

(2015) 04 MAD CK 0233

In the Madras High Court

Case No : Criminal R.C. No. 717 of 2014

T.N.P. Muthoo Natarajan Trustee and Treasurer Tirupur
Education Foundation

APPELLANT

Vs

P.V. Ravi and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203
Penal Code, 1860 (IPC) — Section 120-A, 405, 418, 420, 423

Citation : (2015) 1 LW(Cri) 592 : (2015) 2 MLJ(Cri) 656

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : A. Ramesh, Senior counsel for P. Mahesh Kumar, for the Appellant;
S. Ashok Kumar, Senior Counsel for P.R. Balasubramaniam, Advocates for the Respondent

Judgement

C.T. Selvam, J.—This Criminal Revision arises against the order of learned Judicial Magistrate, Avinashi, passed in CrI.M.P. No.4343 of 2014 on 02.07.2014.

2. Petitioner preferred a complaint before learned Judicial Magistrate, Avinashi, informing that he was the trustee and treasurer of a trust by name Tirupur Educational Foundation, which ran a polytechnic college and owned properties. He informed that the trust was formed in the year 1982 by his father, the father of the first respondent and one another. The founders, the first respondent and one another were the trustees thereof. On the expiry of the other four trustees, the Board was reconstituted and the first respondent became the Managing Trustee/Chairman, one Mr.N.Ravindran, the Trustee/Secretary, the petitioner/complainant, the trustee/treasurer and fourth accused in the complaint T.R. Karthik and S.Sarangarajan, trustees. All the funds of the trust were to be utilized only towards developing the trust. No powers had been vested even with the Managing Trustee to alienate or encumber any of the trust properties. An extent of 2.84 acres in S.F. No.203 and an extent of 7.44 acres in S.F. No.207 at Morattupalayam Village, Avinashi Taluk, Tirupur District, belonged to the trust.

The trust had put up a building of an extent of 10000 sq.ft. on the said property and started the "Nanjappa Institute of Polytechnic". Later, the institution was shifted to Karumathampatty. Thereafter, the building was maintained by the first respondent/Managing Trustee. While so, the first respondent, without informing petitioner and other trustees, had leased out an extent of 5 acres along with the building to "M/s. Prema Matriculation School". The petitioner came to know thereof only in May 2012. Aggrieved by the action of the first respondent, the petitioner and other trustees had sought a copy of the lease deed which the first respondent failed to produce. Hence, the petitioner applied for certified copies of the lease deed dated 26.04.2002 registered as document No. 438/2002 and supplementary lease deed dated 04.04.2008 registered as document No. 1474 of 2008 and obtained the same on 25.05.2012. On perusal of the lease deed dated 26.04.2002, the petitioner and the Board of Trustees came to know that M/s. Park Trust, represented by its Managing Trustee P.V. Ravi/A1 had executed the said lease deed in favour of M/s. Prema Matriculation School, represented by its Secretary and Correspondent, Prema Ravi/A2. In such lease deed, M/s. Park Trust categorically had claimed themselves to be the lessor, that they were the absolute owners of the lease property and that they have power to lease out the same. It has also been stated that M/s. Park Trust leased out the properties to M/s. Prema Matriculation School for 15 years from 01.04.2002 at a rent of Rs.100/- per month and had received an advance of Rs.5,000/- from such School. Petitioner informed that on a perusal of the supplementary lease deed dated 04.04.2008, they came to know that A1 and A2 in the capacity of Managing Trustee of M/s. Park Trust and Secretary and Correspondent of M/s. Prema Matriculation School respectively, have renewed the lease for another 45 years on the same terms and conditions of the previous lease deed. Petitioner informed that the said 5 acres along with school building measuring an extent of 10000 sq.ft. belonged to Tirupur Educational Foundation Trust and it would fetch a minimum rent of Rs.75,000/- per month. A1 had knowledge thereof. The said property could not be leased out or sold without the consent of the Board of Trustees/permission of Court. A resolution to such effect also is necessary. Though A1 had knowledge of the said facts, he along with other accused, acted in an unlawful manner (i) to create an impression that the property belonged to M/s. Park Trust and to gain wrongful profit and (ii) to lease out the said property to M/s. Prema Matriculation School, which is their family institution, for a meagre rent of Rs.100/- per month and to cause financial loss to Tirupur Educational Foundation. Without conducting any meeting of the Board of Trustees since 2009 and without filing income-tax returns for the past three years, A1, in May 2012, informed the trust that 12 acres of Tirupur Educational Foundation Trust's property was in litigation and he required a power of attorney to sell 30 acres of trust lands. Upon receiving such information, the Tirupur Educational Foundation, required him to produce the relevant documents. However, he failed to do so. Pursuant thereto, the petitioner preferred a complaint before Superintendent of Police, Tirupur, against accused 1 to 5 alleging offences u/s. 120-A, 468, 471, 420, 418, 423, 424 and 405 IPC and the same was forwarded to Deputy

Superintendent of Police, Land Grabbing Cell, Tirupur, who, upon enquiry, had concluded that no offence of land grabbing stood made out. A further enquiry was conducted by Deputy Superintendent of Police, Land Grabbing Cell, Erode, who had also concluded that no offence of land grabbing stood made out. Thereafter, the petitioner preferred CrI.O.P. No.11137 of 2013 before this Court and pursuant to orders of this Court dated 13.11.2013, a case in Crime No. 37 of 2013 for offences u/s.467, 468, 471 and 420 IPC was registered. However, the police, without calling the petitioner for enquiry, closed the complaint as "mistake of fact" and furnished a copy to him. Thereafter, when the Board of Trustees sent a notice to A1 and other Trustees with an Agenda for Suspension, the accused had produced documents, which were not relevant to the case. Though the complaint did not pertain to land grabbing, the same was forwarded to Land Grabbing Cell and was closed as "mistake of fact". Hence, the petitioner preferred a private complaint. The same was taken on file in CrI.M.P. No.4343 of 2014 on the file of learned Judicial Magistrate, Avinashi, and was dismissed u/s.203 Cr.P.C. on 02.07.2014. There against, this revision.

3. Heard Mr.A.Ramesh, learned senior counsel for petitioner, Mr.S.Ashok Kumar, learned senior counsel for respondents 1 to 4 and Mr.M.Mohamed Riyaz, learned Government Advocate [CrI.side] for fifth respondent.

4. Mr.A.Ramesh, learned senior counsel for petitioner submitted that the petitioner preferred a complaint before the Superintendent of Police, Trippur, in August 2012. Such complaint was referred to the Deputy Superintendent of Police, Land Grabbing Cell, Trippur, who, on enquiry, concluded that no offence of land grabbing was made out. A further enquiry was conducted by the Deputy Superintendent of Police, Land Grabbing Cell, Erode, who also concluded likewise. Thereafter, petitioner moved CrI.O.P. No.11137 of 2013 before this Court seeking appropriate action on the complaint. Pursuant to direction of this Court in such and other connected matters dated 06.08.2013, a case was registered in Crime No. 37 of 2013 on the file of District Crime Branch, Tirupur, on 13.11.2013 for offences u/s.467, 468, 471 and 420 IPC. The same erroneously was referred to the Inspector of Police, Land Grabbing Cell, Tirupur. After investigation, a referred charge sheet informing the complaint to be a "mistake of fact" was filed before the Special Court for Land Grabbing cases. Though referred charge sheet notice had been served on the petitioner, he was unable to move any protest petition owing to stay of proceedings before the Land Grabbing Courts under orders of this Court. Hence, the petitioner preferred a complaint before learned Judicial Magistrate, Avinashi and the same was taken on file in CrI.M.P. No.4343 of 2014 and wrongly was dismissed u/s.203 Cr.P.C.

5. Learned senior counsel submitted that on a bare reading, the complaint informed commission of offences. It was not open to learned Judicial Magistrate, Avinashi to dismiss the same u/s.203 Cr.P.C. The truth or otherwise of the complaint allegations as also the guilt or the innocence of the persons accused were matters for trial. The Magistrate had fallen into error in dismissing the

complaint on the premise that the contention of the petitioner of his not being aware of the lease deeds of the years 2002 and 2008 and of the wrong doings of the accused 1 to 5 upto May 2012, despite Prema Matriculation School having been functional to the knowledge of all from 2002 and the extension of the lease in favour of the School for its benefit in the year 2008, was unacceptable inasmuch as the petitioner admittedly was the treasurer of the Tirupur Educational Foundation and it was his duty to protect its interests and to verify its affairs and accounts on a year to year basis.

6. Learned senior counsel contended that the Magistrate fell into further error in informing that a civil dispute was sought to be given criminal colour and was misled by the findings of the District Superintendent of Police and the Inspector of Police, Land Grabbing Cell, Tirupur, to the effect that the complaint allegations were false. Learned senior counsel submitted that the very causing of investigation by the Land Grabbing Cell was erroneous inasmuch as the complaint did not seek to inform any offence of land grabbing. The Deputy Superintendent of Police, Land Grabbing Cell, Erode, had caused enquiry on the complaint and concluded that no offence was made out. Upon direction of this Court, a case was registered and investigation was carried out by the Inspector of Police, Land Grabbing Cell, Tirupur, who had concluded that no offence was made out on the premise that the lease was authorised under a Board Resolution of the year 1991, that a well established school which collected no excess fee and was run in a charitable manner was functioning, the description of property belonging to Tirupur Educational Foundation as belonging to M/s. Park Trust was a bona fide mistake of the first respondent, the lease deed of the year 2002 and the supplementary lease deed of the year 2008 had been cancelled by the first respondent in 2013 and that the preference of the complaint was an act of vendetta on the part of the petitioner who had tried to take over the polytechnic institution leading to dispute between him and the first respondent.

7. Learned senior counsel submitted that no investigation had been made on allegations of forgery or misappropriation of funds. The Magistrate had also failed to go into such matters and decided the matter not on merits but on the strength of the investigation report. In informing that the petitioner's claim of being unaware of the lease deed was false, the Magistrate failed to note that the lease deed and supplementary lease deed were executed by the first respondent in his capacity as Managing Trustee of M/s. Park Trust and though the property belonged to the Tirupur Educational Foundation, the deed informs the same as belonging to M/s. Park Trust. In the absence of the lease having been executed on behalf of the Tirupur Educational Foundation there was no occasion for the petitioner to have knowledge thereof.

8. Learned senior counsel submitted that the investigative agency wrongly had referred to a Board Resolution allegedly executed by the settlors in favour of the school run by the second respondent failing to note that such resolution was of the year 1991 when the then Managing Trustee Mr. Nanjappa was alive and if a

lease indeed had been intended the same would have been effected in the year 1991 itself by him in his official capacity. That the lease had been executed not in the name of the Tirupur Educational Foundation and that the lease deed made no mention of the resolution of the year 1991 only rendered the action of the first respondent more suspect.

9. Mr.S.Ashok Kumar, learned senior counsel for respondents 1 to 4 submitted that the Tirupur Educational Foundation had been formed in the year 1982 by three persons and the first respondent and his father were co-opted as trustees. The foundation has purchased a huge extent of 50 acres and a building of 10000 sq.ft. had been put up for a College. Finding the location inconducive for running a College, the trust had passed a resolution in 1991 and the College had been shifted to Karumathampatty village. In 1991, the trust had resolved to lease the building to M/s. Park Trust at an annual rent of Rs.12,000/- on the stipulation that the land and building were to be used by M/s. Park Trust only for running an educational institution and no profiteering was to be indulged in. In keeping with such resolution the then Managing Trustee had executed an unregistered lease deed in favour of the M/s. Park Trust in 1993. In 2002, the lessee, M/s. Park Trust, had executed a registered lease deed in favour of Prema Matriculation School for a period of 15 years. An advance of Rs.5,000/- was received and the rent was fixed at Rs.100/- per month. The first respondent had become the Managing Director of M/s. Park Trust. Under supplementary lease deed dated 04.04.2008, the lease had been extended for 45 years. The case had been investigated twice over and on both occasions, the investigation has concluded that no offence stood committed. The petitioner had obtained orders in Crl.O.P. No.11137 of 2013 on 06.08.2013. Referred charge sheet had been filed on 25.11.2013 and notice had been issued to the petitioner. The original Managing Trustee and others had by then died. Suppressing the above position, a fresh complaint came to be preferred before learned Judicial Magistrate, Avinashi, arraying also police personnel as accused. The same has been dismissed u/s.203 Cr.P.C. on 02.07.2014. The Magistrate had concluded that there had been no response to the notice regards the referred charge sheet and the petitioner was aware of the functioning of the school from 2002 but had kept quiet till 2012. The entire extent had been leased out by the then Managing Trustee in 1993 pursuant to resolution of the year 1991 and not having complained of any acts of forgery in the complaint preferred by the petitioner, the ground of forgery of resolution of the year 1991 was being raised for the first time in the present revision.

10. Learned senior counsel submitted that without challenging the final report filed pursuant to investigation, a complaint on the same facts would not be maintainable. The complaint was malafide inasmuch as despite knowledge of the factual position, the same came to be preferred owing to a dispute arising between families of the original trustees. On realising the mistake in informing the property as belonging to M/s. Park Trust, the lease deeds of the years 2002 and 2008 had been cancelled under a deed dated 03.07.2013.

11. Learned senior counsel for petitioner would reply informing that as proceedings before the Special Court for Land Grabbing cases had been stayed under orders of this Court, the petitioner had no occasion to prefer a protest petition and hence, he had preferred the complaint. The resolution of the year 1991 and the unregistered lease deed of the year 1993 were fabrications. The respondents 1 to 4 had sought to make out their defence by relying on a typed set of papers. Even in doing so, they have merely produced a self serving Auditor's Report and had failed to submit income-tax returns. The balance sheet put up by the respondents 1 to 4 informs of sums of Rs.3.30 crores owed by the Tirupur Educational Foundation as also that a sum of Rs.3,40,067/- was due to M/s. Park Trust. This was a reflection that much was wrong with the Management of the trust by the first respondent. Referring to the typed set of papers, learned senior counsel submitted that it was wrongful on the part of the respondents 1 to 4 to contend that as the Education Department required schools to own or hold lease premises over long periods, they could deal with the property of the trust in such manner as would serve their purpose. Under the lease deeds of the years 2002 and 2008, the respondents 1 to 4 had claimed the property to be theirs. The petitioner had never been enquired of in the course of investigation. Learned senior counsel further submitted that no payment of lease amounts had been made to the Tirupur Educational Foundation and contended that if indeed the action of the respondents 1 to 4 in executing lease deed in the years 2002 and 2008 was in order, there was no need to cancel such lease deeds.

12. Heard Mr.M.Mohamed Riyaz, learned Government Advocate [Crl.side], on the above submissions.

13. The order under challenge is to be set aside for the simple reason that it was not open to the Magistrate to consider the truth or otherwise of the complaint allegations. The decision in D.N. Bhattacharjee and Others Vs. State of West Bengal and Another, AIR 1972 SC 1607 : (1972) CriLJ 1037 : (1972) 3 SCC 414 : (1972) SCC(Cri) 564 : (1972) 3 SCR 973 : (1972) 4 UJ 823 informs thus:

"8.... What the Magistrate had to determine at the stage of issue of process was not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what was stated could be true unless the prosecution allegations were so fantastic that they could not reasonably be held to be true."

A bare reading of the complaint prima facie does inform commission of offences and following the decision referred to above the Magistrate ought to have taken cognizance and proceeded further in accordance with law. The reasons informed by the Magistrate in choosing to proceed u/s.203 Cr.P.C., might, in the facts and circumstances of the case, be well-merited. It only is that such reasoning was not to be entered upon at the nascent stage. Apart from allegations of wrongful lease of property, the complaint also informs of misappropriation of trust funds. Such as also other allegations are for the petitioner/complainant to establish.

Though police personnel are arrayed as respondents 6 to 9 in the complaint, the complaint informs that the complainant has added the connected police as respondents 6 to 9 only as formal parties for better adjudication and no relief is claimed against them. Not merely is the contention novel but also against the run of the criminal law. This Court considers it appropriate to pass the following order:

(i) this Criminal Revision is allowed and the order of learned Judicial Magistrate, Avinashi, passed in Crl.M.P. No.4343 of 2014 on 02.07.2014, shall stand set aside;

(ii) the complaint in Crl.M.P. No.4343 of 2014 shall stand quashed insofar as respondents (as distinct from accused) 6 to 9 in the complaint are concerned;

(iii) the trial Court shall not require the presence of the respondents 1 to 4 before it upon their swearing to affidavits informing their address for service, that they would be duly represented by counsel on all hearing dates, that they would, at no instance, dispute their identity and that, they would appear before the trial court as and when required. Upon the petitioners doing so, the trial court may seek the presence of the petitioners before it, solely on the important hearing dates.