

(2013) 07 MAD CK 0059

In the Madras High Court

Case No : Criminal R.C. No. 596 of 2006

K.E. Jayaraman

APPELLANT

Vs

R. Balakrishnan, T. Narayanan, A. Madanagopal and D.
Rajasekaran

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 120(B), 409, 420

Citation : (2013) 07 MAD CK 0059

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The revision petitioner herein has filed a case u/s 200 of Cr. P.C. against the respondent herein/accused stating that all the accused had committed was an offence of cheating and criminal breach of trust, punishable u/s 409, 420 and 120(B) of IPC. The revision petitioner stated that the first accused was inducted as a management trustee of the said temple in the year 1986. Due to completion of his term of trusteeship in the year 1991 and non-relinquishment of his post as management trustee and also rampant corruption committed by him in the administration of the said temple, the members of Baliya Chetty Community of Saidapet had passed a resolution during their meeting held on 26.11.2000 to remove the first accused from the Management Trusteeship of the said temple as he had misappropriated the huge amount collected by the temple for his personal benefits. The complainant further stated that based on the criminal complaint lodged by one Mr. A.N. Damodaran, the former advisor and Court trustee of the said temple, the first accused was arrested and remanded into judicial custody in Cr. No. X Cr. 719 of

2001, on the file of Central Crime Branch, Egmore for misappropriation of the said temple funds to the tune of Rs. 60,00,000/- for his personal

gain. The first accused, in connivance with the other three accused created false documents and alienated the properties situated at No. 63,

Perumal Koil Street, Saidapet, Chennai for their personal gains. Further, all the accused created false documents and leased out the properties to

the various persons and also sold the property by a registered sale deed. As such, all the accused persons have connived together and alienated

the temple property for their personal gain. Hence, the complainant has filed the Crl. M.P. No. 99 of 2005 and prayed before the learned

Magistrate to direct the Deputy Commissioner of Police, Central Crime Branch, to cause an investigation by forwarding this report u/s 156(3) of

Cr. P.C. and to file a final report.

2. At this stage, the complainant has filed C.M.P. No. 1647 of 2005, to direct further investigation to take the case on file and issue process to the

accused since the final report referring the case as civil in nature should not be given any consideration and the case may be directed for further

investigation by collection of all materials and examination of witnesses for a right decision. After hearing the arguments of the petitioner's counsel

and on scrutinizing the complaint, the said petition was dismissed.

3. Against the said dismissal of the above petition, the revision has been filed.

4. It has been submitted on the grounds of revision that the contention that the learned Magistrate had wrongly viewed that the accused was

elected trustee. It was also submitted that the learned Magistrate failed to note that the election of the accused as trustee has already been

challenged before the competent Court. After completion of his term, which had been completed in the year 1991, the first accused connived with

the other accused and sold some property and leased out some properties belonging to the temple for their personal gain. As such, all the accused

have committed offence u/s. 409, 420, 120(B) of I.P.C. The criminal case has been registered against the accused by the Central Crime Branch

since there is a prima facie case against the accused for cheating and criminal breach of trust, with mala-fide intention. It was also contended that

the learned Magistrate failed to note that for administration of trust, already appropriate civil proceedings have been initiated and for punishment for

criminal breach of trust and misappropriation, the remedy is criminal prosecution. The learned counsel has further raised the grounds that there can be parallel proceedings in civil Court and criminal Court depending upon the relief sought for and as such, the learned Magistrate erred in law in thinking that the criminal Court can do nothing in this aspect.

5. On verifying the facts and circumstances of the case and the grounds laid down in the revision and on perusing the impugned order of the learned Magistrate, this Court does not find any discrepancy in the trial Court's order. Further, this Court is of the view that the complainant had alleged that the accused are in connivance with each other and cheated the temple property, fraudulently by transferring the civil rights and lease hold rights in favour of the third parties after receiving a huge amount. In support of this allegation, the complainant had listed five documents which have been registered in the year 1991 and 1993. The criminal miscellaneous petition has been filed in the year 2001 and 2003. As such, the complaint had been filed by the complainant after a long delay. Further, the question of authenticity of the "created" documents have to be determined by a civil Court, after framing necessary issues. Therefore, this Court does not find any force in the contentions made by the counsel in the revision. In the result, the above revision is dismissed and the order passed in C.M.P. No. 1647 of 2005 on the file of XI Metropolitan Magistrate, Saidapet, Chennai, dated 18.01.2006 is confirmed. Accordingly ordered.