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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2024

Pronounced on : 18.12.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.1102 of 2024
and Crl.M.P.Nos.9327 & 9329 of 2024

A.P.Raju

.... Petitioner / Accused - 2

Vs

The State of Tamil Nadu
Rep. by Deputy Superintendent of Police
Vigilance and Anti Corruption, Chennai City III
Chennai.

Cr.No.10/AC/2017

.... Respondent / Complainant

Prayer : Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C., r/w. Sec.27 of P.C. Act, 1988 praying to call for the records of the impugned order dated 22.02.2024 in Crl.M.P.No.12917 of 2023 in Spl.C.No.5 of 2022 on the file of Special Judge / Chief Judicial Magistrate, Kancheepuram District at Chengalpattu, and revise the same by setting aside the impugned order and allowing the discharge application filed in Crl.M.P.No.12917 of 2023 in Spl.C.No.5 of 2022 on the file of Special Judge / Chief Judicial Magistrate, Kancheepuram District, Chengalpattu.



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For Petitioner : Mr.Naveenkumar Murthi
for Ms.S.Varsha

For Respondent : Dr.C.E.Pratap
Government Advocate [Crl Side]

ORDER

This revision is preferred by A2 in Special Case No.5 of 2022 on the file of Chief Judicial Magistrate, Kancheepuram @ Chengalpattu, challenging the order passed by the learned Special Judge dated 22.02.2024 in Crl.M.P.No.12917 of 2023, a petition filed by under Sec. 239 Cr.P.C.,

2. The petitioner herein was working as a District Registrar at Alandur, where A1 was working as Sub Registrar. The prosecution line of the accusation is as follows:

- a) Sometime in 2005, a sale deed came to be executed as regards the property comprised in S. No.90, Ullagaram village, Tambaram Taluk for registration and when the document was presented for registration, the same was not registered essentially because the SRO, at the relevant time suspected that the vendor in the sale deed in question



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might not have title to the property, and that it could be a poramboke piece of property. Few years rolled by but there is no change in the *status quo*.

- b) It is in these circumstances, sometime prior to 26.03.2010, A3 preferred a complaint to the Inspector General of Registration alleging that the sale deed which he had presented for registration was not registered for close to five years.
- c) Disturbed by the complaint, the IG Registration, vide his proceedings dated 23.06.2010, had enquired the same with A2 (the petitioner herein) who was the District Registrar at that time. A2 then holds an enquiry and ascertains the reason as to why the document was not registered, and communicates the same to the IG of Registration vide his communication dated 12.07.2010.
- d) Thereafter, A2 finds that the sale deed could be registered inasmuch as the property which was dealt with under the sale deed is not a poramboke property. Accordingly he, vide his communication dated 30.07.2010 advised A1 to attend to the matter. A1 on his part proceeded to register the sale deed.
- e) Some seven years thereafter, V&AC, randomly picks up the



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transaction herein above narrated, smelt something fishy and *suo motu* registered a case in Crime No.10 of 2017 dated 26.12.2017 under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and Sections 120-B, 109, 465, 468 and 470 IPC. Its accusation is that while the property in question is a water body, A2 had directed A1 to register the sale deed in question, and it constituted a conspiracy leading to a criminal misconduct by abusing their official position in registering the document.

- f) The investigation agency completed its investigation and laid its final report in which it cited A1, A2 as well as the purchaser as A3.

3. Contending that the final report does not indicate commission of the offence as defined under Section 13(1)(d) or 13(2) of the Prevention of Corruption Act, A2 has approached the Special Court with Crl.M.P.12917 of 2023 under Section 239 Cr.P.C, and it came to be dismissed by the trial court vide its Order dated 22.02.2024 on the ground that the revision petitioner cannot file this petition to discharge him from the case during trial. This Order is now under challenge in this criminal revision case.



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4. The learned counsel appearing for the revision petitioner made the following submissions:

- a) The final report encloses the complaint preferred by A3 to IG of Registration about the non-registration of the sale deed which he had presented for registration in 2005, followed by IG's correspondence to A2 dated 23.06.2010, and A2's reply to the IG dated 12.07.2010 and the further communication of A2 to A1 dated 30.07.2010. Taking all these documents together, it only indicates that A2 had tried to perform his statutory duty and had acted bonafide within his powers under Section 86 of the Registration Act. These three communications taken together does not disclose that there has ever been a demand for any bribe or advantage either to himself or to any other, which is the core ingredient of Sec. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.
- b) With no complaint either from the Tahsildar or with no material for the respondent to suspect the commission of an offence, the respondent has saw a devil where there is none.

No offence, therefore, could be established with the materials which the prosecution has made available, argued the counsel. Reliance was placed on



Neeraj Dutta Vs State (Govt. of N.C.T. of Delhi) [2023 SCC OnLine SC 280]

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5. Per contra, the learned Prosecutor submitted that there are statements of witnesses which indicates that there has been a refusal to register the sale deed dated 30.12.2005 then. The then Sub Registrar had obtained the opinion of the Tahsildar concerned, whose report says as per the Village A-Register, Survey No.90 of Ullagaram Village was classified as '*poromboke*' (Periya Eri / Big Lake), which implies it is a water body. However, in the impugned sale deed before its registration, in the description of the property there is a hand-written insertion that the property in Survey No.90 of Ullagaram Village is 'Gramanatham'. Therefore, to direct registration of the sale deed which is stopped for registration, by A2 would amount to criminal misconduct.

6.1 Rival submissions are carefully evaluated. There are few facts that required to be stated : The sale deed dated 30.12.2005, which has now triggered the present controversy, was executed by a certain Jayageetha. While tracing her title in the recital to the document, Jayageetha has made a statement that she had obtained the said property based on a Will executed by her father I.A.Durai and this Will was registered as Document No.25/1993 at Alandur Sub Registry and



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the description of property discloses that it was comprised in Survey No.90 with a residential building bearing Old No.25 and New No.21, Anna Salai, Karunanidhi Nagar, Ullagaram Village, Tambaram Taluk, Kancheepuram District. This implies that this piece of property had been a residential property even before 1993 and the sale deed was executed some 12 years after the registration of the Will. This is also spoken by L.W.5, Tr.S.Arulmani, Deputy Inspector General (Registration).

6.2 So far as the statement of L.W.3, Tr.T.Ravindran, the former Sub Registrar of Alandur Sub Registry is concerned, he merely says that directing the registration of the sale deed vis-a-vis the property whose registration was stopped on the ground that the property dealt with under the sale deed is improper. L.W.4, Tmt.P.V.Geetha, the Assistant Inspector General of Registration, Chennai (South), Saidapet, Chennai, says that directing registration of poromboke land by classifying it as gramathan in sale deed is intended for deriving a pecuniary advantage. And the rest of the statements of other witnesses are also either approximate to the statements of aforesaid three witnesses.



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7. The following facts emerge :

- a) that it is not disputed that the property dealt with under the sale deed had been a residential house even prior to 1993, that it was assigned Old No.25 and New No.21, by the local body. This fact is not controverted. Therefore, it is not as if the vendor under the sale deed had freshly encroached into the property and put up a construction. Indeed, there is no material produced by the prosecution to establish that the recital regarding the title of the vendor under the sale deed was illegal.
- b) the second aspect is how directing registration of the sale deed will constitute an offence under Sec.13(1)(d) of P.C.Act. Sec.13 of P.C.Act as it was prior to its amendment Vide Act.16 of 2018 reads as below :

..... Prior to its substitution, sub-S(1) read as under :- “(1) A public servant is said to commit the offence of criminal misconduct, -

- a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
- b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other



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- person, such valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any persons whom he knows to be interested in or related to the person so concerned; or*
- c) *if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or*
- d) *if he, -*
- i. *by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
 - ii. *by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
 - iii. *while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or*
- e) *if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.*



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Explanation :- For the purpose of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant”.

To constitute any offence under Sec.13 of P.C. Act, the prosecution should produce such materials it had gathered during investigation, that would persuade the Court to a *prima facie* conclusion that they are adequate enough to frame charges. Here, the materials indicate that while directing the registration of a sale deed by A2 is a misconduct but there is still no materials made available that A2 had made personal gains with his decision.

- c) Thirdly the allegation is that he had conspired with the purchaser to make a false statement. If this should be true, then the Will executed by vendor's father I.A.Durai and registered as Document No.25/1993, necessarily needed investigation. The indications even according to the materials made available by the investigator suggest that there should have been a residential building in the plot in question even prior to 1993. That statement of the prosecution still stands.
- d) The entry in the A-register is not a gospel of truth. After all, a written entry in the revenue records cannot upset the title.



- e) While registering the document, the Registrar is only required to make a reasonable enquiry recording the registrability of the document and is not expected to act as a civil Court
- f) And nobody has received any complaint about the registration of the document including the Revenue Department. The case here was *suo motu* registered by the Directorate of Vigilance and Anti Corruption, and it has to be stated that it has become over enthusiastic with its discovery of a hand-written insertion in the schedule to the sale deed in question that the property in Survey No.90 is a gramathanam property.

8. To sum up, the materials on record hardly are adequate to constitute any offence as suggested by the investigator. To insist A2 participates in the trial merely because the trial has commenced may violate the human rights of the petitioner, for to force a person to face a trial for nothing and to compel him to undergo the agony and anxiety of its process with no need, will be a transgression upon his right not to be disturbed. The trial Court however has rushed to its conclusion that the materials available disclose a triable issue, without discussing what they specifically are and how they are likely to prove a completed offence. This Court does not agree with that, for the trial Judge has



not discussed any one of the aspects which this Court has now gone into.

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9. To conclude, the revision petition is allowed and the order dated 22.02.2024 in Crl.M.P.No.12917 of 2023 in Spl.C.No.5 of 2022 on the file of Special Judge/ Chief Judicial Magistrate, Kancheepuram District at Chengalpattu, is set aside. Consequently, connected miscellaneous petitions are closed.

18.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
Asr/ds

To:

- 1.The Special Judge/ Chief Judicial Magistrate
Kancheepuram District at Chengalpattu,
- 2.The Public Prosecutor
High Court, Madras.



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CrI.R.C.No.1102 of 2024

N.SESHASAYEE.J.,

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Pre-delivery order
in CrI.R.C.No.1102 of 2024

18.12.2024