IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08 / 01 / 2025
Delivered on	04 / 03 / 2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.(MD)Nos.320 of 2021 & Crl.M.P.(MD)No.3132 of 2021
and
Crl.R.C.(MD)No.& 1416 of 2024

The State Represented
Through the Inspector of Police,
Antiland Grabbing Special Unit,
Madurai District.
(Crime No.40/2014)

... Petitioner in Crl.R.C.(MD)No.320 of 2021 &
Respondent in Crl.R.C.(MD)No.1416 of 2024

Vs.

M.K.Alagiri ... Respondent in Crl.R.C.(MD)No.320 of 2021 &
Petitioner in Crl.R.C.(MD)No.1416 of 2024

Prayer in Crl.R.C.(MD)No.320 of 2021: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C. to call for the records pertaining the order made in Crl.M.P.No.973 of 2019 in C.C.No.788 of 2019, on the file of the learned Special Magistrate Court/Judicial Magistrate No.1, Madurai, dated 12.02.2021 insofar as the finding recorded in the order that discarding the offences under Sections 465, 468, 471 of IPC, which is contrary to the final report and the same finding is liable to be set aside.

Prayer in Crl.R.C.(MD)No.1416 of 2024: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C. to call for records and hear the side of the petitioner and revise and set aside the order of dismissal of discharge in Crl.M.P.No.973 of 2019 dated 11.02.2021 by the learned Special Judicial Magistrate cum Judicial Magistrate No.I, Madurai.

For Petitioner in Crl.R.C.(MD)No.320 of 2021 & Respondent in Crl.R.C.(MD)No.1416 of 2024 : Mr.J.Ravindran
Additional Advocate General
Assisted by
For Mr.S.Vinoth Kumar
Government Advocate (Criminal Side)

For Respondent in Crl.R.C.(MD)No.320 of 2021 & Petitioner in Crl.R.C.(MD)No.1416 of 2024 : Mr.R.Srinivas
Senior Advocate
For Mr.Baranidharan

COMMON ORDER

The petitioner in both the criminal revisions is challenging the order passed by the learned Special Judicial Magistrate cum Judicial Magistrate No.I, Madurai, in Crl.M.P.No.973 of 2019 dated 11.02.2021. Since the issues involved in both criminal revisions are identical, and both parties are challenging the same order, these revisions are taken up for disposal through this common order.

2. For clarity and ease of understanding, since the revisions have been filed solely against the order passed by the learned Special Judicial Magistrate cum Judicial Magistrate No.I, Madurai, the petitioner in Crl.R.C.(MD)No.320 of 2021 (filed by the Inspector of Police) will be hereinafter referred to as the "respondent," and the petitioner in Crl.R.C.(MD)No.1416 of 2024 will be hereinafter referred to as the "petitioner."

3. The case of the prosecution giving rise to these revisions, in brief, is that:

3.1. The wetland situated in Sivarakkottai Village, Thirumangalam Taluk, Madurai District, in S.No.175/13, Patta No.1597, covering an extent of 44 cents, was assigned in favour of Shri Vinayaga Temple under a Ryotwari Patta on 04.08.1969 by the Settlement Tahsildar, Madurai. The land was managed by Ramasamy Pandaram and Velusamy Pandaram, who served as the Poosaris (priests) of the temple.

3.2. The petitioner, with the intention of establishing an educational institution, formed a trust in the name of M.K. Alagiri Charitable Trust, which was registered on 03.05.2000 before the Sub-Registrar, Palanganatham, in Document No.305 of 2000. Later, the name of the trust was amended to M.K.Alagiri Educational Trust through a registered deed, Document No.1795 of 2008, at the Sub-Registrar's office, Palanganatham, Madurai District. To achieve the goal of establishing an engineering college, the petitioner / first accused decided to purchase land in and around Sivarakkottai Village. For this purpose, the petitioner engaged the second accused, Sampath Kumar, in the transaction concerning the purchase of land. Subsequently, the second accused executed a sale deed in favour of the first accused.

3.3. In the process of purchasing land intended for the construction of an educational institution, the petitioner conspired with the second accused. They made the two Poosaris, Ramasamy Pandaram and Velusamy Pandaram, execute an exchange deed with the third accused, Aathilakshmi. The said two poozaries, who are arrayed as sixth and seventh accused jointly registered the exchange deed with the third accused. However, instead of using the correct Patta No.1597, they misquoted the Patta number as 1270 in order to conceal their fraudulent acquisition of the temple land.

3.4. The land in question belongs to the temple, and the Poosaris, Ramasamy Pandaram and Velusamy Pandaram (the sixth and seventh accused), had no legal rights to execute any deed of conveyance without prior permission from the competent authority, as per the provisions of the Religious and Charitable Endowments Act. The statement recorded from the witnesses and the materials collected during the investigation clearly indicate that the petitioner and second accused conspired with the Poosaris to illegally grab the temple land. The Poosaris executed the exchange deed with the third accused on 30.06.2008, which was registered at the Sub-Registrar office, Thirumangalam, under Document No.6199 of 2008.

3.5. In furtherance of this conspiracy, the third accused sold the land to the second accused on the same day (30.06.2008), and the sale deed was registered as Document No.6200 of 2008. The sale deed also incorrectly mentioned Patta No.1270 instead of the correct Patta No.1597.

3.6. After executing the exchange and sale deeds fraudulently, the accused deliberately kept the land idle for an extended period, ensuring that no objections were raised by the Department of Hindu Religious and Charitable Endowments or any other concerned parties. Subsequently, they procured other nearby properties from various individuals in the name of the second accused. On 10.01.2011, the second accused sold the properties, including the temple land, to the petitioner/ first accused (in the name of the Trust) through a registered sale deed, Document No.1121 of 2011. In this sale deed, the Patta number for the temple land was once again incorrectly mentioned as 1270, with the apparent intention to divert attention from their unlawful acquisition. The correct Patta number for the Arulmigu Vinayagar Temple land is 1597.

3.7. Upon discovering the fraudulent exchange deed executed between the Poosaris, the first and second accused, and the third accused, the Administrative Officer of the Hindu Religious and Charitable Endowments Department filed a complaint with the concerned police jurisdiction. Based on this complaint, the Investigating Officer/respondent registered a case in Crime No.40 of 2014 against the accused persons for the offence under Sections 120-B, 420 468, 471 of IPC, where the petitioner was arrayed as the first accused.

3.8. After investigation, a final report was filed for the offences under Sections 120-B, 420, 423, 465, 468, and 471 of IPC before the learned Special Judicial Magistrate No. I (Special Court for Exclusive Trial of Land Grabbing Cases) in Madurai in C.C.No.788 of 2019.

4. Pending the trial in C.C.No.788 of 2019, the petitioner filed a petition under Section 239 of Cr.P.C. seeking discharge from the charges under Sections 120-B, 420, 423, 465, 468, and 471 of the IPC. The petition was taken on file by the learned Magistrate as Crl.M.P.No.973 of 2019 in C.C.No.788 of 2019.

5. After hearing both sides, the learned Magistrate held that there was no material to show a prima facie case for the offences under Sections 465, 468, and 471 of the IPC. However, the learned Magistrate found sufficient ingredients to constitute an offence under Section 120-B read with Section 408 of the IPC against the petitioner and discharged the petitioner from the charges under Sections 465, 468, and 471 of the IPC. Regarding the offence under Section 120-B read with Section 408 of the IPC, the learned Magistrate held that discharge was not maintainable, as there were sufficient ingredients to constitute the offence.

6. Aggrieved by this order, the prosecution/respondent filed a criminal revision in Crl.R.C.(MD) No.320 of 2021, and the petitioner/ first accused filed a revision in Crl.R.C.(MD) No.1416 of 2024.

7. The learned senior counsel appearing for the petitioner submits that the trial court failed to consider the fact that the petitioner did not purchase the disputed land with the intention of executing a reciprocal deed. Therefore, there is no incriminating evidence to establish a conspiracy between the petitioner and accused 3, 6, and 7 in 2008, as the petitioner purchased the property only in 2011, making the conspiracy allegation untenable. Moreover, when the petitioner purchased the land from the

second accused, the sixth and seventh accused had already passed away, further weakening any claim of conspiracy between the petitioner and them. The learned senior counsel further submits that the petitioner had initiated a civil suit against the defacto complainant/HR & CE Department in 2014, demonstrating his bona fide intent to assert his legal rights. The subsequent criminal complaint lodged by the defacto complainant seems to be motivated by political vendetta, underscoring the petitioner's good faith. Additionally, the sale deed was sent for comparison, and the expert report found no evidence of forgery. Thus, there is no indication that forged documents were created or used as genuine to commit fraud. Consequently, the trial court correctly concluded that there was no prima facie case for offences under Sections 465, 468, and 471 of the IPC. However, the trial court erroneously held that there were sufficient ingredients to constitute an offence under Section 120-B read with Section 408 of IPC, despite the absence of evidence linking the petitioner to any conspiracy or fraudulent acts related to the exchange deed or the sale deed. Therefore, the learned senior counsel prays to set aside the order passed by the learned Magistrate. In support of his contentions, the learned senior counsel has referred the following judgments:-

(i) ***State of UP. Vs. Dr.Sanjay Singh and another***
[(1994) Supp (2) Supreme Court Cases 707]

(ii) ***Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra***
[2008) 10 SCC 394]

(iii) **Jayaprakash Vs. The State & others**
[2014 SCC OnLine Mad 9124]

(iv) ***V.K.Sasikala Vs. State*** *[(2012) 9 SCC 771]*

(v) ***Parminder Kaur Vs. State of Uttar Pradesh and Another*** *[(2010) 1 SCC 322]*

(vi) ***Mohammed Ibrahim and Others*** *[(2009) 8 SCC 751]*

(vii) ***Sheila Sebastian Vs. R.Jawaharaj and another*** *[(2018) 7 SCC 581]*

(viii) ***Sanjay Kumar Rai Vs. State of Uttar Pradesh and Another*** *[(2022) 15 SCC 720]*

(ix) **Crl.O.P.No.11477 of 2015, dated 06.05.2024** (Madras High Court)

8. The learned Additional Advocate General appearing for the respondent-State submits that the issue involved in the present case is substantiated by various evidences and statements, and the charges against the petitioner are specific and should be determined through a full-fledged trial. However, the learned Magistrate failed to consider the facts advanced by the petitioner in a proper perspective and erroneously arrived at a conclusion independently. The learned Additional Advocate General further submits that the learned Magistrate concluded that, based on the materials available on record, only an offence under Section 120-B read with Section 408 of IPC is made out. If these charges are taken to trial, there would be no charge against the petitioner, as Section 408 pertains to criminal breach of trust by a clerk or servant. The learned Magistrate's finding changing the charges may be fatal to the prosecution’s case, and the inquiry and statements made by

the police against the petitioner would likely end in vain. The learned Additional Advocate General also submits that once the constitution of the offence under Section 120-B is taken into account, it must be applied against all those involved in the conspiracy. If any finding is made regarding the commission of an offence under Section 120-B, it must be specific. Therefore, the learned Magistrate's finding is vague and lacks the necessary specificity to substantiate the offence. In light of the above, the learned Additional Advocate General prays that the order of the learned Judicial Magistrate be set aside and that the petitioner not be discharged from the offences under Sections 120-B, 420, 423, 465, 468, and 471 of IPC.

9. Heard the learned counsel on either side and perused the materials available on record.

10. Admittedly, the allegation against the petitioner / first accused and other accused is that they entered into a conspiracy to grab the temple property. It is alleged that the temple poosaris/sixth and seventh accused executed an exchange deed with the third accused, and the second accused purchased the property from the third accused. The essence of the case is that the petitioner entered into a conspiracy to grab the temple property by using forged documents and making them appear as genuine transactions.

11. A reading of the complaint filed by the Executive Officer (L.W.1) clearly narrates the allegations. Although the jurisdictional police registered the case against the petitioner/first accused and others under Crime No.40 of 2014 for the offences under Sections 120-B, 420, 468 and 471 IPC, they conducted an investigation and filed the charge sheet for offences under Sections 120-B, 420, 423, 465, 468, and 471 of the IPC. This charge sheet was taken on file in C.C.No.788 of 2019. While the case was pending, the first accused filed a petition for discharge in Crl.M.P.No.973 of 2019 and the petition was partly allowed and partly dismissed. Hence, the present revisions.

12. A perusal of the complaint, FIR, charge sheet, and statements recorded from the witnesses, along with the documents, reveals that the petitioner / first accused registered an educational institutional trust and purchased land through the second accused by granting power of attorney. The disputed property, which belongs to the temple, was purchased for the purpose of strengthening the trust.

13. The allegations further indicate that the first and second accused were well aware that the land belonged to the temple, and in order to create the appearance of a genuine claim to grab the disputed temple land, they

conspired with the other accused. The allegations further reveal that, in an attempt to conceal the fact that the property in question is temple property, the petitioner conspired with the sixth and seventh accused who had no rightful claim to the property. They allegedly alienated the property through an exchange deed to the third respondent. The third respondent then sold the property to the second accused, who, after acquiring adjacent properties, subsequently sold the disputed temple property back to the petitioner /the first accused. Additionally, the allegations indicate that the sixth and seventh accused misquoted the patta numbers in the documentation. Further, these documents were executed without the consent of the Hindu Religious and Charitable Endowments (HR & CE) Department.

14. A reading of the entire prosecution materials clearly shows that the petitioner/first accused and the second accused alleged to have entered into a conspiracy to grab the temple property. They subsequently created documents that falsely portrayed the transactions as legitimate. The petitioner/first accused claims that he was not present when the exchange deed was executed in 2008 by the sixth and seventh accused in favour of the third accused, nor when the sale was made by the third accused to the second accused on the same day. The petitioner/first accused asserts that he only became involved after purchasing the disputed property from the second accused in 2011 and thereby claiming that he had no connection to the

alleged conspiracy.

15. The main allegation revolves around the petitioner allegedly cheating temple property through a conspiracy. Whether the petitioner is implicated in this conspiracy, whether the property in question is indeed temple property, and whether the second and third accused, along with the sixth and seventh accused, were aware of the registrations in the relevant documents are substantive matters that necessitate a thorough examination during the trial. Therefore, the defence arguments presented by the petitioner / first accused should be addressed during the trial and not at this stage. It is well settled legal principle that, at the time of discharge, the court should examine the prosecution's case and not consider the defence arguments or documents produced by the accused. The prosecution materials, including witness statements, establish a *prima facie* case against the petitioner/first accused. There is no quarrel over the judgments cited by the learned senior counsel for the petitioner; however, they are distinguishable on facts. Here, the case revolves around whether the petitioner is implicated in the conspiracy based solely on actions taken by the petitioner/first accused or others prior to his purchase, which should only be determined after a full-fledged trial.

16. Hence, in my considered opinion, the submissions made by the

learned counsel for the petitioner/accused regarding the merits of the case, as discussed above, do not constitute grounds for discharging the petitioner from the criminal case. Therefore, based on the available evidence, this Court finds sufficient grounds to proceed with the prosecution of the petitioner / the first accused.

17. While the trial Court rendered its findings, holding that there were only materials available to constitute an offence under Section 120-B read with Section 408 of the IPC, it found no material to establish a prima facie case for the offences under Sections 465, 468, and 471 of the IPC. However, the trial court omitted to provide any findings regarding Sections 420 and 423 of the IPC, which were also charged offences as per the final report.

18. Hence, for all the reasons stated above, the order passed by the learned Judicial Magistrate No.1, Madurai, in Crl.M.P.No.973 of 2019, dated 12.02.2021, is set aside. It is made clear that there are *prima facie* materials and ingredients present for the offences under Sections 120-B, 420, 423, 465, 468, and 471 of the IPC.

19. Accordingly, the revision filed by the prosecution in Crl.R.C.(MD)No.320 of 2021 is allowed, and the revision filed by the petitioner/first accused in Crl.R.C.(MD)No.1416 of 2024 is dismissed. The trial

Court is directed to frame charges and proceed with the case in accordance with the law. The petitioner / first accused is at liberty to take their defence before the trial court. Consequently, connected miscellaneous petition is closed.

04/03/2025

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

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To

1.The Special Magistrate Court-cum-
Judicial Magistrate No.1, Madurai.

2.The Inspector of Police,
Antiland Grabbing Special Unit,
Madurai District.

3. The Public Prosecutor,
High Court, Madras.

P.VELMURUGAN, J.

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Pre Delivery Order made in
Crl.R.C.(MD)Nos.320 of 2021 &
Crl.M.P.(MD)No.3132 of 2021
and
Crl.R.C.(MD)No.& 1416 of 2024

04/03/2025