dismissed on 24.03.2023. Assailing the dismissal order, the present revision petition is filed by the petitioners.



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3. The case of the prosecution is that the land admeasuring 10027 sq.ft in T.S.No.720 situate in Thiruvilandur Village, Mayiladuthurai Taluk classified as 'natham promboke', belongs to A.V.C Trust and they leased out the said property to several persons including the fifth petitioner-A5 and sixth petitioner-A6. The total extent of item Nos.1, 1A and No.2 is 2280 sq.ft and the same was leased out to A5 and A6 and they were in possession and enjoyment of the said land and were paying rent to the AVC Trust. While that being so, A5 and A6 had surrendered the said lands i.e., properties at No.1, 1A and No.2 to the first petitioner-A1, subsequently, the third petitioner-A3, who is the mother of A1 and who has no right over the properties had executed a settlement deed in respect of the subject properties in favour of the first petitioner-A1. It is further alleged that the first petitioner conspired with the other accused with an intention to grab the subject properties, prepared forged documents and got possession and title over the Trust properties in his favour by illegal means to avoid the disqualification for election to the administration of the Trust. Hence a case was registered against the petitioners in Crime No.18 of 2006 for the offences punishable under Sections 420, 406, 466, 467, 468 and 34 IPC later altered to 120(b), 406,



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465, 468, 471 and 420 IPC. After investigation, the respondent-Police filed a charge-sheet in C.C.No.311 of 2011 against the petitioner and that the petitioners filed discharge petition and the same was dismissed.

4. Learned counsel for the petitioners submitted that the original complaint has not been lodged by Trust or by anyone of the Trustess, however, without any resolution and authorization by the Trust, the *de-facto* complainant, in his individual capacity has lodged the said complaint, though he has no *locus standi* to prefer the said complaint before the respondent-Police. Further, the subject properties are not the Trust properties. He further submitted that the first petitioner as a Chairman-cum-Secretary to the said Trust had lodged a complaint against the *de-facto* complainant in Crime No.17 of 2006 alleging that while the *de-facto* complainant was acting as a Secretary to the said Trust has misappropriated the funds of the Trust. As a counter blast to the said complaint, the *de-facto* complainant filed the present complaint against the petitioners before the first respondent-Police. He further submitted that earlier the *de-facto* complainant had lodged a complaint on the very same allegations and the same was referred as 'mistake of facts' as it was



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a civil dispute. Further, the Trust filed a civil suit in O.S.No.576 of 2004 before the Additional Sub Court, Mayiladuthurai against the petitioners herein for the relief of demolition of superstructure and recovery of possession in respect of the portion of land in T.S.No.720 measuring an extent of 745 sq.ft., and the civil Court dismissed the said suit. In fact, the land in question belongs to the third petitioner-A3, who has legally settled the same in favour of the first petitioner. Hence, the petitioners filed the discharge petition, but the learned Magistrate failed to consider the grounds taken by the petitioners, simply dismissed the discharge petition.

5. Learned Additional Public Prosecutor appearing for the first respondent-Police, on instructions, submitted that *prima facie* there are materials available against the petitioners to proceed with the case further and L.W.2 and L.W.3 also clearly stated about the involvement of the petitioners in the alleged offences and that the case was registered against the petitioners. After completion of investigation, the respondent-Police filed a charge-sheet before the Court below and the same was taken on file in C.C.No.311 of 2011. Therefore, there is no merit in the revision and the same is liable to be dismissed.



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

7. Admittedly, the case was registered against the petitioners in Crime No.18 of 2006 for the offences punishable under Sections 420, 406, 466, 467, 468 and 34 IPC later altered to 120(b), 406, 465, 468, 471 and 420 IPC. After investigation, the respondent-Police filed a charge-sheet in C.C.No.311 of 2011 against the petitioners.

8. On a reading of the entire materials, particularly, complaint, charge-sheet and statements of list of witnesses, it is seen that *prima facie* there are materials available against the petitioners to proceed with the case further and also there is a specific overtact attributed against the petitioners. However, the main defence taken by the petitioners is that the *de-facto* complainant has no *locus standi* to file the complaint against the petitioners. The learned Magistrate, while dismissing the petition observed that any person can inform to the Police regarding the commission of the offence, in that way, the *de-facto* complainant made a complaint against the petitioners and based on that the respondent-Police



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investigated the matter and filed the charge-sheet, and accordingly, dismissed the discharge petition.

9. It is settled proposition of law that at the time of deciding the discharge petition, *prima facie*, the Court has to see the materials produced by the prosecution/investigating agency and not the defence taken by the accused and documents produced by the accused. The matter of defence can be decided only after trial, but not at this stage.

10. Considering the facts and circumstances and also considering the submissions of both sides, this Court finds that *prima facie* there are materials available against the petitioners to take cognizance of the offences and hence, there is no merit in this revision and the same is liable to be dismissed.

11. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. However, the petitioners are at liberty to take all their defences before the trial Court during trial.

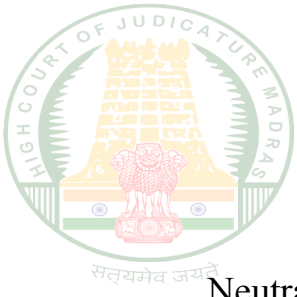
19.03.2025

Index: Yes/No

Speaking Order/Non Speaking Order

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Neutral Citation Case : Yes/No
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To

1. The Judicial Magistrate No.I,
Nagapattinam.
2. The Inspector of Police,
District Crime Branch,
Nagapattinam.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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