

**(2010) 09 MAD CK 0252**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal Original Petition (MD) No. 103 of 2010 and M.P. (MD) No"s. 1 and 2 of 2010

G.K. Chezhian

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Sept. 3, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 120, 201, 34, 415, 420

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

**Advocate:** G.R. Swaminathan, for the Appellant; R.M. Anbunithi, G.A. (Crl. Side) for RR1 and G. Mariappan, for RR2, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

R. Mala, J.

The petitioners approach this Court with a prayer to call for the records in C.C. No. 246 of 2009 pending on the file of the Judicial Magistrate No. 1, Thoothukudi and quash the same.

2. The petitioner in Crl.O.P. No. 103 of 2010 is arrayed as A2 and the petitioner in Crl.O.P. No. 1061 of 2010 is arrayed as A4 and they have come forward with the present application stating that on the basis of the complaint given by the second respondent, a case has been registered in crime No. 32 of 2008 for the offences under Sections 120(b), 465, 468, 471 and 420 I.P.C. and after completion of investigation, the charge has been filed for alleged offence under Sections 468, 471, 420, 201 r/w 34 I.P.C., which was taken on file in C.c. No. 246 of 2009 on the file of the learned Judicial Magistrate No. 1, Tuticorin;

3. The case of the petitioners are that the defacto complainant/R2 is one of the shareholders in Tamilnad Mercantile Bank Limited, Tuticorin and there are civil disputes between some of the Directors of the Bank, which led for filing a civil suit in C.S. No. 481 of 2008 on the file of the Principal Bench of this Court and the suit was filed by Tamilnadu Mercantile Bank Shareholders Welfare Association represented by its office bearers, who are cited as A1 to A3; since no injunction has been granted in the said suit, the defacto complainant, no way was affected; now one of the member of the Association has given a complaint stating that he is not the member of Tamilnad Mercantile Bank Shareholders Welfare Association, but their names have been mentioned in annexure and when they filed a suit stating that the 172 Nos. of members of the Association were holding 95418 shares in the second defendant viz., the Tamilnad Mercantile Bank Limited, whose list has been annexed; one Mr. Shashi Ruia, ESSAR Group of Company, Mumbai, with an intention to take over the Management of Tamilnad Mercantile Bank has entered into a Memorandum of Understanding that the shareholders of the Tamilnad Mercantile Bank by 1,97,455 shares roughly about 67% of shares in the names of 7 companies owned by him, at that time, the plaintiff has filed a suit and prayed for declaring the transfer of 95,418 shares of the second defendant company at the meeting of the Board of Directors of the second respondent company held on 13.05.2007 as null and void and also of no legal effect and other consequential relief; in that plaint, the Association has given a list of members of the Tamil Nadu Mercantile Bank Shareholders' Welfare Association in page No. 14 to 18, since the defacto complainant is not the member of the Association, he has given a complaint and a case has been registered. He relied upon the 161(3) Code of Criminal Procedure statement one Arumugan and Ashok, Subramanian and submits that no prima facie case has been made against the petitioners.

4. He further submitted that nothing has been attributed against A2 and A4 in the F.I.R., merely, Chezhan, petitioner in CrI.O.P. No. 103 of 2001 is the coplaintiff of the said suit in C.S. No. 481 of 2008, no criminal liability will be fastened and there is no document to show that he has forged the documents and no ingredients of Section 415 I.P.C has been made out for missing of records, for which a complaint has been given and it was not detected and hence the offence u/s 201 I.P.C also not made out.

5. He further submitted that even though a case has been registered for the offence u/s 420 I.P.C., there is no gain or no loss to the complainant and thus he prayed for the quashing of the complaint. To substantiate his case, he relied upon the decision in (1) [Parminder Kaur Vs. State of U.P. and Another](#), [G.S. Bansal Vs. The Delhi Administration](#), (4) [State of U.P. Vs. Ranjit Singh](#), (5) State of Karnataka v. T.B. Ramakrishna Reddy reported in (2009) 1 SCC (Cri) 956 and (7) [In Re: Sivananda Mudali](#), .

6. The learned Counsel appearing for the 2nd respondent would submit that in the year 2004, 67% of shares transferred to ESSAR Group of Company; since the Nadar

Communities objected the same, the Reserve Bank of India has not transferred the shares in the name of ESSAR Group of Company and transferred the same in favour of one Sivasankaran, but there was an agitation among Nadar Community with regard to the selling of the shares to the outsiders and hence a Memorandum of Understanding was entered into between Sivasankaran and Nadar Community people to re-purchase of 1,91,418 shares and thereafter, a revised agreement has been made by which, 96,000/- shares have to be sold to Nadar Community people and the remaining 95418 were retained with Sivasankaran; on 30.05.2007, the bank passed a resolution to permit the said Sivasankaran to sale 25% of shares to NRI and 5% of shares too Ramachandra Nadar and 3% of shares to M.G. Maran Group; Then only, A1 filed a civil suit in C.S. No. 481 of 2008 for challenging the transfer of shares to ESSAR Group of Company and others, which is pending; hence, election has been held on 29.04.2008 and Justice R. Balasubramanian was appointed to conduct the election and the result is kept in a sealed cover; in pursuance of the suit filed by them, on 09.06.2008, the office bearers were not permitted to take office even though they were elected, but the Managing Director and nominee were directed by Reserve Bank of India to take office; 95481 shares are only 33% of the total shares; without any rhyme or reason, the Association has filed the suit; they have impleaded 172 persons including the dead persons, which shows that they wantonly to cheat the Court and created the document as if the defacto complainant and others were the members of the Association; hence, the defacto complainant has filed the complaint before the concerned police and after investigation only charge sheet has been filed and hence there is no need to quash the same, thus he prayed for the dismissal of the applications.

7. Considering the rival submissions and a perusal of the plaint in C.S. No. 481 of 2008 on the file of the High Court Madras would reveal stated that 172 members of the Association were holding 95418 shares of the Tamilnadu Mercantile Bank and the suit was filed for declaring the transfer of 95,418 shares of the second defendant bank at the meeting of the Board of Directors of the second respondent bank held on 13.05.2007 as null and void and also of no legal effect. A perusal of page No. 179 of the typed set of papers, the said Ashok has owned 224 shares and S. Annamalai and Group is having 5952 shares totally. But, they disputing that they are not the members of Tamilnad Mercantile Bank Shareholders Welfare Association.

8. At this juncture, the learned Counsel appearing for the 2nd respondent would cull out the 161(3) Cr.P.C statement of L.W. No. 11, Jeyaram, who has stated that if any new member wants to join in the Association, he must be the shareholder of the Tamilnad Mercantile Bank and he has to submit a prescribed form with his signature and also to pay the subscription of Rs. 100/- and they also ought to have signed in the admission register. But, here, admittedly, no document has been filed.

9. A perusal of the 161 (3) Code of Criminal Procedure statement of Chandrasekar would reveal that he is the shareholder of the Tamilnad Mercantile Bank and

member of the rescue committee of that Bank and he is having 11 shares. In his statement, he further stated that on 24.09.2007, when the general body meeting has been conducted, the balance sheet for the period from 01.04.2006 to 31.03.2007 has been submitted and 172 members have included on new members and one M.P.T. Muthuraj/A3 has signed as Secretary to the Association. He also fairly conceded that he has not attended the meeting held on 31.03.2007, hence it is clearly proved that for filing of the suit only, 172 members have been included as new members.

10. A perusal of the 161(3) Code of Criminal Procedure statement of Paulraj would show that there is no separate building for the Association and he has no knowledge about the Profit and Loss Account, one M.P.T. Muthuraj/A3, who is the Secretary of Association alone has known about the Profit and Loss Account, but the Association was not functioning, but some of the members have been included as members, even the dead persons and the persons, who residing abroad were also included as members of the Association and the said M.P.T. Muthuraj/A3 stated to be the president and L. Ws.2 to 7, 12-18 were the witnesses and Vijayakumar, Kanagasabai, vannairajan and kannan are not the members of the Association, but their names have been found place in annexure in the plainy in O.S. No. 481 of 2008. To prove that the some of the persons are the dead persons, death certificates have been filed, which find place in page Nos. 85 to 85B.

11. It is pertinent to note that they given Form No. 7 before the Registrar of Societies, wherein, names of 172 members have has been mentioned, who were included as members of the Association at the time of the general body meeting held on 29.04.2007, which was found place in page 97 to 102 and Anr. 9 persons were also included on the same day that has been found place in page No. 103. It is pertinent to note the petitioner in CrI.O.P.(MD) No. 1061 of 2010 has given a complaint before the Sub Inspector of Police, South Crime Branch, Tuticorin on 02.07.2008 stating that the Account Book & Minute Book of the Association were lost on 01.07.2008 evening while he was going along the Chidambaranagar Main Road, Thoothukudi - 628008 and an acknowledgment card has been issued by the Sub Inspector of Police, South Crime Branch, Tuticorin, which has been found place in page No. 85 D. In pursuance of that only, non traceable certificate has been issued on 04.07.2008.

12. In such circumstances, the learned Counsel appearing for the 2nd respondent would contend that since they concocted the document and forged the signatures of 172 persons, including them as members and they presented Form No. 7 to the Registrar of Societies, the petitioner has given a complaint disputing the same and obtained non traceable certificate and hence the ingredients of Section 201 is made out. The witnesses, who have been examined during the investigation, had stated that they are not the members and they have not signed any papers, but as early stated above, if any one wants to include as member in this Association, he has to

sign in the prescribed form and also to pay the annual subscription and to sign in the admission register. Hence, only with a view to delay the transfer of 95418 shares of the 2nd respondent bank they filed the suit for declaration and injunction and on the basis, the plaintiff Association consist of 172 members filed a suit including the defacto complainant, dead persons and the persons, who are residing in abroad, were mentioned in the annexure. Since the defacto complainant denied that he is the member of the Association, immediately, he gave a complaint and the M.P.T. Muthuraj/A3 has also given a complaint stating that the Account Book & Minute Book of the Association were lost on 01.07.2008 evening while he was going along the Chidambaranagar Main Road, Thoothukudi - 628008 and he obtained non traceable certificate on 04.07.2008, which shows the prima facie case has been made out.

13. At this juncture, it is appropriate to consider the decisions relied upon by the learned Counsel appearing for the petitioner reported in [Parminder Kaur Vs. State of U.P. and Another](#), , and submit that petitioner has gained nothing and loss nothing to the defacto complaint and hence the ingredients of Section 415 I.P.C. has not been made out. The relevant portion is extracted hereunder:

Para 2(e) of his submissions, Respondent 2 states:

Now the petitioner has been raising the issue as to what benefit she was going to derive from forging the dates from 6-5-2002 to 16-5-2002 and from 7-5-2002 to 17-5-2002 and 27-5-2002. The correct answer to this has to be given by a person who has committed this fraud as is laid down u/s 106 of the Evidence Act. This 10 is a self-confessional case in which the petitioner has mentioned categorically that the forgery in changing the dates has been committed by her advocate. She is habitual in committing fraud, whenever she gets opportunity to do so, just for greed of money and to get more and more material possession. If she was not going to derive any benefit from changing the dates from 10 to 20 days then why she has committed this fraud. She cannot be absolved from committing the forgery which requires her trial in the appropriate court. In fact it is not an ordinary case of condoning the delay of 10 to 20 days but is a part of deep-rooted conspiracy to usurp and grab the land of five families consisting of forty members whose future and livelihood has been put at stake by the petitioner. After the land was sold by her husband and her daughter through their attorney to common relations of both, Respondent 2 and the husband of the petitioner, the land prices had gone up by ten times which led the petitioner to file six cases after a period of 11 years with mala fide intention to grab the land.

(emphasis supplied)

We have deliberately quoted the whole para in order to show that even Respondent 2 has not been able to show as to how the appellant could be benefited in any manner by changing the dates. We, therefore, find that since there was no question

of the appellant gaining anything, she would not have made the aforementioned changes in the document. How the document is changed is not for us to explain. However, whosoever may have changed those documents, the said change did not and could not result in any illegal gains to the appellant or illegal loss to anybody. Such changes were, therefore, innocuous and did not give rise to any offences.

In [G.S. Bansal Vs. The Delhi Administration](#), wherein, the Apex Court has held as follows:

On the said facts we have no doubt that the appellant had made the false documents with an intention to cause wrongful gain to himself, for by adopting the aforesaid device he secured for himself a gain as otherwise he would have had to incur some expense for obtaining a succession certificate. Even on the assumption that he would have received the money after satisfying the Rationing Authority and the Post Master General, he secured an advantage by resorting to the said device, as he was relieved of the trouble of satisfying the Rationing Authority and the Postal Authority that he was the sole heir of his father and avoided the risk of their refusal, which would have entailed further delay. In that event he had secured an uneconomic advantage: in the former case he had made the false documents dishonestly and in the latter case fraudulently. In either case he committed forgery within the meaning of Section 463 of the Indian Penal Code.

In [State of U.P. Vs. Ranjit Singh](#), wherein, the Apex Court has held as follows:

Then again u/s 464 whoever dishonestly or fraudulently makes a document or part of a document can be said to have made a false document. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss and it will include any harm whatever caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Where, therefore, a document is prepared with the intention to deceive and by means of deceit, an advantage is obtained then there is a fraud and judged from this standpoint, the preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the courts and the society at large cannot but be said to have made the document fraudulently, thereby attracting Section 466 of the Indian Penal Code

In Sivananda Mudali, In re. Reported in A.I.R.1926 Mad 1072, wherein, this Court has held as follows:

Where a person forges a document to support a genuine title, can it be said that he derives no advantage or benefit by means of the document? The production of the document may enable the Court to find in his favour though not on the strength of the document alone; yet the document may form one of the series of documents

which support the title of the person who uses it as genuine. It is unnecessary that the forged document should be the basis of the decision of the Court. It is sufficient if the document is for the purpose of supporting a title and the intention to defraud is complete when the document is made with the intention of making it appear that it is a genuine document. If the other conditions necessary to constitute a false document are present, the intention to defraud is a matter of inference. Where the document is false, the inference can be safely drawn that it was intended to defraud the Court or the party against whom it is used

14. Considering the above said citations, merely because the petitioner has not gain anything and loss nothing, since because of his activities, it is not a ground for quashing the proceedings for the offence u/s 465, 468, 471 I.P.C. Because as per the decisions already referred to above, the petitioner in CrI.O.P.(MD) No. 1061 of 2001 viz., Ganesan is one of the Secretaries of the Association, he has filed a suit and because of the said suit, the transfer of the shares has been delayed and in such circumstances, a prima facie case for the offence under Sections 465, 468, 471 I.P.C. has been made out. Hence, the argument of the learned Counsel appearing for the petitioners that because of the activities, the petitioner has not gained nothing and hence the ingredients of Section 415 I.P.C has not been made out against the petitioners does not merit acceptance.

15. It is also appropriate to consider the decision in *Shantilal v. Vilamchand and Ors.* reported in 2002 SCC (Cri) 23, wherein, this Apex Court has held as follows:

Para 3. In view of the decision of this Court in *Rajesh Bajaj v. State NCT of Delhi* we set aside the impugned order with a view to facilitate investigation to be completed. The investigating agency can proceed with the investigation of the case and reach a final conclusion on their own, either way. If the persons shown as accused in the FIR are to be arrested in the meanwhile we direct that those persons shall be released on bail on executing a self bond for such sum as the arresting officer may deem fit.

Para 4. If the investigation reaches the conclusion that a final report u/s 173 of the Code of Criminal Procedure has to be laid against the respondents, we permit the respondents to raise all their contentions for a discharge at the appropriate stage.

In *State of Karnataka v. T.B. Ramakrishna Reddy* reported in (2009) 1 SCC (Cri) 956, wherein, this Court has held as follows:

We make it clear that the appellant would be at liberty to raise any objection at the time of framing of charges by the Sessions Court and he would be at liberty to raise all his contentions before the Sessions Court

16. Considering the above said decisions, I am of the considered view that on the basis of the complaint given by the second respondent, case has been registered, investigation is over and charge sheet has also been filed. It is immaterial whether the petitioner has not gained anything and the defacto complainant has lost

nothing. Since because of the activities, as per the version of the second respondent, even though the office bearers were elected in the election, they were not permitted to take office. On perusal of 161(3) Code of Criminal Procedure statements of the witnesses would clearly proved the prima facie case under the provisions of 120(b), 465, 468, 471 and 420 I.P.C. and hence, I do not find any merits in the arguments advanced by the learned Counsel appearing for the petitioner and the application is liable to be dismissed.

17. Accordingly, these criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed.