

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.2669 of 2020

and

Crl.M.P.(MD) Nos.1396 and 1399 of 2020

Ganapathyvaratha Subramanian ... Petitioner/
Accused No.4

Vs.

1.The State rep by
The Inspector of Police,
Samayanallur Police Station,
Madurai District.
(Crime No.302 of 2014) ... 1st Respondent/
Complainant

2.Kader Beevi ... 2nd Respondent/
Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to C.C.No.9 of 2019 on the file of the learned Judicial Magistrate No.IV, (Special Court for Exclusive Trial of Land Grabbing Cases), Madurai and quash the same.

For Petitioner : Mr.K.Samidurai
For R-1 : Mr.A.Robinson
Government Advocate (Crl. Side)

* * *

ORDER

Kader Beevi, the defacto complainant in this case, was a member of a trust known as "Thenur Thanneer Pandhal". Lands were endowed in its favour. Anwar Basha, the first accused in this case, was appointed as its temporary manager. He 'managed' to enter his name in the revenue records in the place of the trust in respect of the endowed lands. He also fabricated a document as if on 19.04.2010 all the members of the trust including Kader Beevi passed a resolution authorising him to deal with the said property.

2.The petitioner who is an advocate cum notary notarised the said document. Armed with these two documents, namely, patta and the notarised resolution dated 19.04.2010, Anwar Basha executed documents appointing one Senthil Kumar (A3) as the power of attorney to sell the lands. Iqbal (A2) signed as an identifying witness. The trust properties were alienated in favour of third parties. When this came to the knowledge of the defacto complainant, she lodged information before the Inspector of Police, Samayanallur police station. Crime No.302 of 2014 was registered. The matter was investigated and the investigation officer filed final report against all the four accused,

namely Anwar Basha, Iqbal, Senthilkumar and the petitioner herein before the learned Judicial Magistrate No.IV (Special Court for Exclusive trial of Land Grabbing Cases), Madurai. The Magistrate took cognizance of the offences under Sections 406, 420, 467, 468, 471, 120(B) r/w.109 of I.P.C. The case was taken on file in C.C.No.9 of 2019 and summons were issued to all the accused including the petitioner herein.

3.This original petition has been filed for quashing the proceedings in C.C.No.9 of 2019 on the file of the Judicial Magistrate No.IV(Special Court for Exclusive Trial of Land Grabbing Cases), Madurai, in so far as the petitioner is concerned.

4.The learned counsel appearing for the petitioner raised only one legal contention. According to him, the impugned proceedings are not maintainable against the petitioner herein. The petitioner had not anywhere claimed that the defacto complainant and the other members of the trust signed in his presence. He had merely notarised the document in question. Even if the document turns out to be a forged one and the petitioner had committed an offence, in view of Section 13 of the

Notaries Act, 1952, the jurisdictional magistrate could have taken cognizance of the offence only if a complaint to that effect had been filed by an authorised officer. The court below could not have taken the case on file on the basis of a police report. According to him, the issue is squarely covered by the decision reported in CDJ 2003 BHC 214 (Chandmal Motilal Bora v. State) and the decisions of the Madras High Court, namely, (2017) 1 MLJ (CrI) 475 (C.Elangovan V. State), CrI.R.C.(MD)No.208 of 2014 dated 16.09.2014 (V.Ramakrishnan V. State through its Inspector of Police) and CrI.O.P.(MD)No.25534 of 2007 dated 04.03.2010 (K.Ramakrishnan V. Rajesh Kataria). The petitioner's counsel would also point out that quite a few other High Courts have also taken the very same view. One such decision is reported in (2019) SCC Online CHH 48 (Rajkumar Mishra V. Gurjeet Kaur Bajwa).

सत्यमेव जयते

5.Per contra, the learned Government Advocate (CrI. Side) contended that Section 13 of the Act will have no application to the case on hand in as much as there was conspiracy among the accused to grab the property in question. According to the prosecution, the petitioner had abetted the commission of the offence of forgery and that therefore, this is not a case for

exercising the inherent powers of this Court. He placed reliance on the decision of the Karnataka High Court made in Criminal Petition No.7603 of 2015 dated 27.06.2019 (M.Rathnakar V. State of Karnataka). He also pointed out that the Hon'ble High Court of Madhya Pradesh vide order dated dated 02.04.2019 in CRR-1306-2019 (Kailash Narayan V. State of Madya Pradesh) chose to distinguish *V.Ramakrishnan V. State (Crl.R.C.(MD) No. 208 of 2014)*.

6.I carefully considered the rival contentions and perused the materials on record.

7.It is beyond dispute that the petitioner notarised the document dated 19.04.2010 which purports to be the resolution passed by the trustees. The resolution ostensibly contains the signatures of as many as 23 trustees. The defacto complainant Kader Beevi is figuring at serial No.21. She had denied the signature attributed to her. The document also contains the signature attributed to one Noor Ali. He had passed away as early as on 28.05.2008. It *prima facie* appears that the document dated 19.04.2010 is a rank forgery. Now the question that arises for my consideration is whether the petitioner can be

prosecuted on the strength of a police report for having notarised such a document and whether Section 13 of the Act will come to his rescue.

8. Section 13 of the Notaries Act 1952 reads as under:-

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 authorized 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 first class shall try an offence punishable under this Act.*

The aforesaid provision is animated by a public policy. Notarised documents have a presumptive value attached to them. One may profitably go through the erudite decision of the Hon'ble Mr. Justice P.B. Mukharji reported in **AIR 1967 Cal 636 (In Re : *K.K.Ray Private Limited*)** to understand the historical origin and significance of the institution of notary. If there is no protective provision like Section 13 of the Notaries Act, a Notary could be implicated in any number of cases. A Notary will not be personally aware of each and every person who comes to him.

He will certainly not know the truth underlying the documents. Therefore, I cannot have any quarrel with the proposition laid down in the decisions relied on by the petitioner's counsel. But the issue that calls for resolution in this case is a little different and more nuanced. Section 8 of the Notaries Act sets out the functions of a Notary. The question is whether even a reckless or malafide discharge of notarial functions would still attract the protective shield of Section 13 of the Act. In my view, the key lies in a proper understanding of the expression "under this Act" occurring in the said provision. In other words, only if the notarial function has been discharged under the Act, Section 13(1) of the Act will kick in and not otherwise.

9. Section 8 of the Act catalogues the functions of notaries. A Notary may by virtue of his office verify, authenticate, certify or attest the execution of any instrument. Authentication has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition, as the process of validating the identity of someone or something; a process is used to confirm the identity of a person or to prove the integrity of the specific information; statement that something is true, such as an auditor's signature on a company's accounts. Rule 11 of the Notaries Rules, 1956, sets

out the statutory norms for discharge of the notarial functions.

It reads as follows :

“11.Transaction of business by a notary.- (1) A notary in transacting the business under the Act shall use the Forms set forth in the Appendix to these rules. 1

[(2) Besides recording declaration of payment for honour a notary shall also register notings and protests made. Every notary shall maintain a notarial register in the prescribed Form XV.]

(3) Where any demand of acceptance or payment or better security has been made by a clerk, a notary shall, after examination of the entry in the Register relating to such demand, affix his signature thereto, and cause the clerk to affix his signature also to the entry.

(4) Each notary shall, before bringing the Notarial Register into use, add a certificate on the title page specifying the number of pages it contains. Such certificate shall be signed and dated by the notary.

(5) Every notary shall permit the District Judge or such officer as the appropriate Government from time to time appoint in this behalf to inspect his register at such times, not often than twice a year, as the District Judge or officer may fix. District Judge or officer appointed by the State Government will have power to lodge a report to the appropriate

Government for taking action against a notary.

(6) When the original instrument is in a language other than English, any noting or protest or entry in his register which has to be made in respect of the instrument by a notary may be made either in that language or in English.

(7) In making presentment of bills or notes a notary shall observe the provisions of Chapter V of the Negotiable Instruments Act, 1881 (26 of 1881).

(8) The notary may- (1) draw, attest or certify documents under his official seal including conveyance of properties; (2) note and certify the general transactions relating to negotiable instruments; (3) prepare a Will or other testamentary documents; and (4) prepare and take affidavits for various purposes for his notarial acts.

(9) Every notary shall grant a receipt for the fees and charge realised by him and maintain a register showing all the fees and charges realised.”

Every Notary has to maintain a notarial register and it must be in Form XV. It is as under :

Sl. No.	Date	Name of the notarial act	Name of executant or person concerned with full address	Contents of document	Notarial fee stamp affixed	Prescribed fee	Fee charged	Sl. no. of receipt book	Signature of person concerned	Signature of notary
1	2	3	4	5	6	7	8	9	10	11

10. Section 8 of the Notaries Act, 1952, must be read in conjunction with Rule 11 of the Notaries Rules, 1956. *Chandamal Motilal Bora* on which heavy reliance is placed by the petitioner's counsel also talks of notifying the notarised documents in the notarial register. An earlier decision of the Bombay High Court reported in **AIR 1992 Bom 149 (Prataprai Trumbaklal Mehta V. Jayant Nemchand Shah and another)** holds thus :

“It is the responsibility of a notary to satisfy himself that the original document intended to be executed before him was executed by the person concerned and not by someone else in the name of a different person. It is the responsibility of the notary to satisfy himself about the identity of the execution of the original document by making all reasonable inquiries including insistence of identification of a member of the public by a legal practitioner known to the notary. Unless the executant is known to the notary personally, the notary must insist on written identification of the executant by an advocate in order to minimise the possibility of cheating by personification.”

Only if a notarial function is discharged in the manner set out above, it can be stated that the notary has exercised his function

“under the Act”. I am conscious that the provision also employs the expression “purported”. It only means that at least the motions must have been gone through. The expression “under” was interpreted in R V. Clyne ex p Harrap reported in (1941) VLR 200 as “pursuant to” than as “by virtue of” and that it is necessary to have regard to the context to determine in which sense the word is used. This was approvingly cited by the Hon'ble Supreme Court in N.K.Jain and others V. C.K.Shah (1991) 2 SCC 495.

11.Oxford Advanced Learner's Dictionary, New 9th Edition, defines “under” as referring to “who or what controls, governs or manages something or somebody”. It also means “according to an agreement, a law or a system”. When we say that India is under the Constitution, it means that the Constitution controls and governs the entire democratic system.

12.The expression “under this Act” occurring in Section 13 is thus pregnant with meaning and significance. When Section 13 of the Notaries Act, 1952, comes up for consideration, the expression “under this Act” cannot be ignored or glossed over. No part of a statutory provision can be left out of consideration. I

therefore, hold that only when the notary has exercised or purported to exercise his functions under the Notaries Act, 1952, he can hide behind Section 13 of the Act.

13.Coming to the facts on hand, there is nothing on record to show that the document in question which was notarised by the petitioner was also duly notified by him in the notarial register. The petitioner does not appear to have produced his notarial register before the investigation officer. Even before me it was not produced. The petitioner had not demonstrated that the document in question finds mention in the said register. If that had been done, I could have come to the conclusion that the petitioner had acted in a *bona fide* manner and that the principal accused had pulled wool over the eyes of the petitioner. In this case, there is nothing on record to show that the act of the petitioner fell within the four corners of the statutory framework. The Notary must tread on the path laid down by the Act. If during the course of such treading some mishap occurs, the statute is there to protect him against vexatious prosecution. If the Notary abandons the statutory path and undertakes an independent journey, he has to take the consequences and cannot invoke Section 13 of the Act. In this regard, I may refer

to the decision of the Hon'ble Delhi High Court reported in **(2010) 114 DRJ 343 (Gian Singh v. State)**. The learned Judge declined to grant relief in a similar quash petition because there was no entry of the document involved in that case in the notarial register. Section 13 will not come to the rescue of those notaries who exercise their function de hors the procedure set out in the statute and the rules framed thereunder.

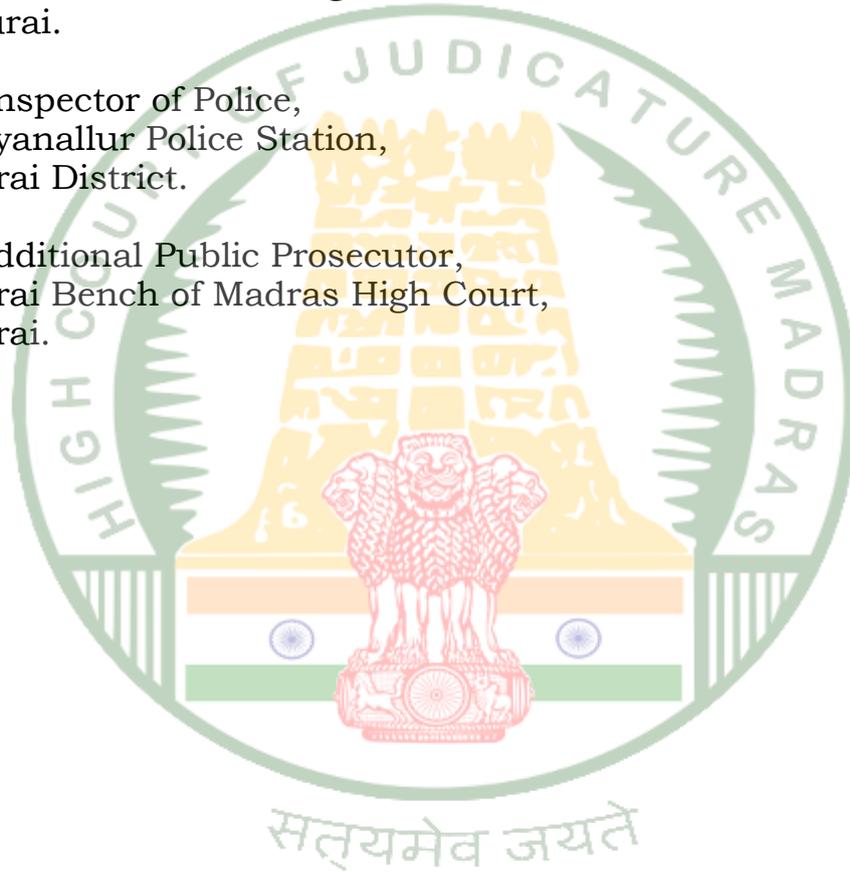
14. In this view of the matter, I dismiss this criminal original petition as devoid of merits. However, I make it clear that what has been answered by me is only the legal issue as regards the applicability of Section 13 of the Notaries Act 1952. I have not gone into the merits of the matter. The petitioner's other defences are left entirely open. Taking note of the other facts and circumstances, the personal appearance of the petitioner before the Court below is dispensed with. He needs to appear only on those occasions when the court below consider his appearance necessary. On all other occasions, the petitioner can very well be represented by his counsel. Consequently, connected miscellaneous petitions are closed.

09.03.2020

Index : Yes/No
Internet:Yes/No
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- 1.The Judicial Magistrate No.IV,
Special Court for Exclusive
Trial of Land Grabbing Cases,
Madurai.
2. The Inspector of Police,
Samayanallur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

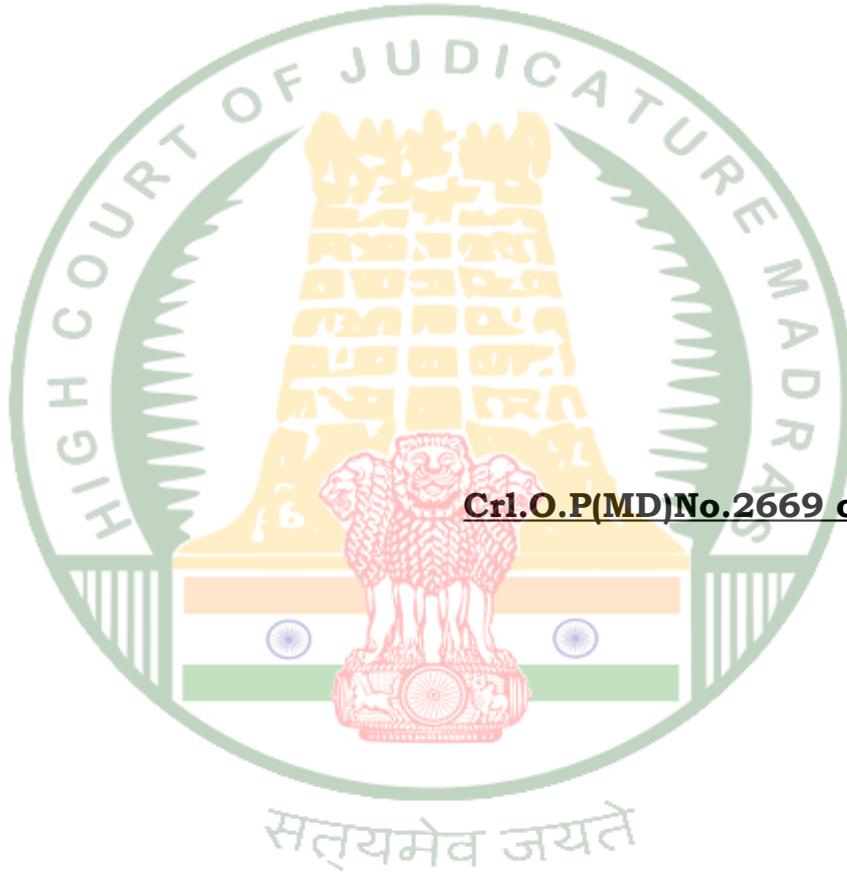


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G.R.SWAMINATHAN, J.

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