

IN THE COURT OF THE JUDICIAL MAGISTRATE,
SULUR, COMBATORE DISTRICT.

Present: Tmt. G.Rubana, B.Sc., M.L.,
Judicial Magistrate, Sulur.

Thursday the 22nd day of September 2022

Cr.M.P. No: 263 of 2017

in

C.C. No.556 of 2017

Mrs.Sujini,
W/o.Ramasamy

... Petitioner / 2nd Accused.

-Vs-

The Inspector of Police,
Sulur Police Station,
Coimbatore District

... Respondent / Complainant.

This petition has been filed on 15.02.2017 and coming for final hearing today in the presence of **Mr.A.Sivakumar, B.Com., B.L.**, Advocate for the petitioner and the Learned Assistant Public Prosecutor **Mrs.K.Jeyanthi** appeared for the respondent and upon perusal of the petition and connected records hearing both side arguments this court passed the following

ORDER

The petitioner herein has filed this petition under Section 239 of Cr.P.C., to discharge the petitioner / 2nd accused herein from the offence under Section 420, 468 and 471 of IPC.

2. The gist of the petition filed by the petitioner / accused is as follows: -

The petitioner submits that she had been arrayed as 2nd accused in the case registered by the respondent as per the complaint lodged by the defacto complainant and that the case of the prosecution is that the property situated at Palladam Taluk, Pattanam Village in S.F.No:297/2 measuring about 12.5 cents of vacant land along with larger extent was originally belonged to one Nachimuthu Thevar based on the sale deed dated 21.08.1957 and he had obtained approval from the Coimbatore Local Planning Authority vide approval No: 1228/91 and based on which, the above said

land along with other land to larger extent were promoted as 35 sites and park and the same were sold and the above said Nachimuthu Thevar executed the Will dated 05.12.1993 in favour of his son Sivasubramaniam (1st Accused) and died on 26.11.1995. The said Sivasubramaniam executed a Power of Attorney in favour of the 2nd accused / petitioner herein and based on which the 2nd accused executed sale deed in favour of the 3rd accused with respect of the property which mention as site instead of park and thereby at the request of the 2nd and the 3rd accused, the defacto complainant got the power of attorney from the 3rd accused infavour of his sister and as per the request of the 2nd and the 3rd accused the defacto complainant got power of attorney from the 3rd accused in favour of his sisters namely Suganthamani and Rajammal and subsequently both sisters sold the same to the defacto complainant and then he came to know that the property purchased by him was allotted to the park and not as site and that the 2nd accused had no knowledge about the classification of land and as instructed by the 1st accused along with her sons she executed registered documents and further submits that she would be the victim if the 1st accused and his sons suppressed the real classification of land and there is no role to the petitioner and that the prosecution leveled charges against the petitioner that she has fabricated the documents by suppressing the park and used the same as genuine and induce to deliver the property in order to attract offence under sections 420, 469 and 471 of IPC and further submits that she was acted in good father and he had no intention and the ingredients are not attracted and without any proper investigation laid final report and hence prays for discharge.

3. The gist of the counter filed by the respondent /complainant is as follows: -

The respondent submits that this petition is liable to be dismissed and the respondent police filed final report against this petitioner for the offence under sections 471, 468, 420 of IPC and all the accused have suppressed the fact and sold the park site in S.F.No.297/2 and if the allegations are groundless one and then the accused is entitled for discharge, however the accused are with intention to cheat the

complainant they have acted upon and the 2nd and the 3rd accused executed power deed in favour of the sisters of the defacto complainant namely Vasanthamani and Rajammal and thereby they have cheated the complainant and that by knowingly the accused have created forged document and there are sufficient evidence to prove the same and there are prima facie case to prove the charge/allegations against the accused and hence prays for dismissal of the petition.

4. Now the point for consideration is that Whether the charge against the accused is groundless or whether there is ground for presuming that the accused has committed the offence?.

(i). Heard and perused the records.

(ii). On perusal of records it reveals that the respondent police have laid final report that the property in S.F.No:297/2, Pattanam Village in Palladam Taluk measuring about 6.92 acres of land originally belonged to the father of the 1st accused and through Will the same was devolved upon the 1st accused and later he executed a power of attorney deed in favour of the 2nd accused and later all the accused got approval and promoted the above said land as house site and park site and on 02.07.2008 all the accused created forged document as house site by suppressing the park site and used the same as genuine one and thereby cheated the defacto complainant and sold the same to him and hence the accused are liable under Sections 468, 471 and 420 of IPC.

(iii). The Hon'ble Apex Court in CRIMINAL APPEAL NOS. 1452 – 1453 OF 202n (Arising out of Special Leave Petition (Crl.) Nos. 3445-3446 of 2019) **State through the Deputy Superintend of Police Vs R. Soundirarasu**, etc held that

55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, it was held that at that stage, the

Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

56. Then again in the case of Som Nath Thapa (supra), a three-Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) [Sections 227](#) and [228](#) resply in so far as the sessions trial is concerned; (ii) [Sections 239](#) and [240](#) resply relatable to the trial of warrant cases; and (iii) [Sections 245\(1\)](#) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

"32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of

framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

57. In a later decision in Mohanlal Soni (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7) "7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

(iv). On perusal of the complaint it reveals that the 2nd accused Mrs.Sujini and the 3rd accused Mrs.Suganthamani are sisters. Further, Mrs.Vasanthamani and Mrs.Rajammal are the sisters of the defacto complainant namely Mr.Manthiriappan. On perusal of records it reveals that the 2nd accused got power from the 1st accused and his two sons on 26.12.2006 and three days later I.e on 29.12.2006 the 2nd accused executed sale deed in favour of her sister Mrs.Suganthamani/ 3rd accused and later on 09.06.2008 Suganthamani executed two separate power deeds in favour of the sisters of the defacto complainant namely Mrs.Vasanthamani and Mrs.Rajammal and with them the complainant entered into a sale agreement.

(v). The respondent police along with the final report filed the (1). General Power of Attorney deed executed by Mr.Sivasubramanian, Mr.S.Gopinath and Mr.S.Rajasekaran in favour of Ms.R.Sujini dated 26.12.2006; (2) Sale deed executed by the general power agent Ms.Sujini in favour of Mrs.Suganthamani dated 29.12.2006; (3) General Power of Attorney deed executed by Mrs.Suganthamani in favour of Mrs.Rajammal dated 09.06.2008; (4) General Power of Attorney deed executed by Mrs.Suganthamani in favour of Mrs.Vasanthamani dated 09.06.2008;(5) Sale agreement executed by the General Power agents Mrs.Vasanthamani and Mrs.Rajammal in favour of Mr.Mandiriappan dated 02.07.2008 and further produced the site map.

(vi). The main contention of the defacto complainant is that the sisters namely the 2nd and 3rd accused have cheated him and sold the park site as house site. Further, along with the final report the respondent have filed the site map as well. On perusal of records this court is of the view that within short span of time the 1st power attorney and the sale deed were executed in the year 2006 and further executed two separate power of attorney deeds on the same day and the same create some suspicious and hence there are grounds for presumption that some offence / something had happened and some suspicious is there on the records and this case is in the preliminary stage and prima facie case has been made out and the charges leveled against the petitioner could not be considered as groundless and the same could be proved by way of letting evidence and detailed analysis of all the documents.

(vii). Further the learned counsel has argued that since the sons of the 1st accused and the two sister of the defacto complainant were not arrayed as accused the petitioner may be discharged. However, during the trial if sufficient material made out against those person they could be added as accused under Section 319 of Cr.P.C., . Hence, this court is of the considered view that only after letting evidence the charges/allegations could be proved beyond reasonable doubt and further at this stage prima facie case made out and hence this petition is dismissed.

In result this petition is dismissed.

Typed by me in the laptop and pronounced by me in the open court on this the 22nd day of September 2022.

**Judicial Magistrate,
Sulur.**

Petitioner side witness: - Nil
Petitioner side list of Documents: - Nil
Respondent side witness: - Nil.
Respondent side documents: - Nil.

**Judicial Magistrate,
Sulur.**