
(2014) 12 MAD CK 0333
In the Madras High Court
Case No : Crl.O.P. No. 29727 of 2014

Vanitha Jayapal

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2015) 1 LW(Cri) 268 : (2015) 1 MLJ(Cri) 380

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—Seeking a direction to the respondent to register a case on the complaint of the petitioner dated 12.09.2014, the petitioner has come up with this petitioner.

2. I have heard Mr.S.Giridharan, learned counsel appearing for the petitioner, Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the respondent State, Mr.N.R.Elango, learned senior counsel appearing for the proposed accused Mr.R.Raman Laal and Mr.V.Karthick, learned counsel appearing for the proposed accused Mr.R.G.Srinivasan as well as perused the records carefully.

3. The brief facts of the case would be as follows:

(i) The petitioner claims to be the owner of the property comprised in T.S.No. 1854/1 measuring an extent of 2580 sq.ft. at Manakkula Vinayagar Koil Street, Tiruvannamalai Town. In the very same Survey No. in a different area, the petitioner owned another property measuring 1600 sq.ft. These two properties, according to the petitioner, were purchased vide two sale deeds dated 02.11.1995 and 28.02.1996 respectively.

(ii) According to the petitioner, during the year 1999 she went to U.S.A. and therefore, she had handed over those two documents for safe custody to one Mr.Bret Carlson, a friend of her husband. When she was in U.S.A. she met with an accident and therefore she could not return back to Tiruvannamalai soon.

(iii) After sometime, she returned to Chennai and underwent treatment by remaining in Chennai itself. During the month of September, 2014 she met Mr.Bret Carlson, who in turn informed her that he kept the documents in the office of the Trust known as "Hohm Sahaj Trust". But he was sent out of the Trust in 2002 and so he could not take back the documents.

(iv) Thereafter, when the petitioner obtained encumbrance certificate, it revealed that the property had already been sold in favour of the said Trust represented by the first proposed accused Mr.R.Raman Laal.

(v) The petitioner later on came to know that a sale agreement had been prepared by forging the signature of the petitioner and based on the same a civil suit had been filed by the said Trust before the Subordinate Court, Tiruvannamalai in O.S.No. 279 of 2000 for specific performance of contract. The petitioner was shown as the sole defendant in the said suit.

(vi) The petitioner further came to know that summons were issued by the Court; but the same was not served but it was recorded that the summons were served by affixture. Thereafter, vakalat had been filed as though it was executed by the petitioner in favour of one Mr.R.G.Srinivasan, a young lawyer, who had just entered into the profession. He filed the vakalat as though he was authorized to appear for the petitioner. On the same day, Mr.Srinivasan had filed a memo submitting to the decree and accordingly the subordinate Court passed a decree of specific performance on 26.04.2001 itself. He had also produced a stamped receipt purporting to have been passed by the petitioner after receiving the balance of sale consideration in terms of the agreement.

(vii) The petitioner came to know that subsequently execution petition in E.P.No. 363 of 2002 was also filed before the same Court. In which also notice was ordered by the Court but again the notice was not served, instead, it was recorded that notice was served by affixture. It appears that the petitioner was set ex parte and thereafter the learned Subordinate Judge executed a Sale Deed dated 16. 02.2004 in favour of the Trust.

(viii) On knowing these facts, the petitioner realised that fraud has been committed on the Court itself and the sale deed has been obtained by such fraud played upon the Court.

4. The petitioner submits that she never executed any vakalat in favour of Mr.R.G.Srinivasan, Advocate who appeared before the Subordinate Court in the suit. She further submits that she never gave any instructions to Mr.R.G.Srinivasan, Advocate to file a memo submitting to the decree and she did not sign the receipt produced before the court. She further submits that the entire episode is a fraud and therefore a case should be registered to unearth the truth.

5. It is further submitted by the petitioner that she made a complaint to this Court addressed to the Registrar (Vigilance). But strangely, Registrar (Vigilance)

had simply forwarded the complaint along with the documents to the respondent police. But, the respondent police has not chosen to register any case on the said complaint apparently because, the alleged fraud was committed on the court. That is how, the petitioner is before this Court with this petition seeking a direction to register a case on her complaint dated 12.09.2014, which was forwarded by the Registrar (Vigilance) of this Court.

6. This matter came up for hearing on 10.11.2014, 17.11.2014, 21.11.2014, 24.11.2014, 28.11.2014, 01.12.2014, 02.12.2014 and also today.

7. Considering the seriousness of the allegations made, this Court allowed the learned counsel for the petitioner to argue the matter at length by taking this Court through several documents filed before it. On going through the documents and after hearing the submissions of the learned counsel for the petitioner, this Court was really shocked since the allegation is that fraud is played upon the Court itself.

8. While this matter is being heard, Mr.R.Raman Laal, a Trustee of the Trust has intervened through his counsel Mr.R.Vivekanandhan. Mr.N.R.Elango, learned senior counsel appearing for Mr.R.Raman Laal submitted that the Trust is guided by eminent jurists and people of eminence from various field. He would further submit that after going through the allegations in the complaint and other related documents, he has now come to know that even the Trust has been cheated by unscrupulous people. It is the contention of Mr.N.R.Elango, the learned senior counsel for Mr.R.Raman Laal that people who had played fraud upon the Court deserve to be proceeded with under the criminal law. But all that he would say is that Mr.R.Raman Laal a leading member of the Bar himself has been cheated because he had no personal acquaintance with the petitioner.

9. Mr.R.Raman Laal has filed an affidavit dated 29.11.2014, wherein he has stated that the Trust was under the bona fide belief that person who signed the sale agreement was the petitioner Mrs.Vanitha Jayapal and based on that only suit was filed against her. He would further submit that he was not aware of the fact as to who engaged Mr.R.G.Srinivasan, counsel who filed vakalat for the petitioner herein. He would further submit that having come to know that fraud has been played upon the Trust and since no title has been passed on, though deed has been executed by the learned Subordinate Judge, the Trust has decided to relinquish all the so called rights the Trust was all along claiming over the property under the Sale Deed executed by the learned Subordinate Judge, Tiruvannamali by executing a registered relinquishment deed. In paragraph 2 of the said affidavit, among other things he has stated as follows:

"2. I humbly submit that the Trust is formed at the instance of Yogi Ram Surat Kumar, the god child of Tiruvannamalai and is guided by eminent jurists, and people of eminence from various field. I submit that after going through the complaint the Trust has come to know that the Smt.Vanitha Jayapal the petitioner has not signed the sale agreement and the same is forged. The Trust

has so far is under the bona fide belief that she has signed the sale agreement and approached the Court and got the property registered in its name. The Trust now having realized a mischief has been committed by the other persons and the Trust do not want to retain the property. I submit that the Trust will relinquish their right in the property situated at Manakulavinayagar Koil Street, in T.S.No. 1854 now subdivided as T.S.No. 1854/3, 1954/4 Ward No. 4, Block No. 33, Tiruvannamalai Town to an extent of 2580 sq.ft. by executing a deed of relinquishment in favour of Smt.Vanitha Jayapal the petitioner herein since it is claimed by the de facto complainant that her signature was forged in the agreement dated 08.07.2000. In view of such an allegation made in the complaint this Hon"ble Court may be pleased to order an enquiry by any appropriate agency. The Trust will co-operate with the investigation and real culprit must be brought before justice. The Trust wants a fair investigation in the matter and that is the reason why the Trust agree for relinquishing their right in the property. In order to have a fair investigation I may be permitted to bring out certain facts which is also to be investigated. In the complaint there is a deliberate omission of the role played by one Mr.Bret Carlson who was in the administration of the Trust, and also the persons who had assisted Mr.Bret Carlson. I firmly believe that justice must prevail and a fair investigation done in this matter.""

10. Yet another proposed accused in the complaint Mr.R.G.Srinivasan, Advocate has appeared before this Court in person. He is represented by learned counsel Mr.V.Karthick. Mr.R.G.Srinivasan also filed an affidavit before this Court pleading innocence.

11. Mr.R.G.Srinivasan would submit to this Court that he was enrolled as an Advocate only on 25.08.1998 and he joined as junior to one Mr.V.Gopalasamy Rao, an Advocate, practicing in Tiruvannamalai. He would further state that he had no acquittance with the petitioner herein. He has not even seen her. He would further submit that his senior Mr.V.Gopalasamy Rao gave the Vakalat to him and wanted him to accept the vakalat and appear before the Subordinate Court on behalf of the petitioner herein. Believing and trusting his senior and due to inexperience, he accepted the vakalat without verifying whether the petitioner had signed the Vakalat and the memo or not. He would further submit that the memo submitting to the decree and the receipt were also given to him only by his senior Mr.V.Gopalasamy Rao. Thus, according to him he is an innocent junior lawyer and he has not committed any crime. In the affidavit in paragraphs 2 to 4 he has stated as follows:

"2. I respectfully submit that I enrolled myself as an Advocate on 25. 08.1998 and started my practice as an Advocate at Vanthavasi, Thiruvannamalai District and later joined as the Junior Counsel, in the office of Late V.Gopalasamy Rao, Senior Advocate of Thiruvannamalai in the year 2000. I further respectfully submit that I was Junior Counsel under him till his demise on 30.05.2012.

3. I state that when I joined my Senior I used to be in his office from the early

hours of the day till late in the evening. On many occasions I have attested vakalats and affidavits at the behest of my Senior on the implicit faith that there was nothing amiss. I state that in respect of proceedings which are now before this Hon"ble Court, I had attested the vakalat of the plaintiff in O.S.No. 279 of 2000 on the file of the Subordinate Judge, Thiruvanamalai at the instance of my senior later on my senior had directed me to appear on behalf of the defendant and handed over the vakalat to me which I accepted on behalf of the defendant in the said proceedings. I also state that the Memo which was to be filed on behalf of the defendant was also prepared on the direction of my senior and I had acted as per the advice of my senior in the said proceedings. I reiterate that I had no persona interaction with either the plaintiff or the defendant in the said suit and I had acted on the bonafide belief that there was nothing wrong.

4. I state that as a Junior Counsel attached to the office of my senior, I was totally unaware of the transaction which culminated in the filing of the suit or the disposal."

12. Admittedly, on behalf of the Trust Mr.V.Gopalasamy Rao a learned Advocate of Tiruvannamalai Bar appeared before the lower Court. I do not understand as to how such a senior counsel could give vakalat to his own junior to appear before the Court on behalf of the defendant. This would go to show that he appeared for the plaintiff and made his junior to appear for the defendant. Now Mr.V.Gopalasamy Rao is no more.

13. The sale agreement is dated 08.07.2000. The suit was filed on 16.08.2000 itself i.e. less than one month from the date of sale agreement without any notice. The summons was issued on 28.08.2000 and vakalat was filed by Mr.R.G.Srinivasan, Advocate on 20. 10.2000. The memo submitting to the decree was filed on the very same day along with the vakalat. The receipt was also filed showing that the balance sale consideration had been paid to the petitioner herein. But later on, that receipt was taken back from the Court after sometime. The receipt is a stamped receipt on which the signature of the petitioner is alleged to have been forged.

14. If these allegations are true, in my considered opinion, the offence committed by the accused are so heinous. People of this country repose enormous faith in the judiciary. Any document bearing the seal of the Court is taken as a true document and the contents as gospel truth. It is shocking that the Court has been taken for a ride by the accused.

15. In my considered view it is absolutely necessary for this Court to issue a direction to register a case on the complaint of the petitioner as against unknown accused. Though the forged documents have been used in evidence before the court making out separate offences , the forging of documents had been done out side the court and before they were produced before the court by impersonation. So, as has been held by the Hon"ble Supreme Court in Sachida Nand Singh and Another Vs. State of Bihar and Another, and C.P. Subhash v. The

Inspector of Police, Chennai and others in Criminal Appeal No. 176 of 2013 dated 23.01.2013 these offences can be investigated by the police by registering a case. In view of the affidavits filed by Mr.R.Raman Laal and Mr.R.G.Srinivasan, Advocates, they need not be arrayed as accused in the F.I.R. The matter shall be thoroughly investigated by the police on registering the case. The real culprits in the case should be identified and prosecuted. Mr.R.Raman Laal, on behalf of the Trust shall execute a relinquishment deed as undertaken in the affidavit within a period of three weeks from today in favour of the petitioner. Mr.R.Raman Laal on behalf of the Trust shall bear the entire expenses including the stamp duty and registration charges for executing and registering the said relinquishment deed. Mr.R.Raman Laal shall hand over vacant possession of the property forthwith to the petitioner. It is further directed that if for the purpose of investigation, the Investigating Officer approaches the learned Subordinate Judge, Tiruvannamalai, the learned Judge shall furnish copies of all the documents to the Investigating Officer and also make available the staff members of the Court for interrogation by the Investigating Officer, if need be.

16. In the result, the petition is allowed with the above directions.