

V.Ramakrishnan Vs. State Through Its

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Court : Chennai

Decided On : Sep-16-2014

Judge : P.R.Shivakumar

Appellant : V.Ramakrishnan

Respondent : State Through Its

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 16.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (Md.No.208 of 2014 V.Ramakrishnan ..Petitioner versus State through its The Inspector of Police, CBI/ACB/Chennai, In FIR No.RC.MA1 2010 A0008 ..Respondent Petition filed under Section 397 read with 401 Cr.P.C., against the order passed by the learned II Additional District Judge for CBI Cases, Madurai in Crl.M.P.No.399 of 2013 in C.C.No.9 of 2012, dated 05.03.2014.

!For Petitioner : Mr.M.Subash Babu ^For Respondent : Mr.G.R.Swaminathan, Special Public Prosecutor.

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ORDER

The petitioner in the Criminal Revision Case figures as accused No.10 in C.C.No.9 of 2012 pending on the file of the II Additional District and Sessions Judge for CBI Cases Madurai.

2.A FiRs.Information Report was registered on the file of CBI/ACB/Chennai in FIR No.RC.MA1 2010 A0008and after investigation a final report was submitted by the Inspector of Police, CBI/ACB/Chennai, alleging commission of offences punishable under Sections 120-B read with 420, 468, 471 and 201 IPC and an offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

The accused Nos.1 to 12, including the revision petitioner herein who figures as 10th Accused are accused of committing substantive offence under Sections 120-B read with 420, 468, 471 and 201 IPC and an offence under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

One Kagiharan, who figures as 13th Accused, is accused of committing substantive offence punishable under Sections 120-B read with 420, 468, 471 and 201 IPC and an offence under Section 1-A(a) of the Passports Act, 1967.

The remaining accused who figure as A14 to A-34, are accused of committing substantive offences punishable under Sections 120 B read with 420, 468, 471 and 201 IPC alone.

3.The said final report was taken on file by the learned II Additional District Judge for CBI cases, Madurai as C.C.No.9 of 2012.

On appearance, before charges were framed and while the trial Court took up the matter for consideration regarding the framing of charges, the revision petitioner/(10th accused) preferred a petition under Section 227 of the Code of Criminal Procedure, praying for an order of discharge.

The said petition was dismissed by the learned trial Judge namely, the Special Judge for CBI cases, Madurai by his order dated 05.03.2014.

Challenging the said order and questioning the legality and sustainability of the said order, the present Criminal Revision Case has been filed under Sections 397 read with 401 Cr.P.C.4.The arguments advanced by Mr.M.Subash Babu, learned counsel for the revision petitioner and Mr.G.R.Swaminathan, learned Special Public Prosecutor for CBI cases were heard.

The grounds of revision, copy of the impugned order and the documents produced in the form of typed set of papers were also perused.

This Court paid its anxious consideration to the above submissions made on both sides and also to the materials available on record.

5.The petitioner herein is a practising advocate and also a notary public.

The CBI conducted an investigation after registering a case regarding the alleged conspiracy to forge documents and use the forged documents for getting passports a few offences under the Prevention of Corruption Act and also an offence of causing disappearance of the evidence punishable under Section 201 IPC.

The part played by the revision petitioner/10th accused, according to the prosecution version, is that he also conspired with the other accused persons to forge the documents for the purpose of obtaining passports in the name of fictitious persons and he attested the affidavits in proof of date of birth and supporting applications for getting passports under datkal scheme, without even verifying the identity of the deponents of such affidavits.

6.Apart from the contention of the petitioner that he, being a notary public had to rely on the identification of the person by the advocate who would bring such a person and identify the deponent, the notary could not have personal knowledge regarding identification of the deponent who came before him for swearing an affidavit and that hence, he had to rely on the identification of such persons by the other advocate who referred them to him for the purpose of swearing affidavits, the revision petitioner has raised a contention that since the Act of attesting the affidavit was done in exercise or purported exercise of power and functions of the notaries under the Notaries Act, 1952, the prosecution launched without following the procedure contemplated under Section 13 of the Notaries Act, 1952 was not maintainable.

7.Section 13 of the Notaries Act, 1952, lays down the conditions for taking cognizance of offences allegedly committed by the notaries in exercise or

purported exercise of their functions as notaries.

In this regard, learned counsel for the revision petitioner/10th accused relied on the following decisions:- (i) In V.Ranga Ramu versus State By Rajajinagar Police reported in 1999(2) ALT Cri 82; (ii) In Chandmal Motilal Bora versus The State of Maharashtra reported in 2004 (2) MhLj 41 and (iii) In M.C.Chandran versus State, Special Police Establishment reported in 2009(5) CTC209 8. Learned counsel for the revision petitioner made an attempt to contend that no knowledge could be attributed to the revision petitioner about the forgery by impersonation committed by the persons who appeared before him for the purpose of swearing affidavits as he has to rely on the identification of the deponents by other advocates who would refer them to the notary for the said purpose.

9. In this regard, learned Special Public Prosecutor for CBI cases would contend that the notary public before whom a person wants to swear an affidavit cannot shirk his responsibility of verifying the identity of such person by simply passing the buck on the advocate who has referred him to the notary and that the failure on the part of the revision petitioner/10th accused to verify the identity of the deponent with reference to his family card, driving licence, voters identity card, Bank passbook etc., will show absence of bona fide on his part.

It transpires the accusation made against the revision petitioner is that, without the production of any of such documents to prove the identity of the deponents and without seeking the production of the identity, the revision petitioner/10th accused simply attested the affidavits as they were sworn before him; that the very fact that he did so will make it obvious that he knew that the affidavits could not be true and the persons swearing the affidavits might not be the genuine persons and that the same will give rise to an inference that he arrived at an understanding with them for attesting false affidavits regarding their dates of birth and the affidavits in support of the applications for getting passports, under the datkal scheme, in the names of fictitious persons with false addresses.

10. Learned Special Public Prosecutor has also contended that the person, who according to the revision petitioner, referred the deponents to the revision petitioner/10th accused for the purpose of attestation of the affidavits, was also a

notary public and he had been suspended from acting as a notary and the same was the reason why he had referred the passport applicants to the revision petitioner/10th accused for the purpose of attestation of their affidavits and that the very fact that the deponents were referred by a person, who had been suspended from practising as notary, should have given rise to suspicion in the mind of the revision petitioner/10th accused and at least on that basis he could have asked them to produce necessary documents to prove their identity and verified the genuineness of such documents before attesting the affidavits.

11.The above said contention of the learned Special Public Prosecutor for CBI cases does have substance in it and the same cannot be rejected as untenable.

Therefore, the contention raised by the learned counsel for the revision petitioner/10th accused that the act of attesting affidavits by the revision petitioner/10th accused were innocent acts committed on bona fide belief regarding the identity of the deponents (passport applicants).that too based on the identification made by another advocate, who was also a notary but suspended from practising as notary, cannot be accepted as having substance in it.

However, a very vital contention, which goes to the root of the case, has been raised on behalf of the revision petitioner/10th accused.

The said contention is that based on Section 13 of the Notaries Act, no Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under the Act except upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

12.Section 13 of the Notaries Act, 1952 reads as follows:- ?13.Cognizance of offence:- (1) No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2)No Magistrate other than a Presidency Magistrate or a Magistrate of the FiRs.Class try an offence punishable under this Act?.13.Relying on the said provision, learned counsel for the revision petitioner/10th accused has submitted that the act of attesting affidavits was done in discharge of his functions of the notary under the Notaries Act and that it cannot be disputed at least that the act of attesting affidavits was done in purported exercise of his functions under the Notaries Act.

14.Section 13 provides a bar for taking cognizance of any offence allegedly committed by such acts in exercise or purported exercise of his functions under the Notaries Act without getting the complaint in writing made by an officer authorised by the Central Government or State Government.

It cannot be contended that the revision petitioner/10th accused did not act in exercise of his functions as notary public.

15.In support of his contention, learned counsel for the revision petitioner/10th accused relied on the judgment of this Court in M.C.Chandran versus State, Special Police Establishment reported in 2009(5) CTC209in which a learned single Judge of this Court made an observation that the advocates giving opinion on the genuineness or otherwise of the documents cannot be roped in the criminal cases for criminal conspiracy, cheating, committing forgery and connected aggravated offences and that if advocates are to be implicated in such criminal cases and in such fashion, the legal profession itself will be in peril.

The said observation was made by the learned single Judge of this Court while discharging the petitioners therein and quashing the proceedings against them holding advocates could not be construed as technical experts to give opinion regarding the genuineness of documents.

16.The facts of the said case are different from the facts on hand.

In the said case, the petitioners therein, who were advocates, gave legal opinion regarding the title of the loan applicants.

Of course, in those cases, the petitioners therein, who were advocates, did not give any certificate identifying the loan applicants.

On the other hand, based on the documents produced by them, they had given legal opinion regarding their title to the properties which were sought to be given as security for the loan to be obtained from the bank.

The vital observation made by the learned single Judge in the said case is that the advocates, who were called upon to give legal opinion could not be expected to go to the Sub Registrar Office to verify the records when the documents produced by them for legal opinion, on their face itself did not indicate that the documents could not be genuine.

On that ground, one accused was discharged and regarding the other accused, the criminal proceedings were quashed.

17. In the case on hand, it is the case of the prosecution that the revision petitioner/10th accused did not verify any documents regarding the identity of the deponents but simply relied on the identification made by an advocate, who was a debarred notary public, and attested the affidavits without verifying the identity of the deponents with reference to the documents of identity.

Therefore, the said judgment shall not support the contention of the petitioner in this case.

18. In this regard, learned counsel for the petitioner has drawn the attention of this Court to a judgment of the Karnataka High Court in V.Ranga Ramu versus State By Rajajinagar Police reported in 1999(2) ALT Cri 82, wherein criminal proceedings initiated against an advocate/notary public without following the procedure contemplated under Section 13 of the Notaries Act, 1952 was held to be not maintainable.

A Similar view was taken by the Bombay High Court in Chandmal Motilal Bora versus The State of Maharashtra reported in 2004 (2) MhLj 41 wherein it was held that Section 13 of the Notaries Act, 1952 provides that no Court shall take cognizance of any offence committed by a notary in the exercise or purported

exercise of his functions under the Act, save upon complaint in writing made by an officer authorised by the Central Government or State Government by general or special order in this behalf and discharged the accused therein holding that the case was not instituted upon complaint in writing by an Officer authorised by the Central Government or State Government as contemplated under Section 13 of the Notaries Act, 1952.

19. In the case on hand also, it is not the case of the prosecution that as against the revision petitioner/10th accused, the case was instituted on a complaint made by an officer authorised by Central Government or State Government.

When there is a special enactment dealing with the official acts or purported official acts of the notary, the provision of the special enactment will prevail over the general law.

It is an admitted fact that the case was not instituted on a complaint in writing made by an Officer authorised by the Central Government or the State Government and the condition stipulated in Section 13 of the Notaries Act, 1952 for prosecuting a notary public for his acts done in exercise of or purported exercise of his functions under the Act has not been complied with.

Hence, the petitioner is entitled to be discharged.

The lower Court committed a mistake in dismissing his petition for discharge.

20. For all the reasons stated above, this Court comes to the conclusion that the order of the Court below taking cognizance of the case against the revision petitioner/10th accused is against law and the learned trial Court ought to have allowed the petition filed by him for discharge on the said ground that the case was not instituted on a complaint in accordance with Section 13 of the Notaries Act, 1952.

21. In the result, the Criminal Revision Case is allowed.

The order of the learned II Additional Sessions Judge for CBI Cases, Madurai, dated 05.03.2014 made in CrI.M.P.No.399 of 2013 in C.C.No.9 of 2012, is set

aside.

Consequently, Crl.M.P.No.399 of 2013 in C.C.No.9 of 2012 shall stand allowed and the revision petitioner shall stand discharged from the said calender case.

To The II Additional District Judge for CBI Cases, Madurai

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