

Crl.O.P.(MD)No.53 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.53 of 2022

and

Crl.M.P.(MD).No.72 of 2022

R.Vijayagopal

...Petitioner/4th Accused

Vs.

1.The Inspector of Police,
District Crime Branch Police Station,
Theni.
(Under Crime No.32 of 2011)

...1st Respondent/
Complainant

2.Anushiya

...2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the impugned charge sheet under C.C.No.99 of 2016, on the file of the Learned Judicial Magistrate, Theni and the order of de-nova trial for the altered charges passed in C.C.No.99 of 2016, dated 03.12.2021 passed under Seciton 216 (i) of the Criminal Procedure Code and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman
For R1 and R2 : Mr.M.Veeranthiran
Government Advocate(Crl.Side)



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ORDER

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“The soul that sinneth, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son : the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him” - is a biblical saying. Applying it to the facts of the case, one can say “the lawyer shall not bear the sins of the client”.

2.The petitioner is a practising lawyer. He had gone to the Judicial Magistrate Court, Theni on 17.05.2011 to appear for the accused in Crime No. 126 of 2011 registered on the file of Veerapandi Police Station for the offence under Section 387 IPC. On the said date, sureties were to be furnished for the accused. When the Head Clerk perused the surety documents, she noted that the court seals affixed on the documents of the sureties namely, Mani and Muthukaruppan had been erased. She lodged complaint before the Inspector of Police, District Crime Branch, Theni. Based on the same, Crime No.32 of 2011 was registered. Mani and Muthukaruppan were shown as accused. The case was investigated and charge sheeted. Based on the confession of the accused, the petitioner was impleaded as the fourth accused. Cognizance of the offence was taken and the case was taken on file in C.C.No.99 of 2016 on



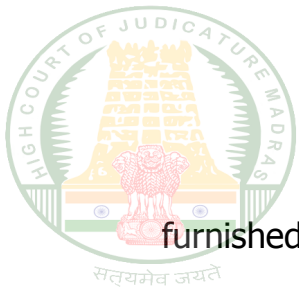
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the file of Judicial Magistrate, Theni. Trial was also concluded and arguments were advanced on either side. Written arguments were also filed.

3.At this stage, the learned trial Magistrate came to the conclusion that the offences under Section 468, 415, 471 and 489 IPC were not made out. However, invoking power under Section 216 of Cr.P.C, charge under Section 465 IPC was framed afresh. The trial was also reopened. Questioning the same, and parelly seeking to quash the prosecution, this Criminal Original Petition has been filed.

4.Heard the learned Counsel for the petitioner who reiterated all the contentions set out in the memorandum of grounds. The learned Government Advocate on the other hand submitted that no case for quashing has been made out.

5.I carefully considered the rival contentions and went through the materials on record. The sum and substance of the prosecution case is that the family ration cards produced by the two sureties had been tampered with. The said sureties had produced the very same family ration cards on quite a few occasions before various courts. Whenever a document of this nature is



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furnished as a surety document, the Court seal will be affixed thereon. Once the Court seal is affixed, when it is produced again in another case, the learned Magistrate will be reluctant to accept the said document on the second occasion. In order to avoid this, according to the prosecution, the earlier seals affixed on the ration cards had been erased. No doubt, this amounts to cheating the Court. But then, the question is whether the counsel can be fastened with penal liability for the same.

6. Section 441 of Cr.Pc is as follows :

“Bond of accused and sureties.

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition, is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.



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(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

By Amendment Act 25 of 2005, Section 441-A was inserted. It reads as follows :

“441-A. Declaration by sureties -

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.”

These provisions were considered in *Anbarasan v. State* (2008) 3 CTC 769. It was observed that for the purpose of determining whether the sureties are fit or sufficient, the court has two options before it ie., either to accept the affidavit in proof of the facts contained therein relating to the sufficiency or fitness of the sureties or the court may in appropriate case hold an enquiry. What kind of documents can be accepted had been catalogued in *Sagayam v. State* (2017) 3 CTC 291. It is the surety who produces the documents. He has to file an affidavit as mandated by Section 441 – A of Cr.Pc. If the



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particulars contained in the affidavit are false, the deponent has to take the consequence. Not the counsel. The counsel after all is only rendering professional service. If the documents produced by the surety are fake or bogus or not genuine, the surety has to be prosecuted. Not the counsel.

7.In this case, both the sureties, namely, Mani as well as Muthukaruppan are said to be relatives of the accused Prabhu. They also belong to the very same community. The accused Prabhu and the sureties, namely, Mani and Muthukaruppan belong to the same village. The petitioner herein had gone to the Judicial Magistrate Court, Theni only for rendering professional service in connection with furnishing of sureties. He had not fabricated or manufactured the documents in question. The sureties had come to the Court and they brought the documents with them. The petitioner had only presented the same along with his memo of appearance.

8.The petitioner as an advocate has not filed any affidavit. It is not the case of the prosecution that the petitioner conspired with the sureties in the tampering of the documents. He cannot therefore be faulted or fastened with penal liability. Of course, a question may arise as to whether the prosecution can be quashed at this stage. Though as a matter of practice, the power



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under Section 482 of Cr.Pc is not exercised after the commencement of the trial, in exceptional cases, if the court comes to the conclusion that contuance of the prosecution would be an abuse of process, the power to quash can still be exercised. Of course, in this case, the entire trial had been set at naught and a fresh charge has been framed. I come to the conclusion that the petitioner is entirely free of blame and contuance of the impugned prosecution would certainly constitute an abuse of process and quashing the same alone would serve the ends of justice. The impugned order as well as the impugned prosecution is quashed as far as the petitioner is concerned. The prosecution will of course go on against the remaining accused. The Criminal Original Petition is allowed on these terms. Consequently, the connected Miscellaneous Petition is closed.

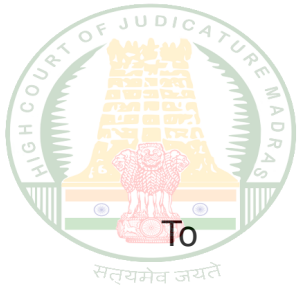
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Index : Yes / No

Internet : Yes/ No

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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To

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- 1.The Inspector of Police,
District Crime Branch Police Station,
Theni.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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