



CrI.O.P.No.28939 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2023

Pronounced on : 12.04.2023

CORAM

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

CrI.O.P.No.28939 of 2019

and

CrI.M.P.Nos.15485 and 18714 of 2019

1.R.Kuppusamy

2.K.Ramasamy

3.D.Bhuvaneshwari

4.V.Manjula

...Petitioners/Accused

Vs.

1.Deputy Superintendent of Police,  
District Crime Branch,  
Kancheepuram District.



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2.A.Boopathy

...Respondents

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PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.22 of 2019 pending on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioners : M/s.S.Santhanam  
and Mr.R.Prabhakar

For R1 : Mr.A.Damodaran  
Additional Public Prosecutor

For R2 : Mr.M.Vijayakumar

### ORDER

The petition is to quash the private complaint filed by the second respondent/defacto complainant herein for the offence under Section 420 IPC.

2. The impugned complaint has been taken on file based on the Protest Petition filed by the defacto complainant. Initially, the second respondent had given a complaint against the petitioners to the first respondent herein stating that the second respondent had two brothers namely A.Viswanathan and A.Rajagopal; that their mother Chinnammal had executed a Will bequeathing her property namely 5.26 Acres of land in their favour at Orathur village on 09.03.1995; that



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she died on 03.12.1999; that the defacto complainant and his brothers were in possession and enjoyment of the property since the death of their mother; that the accused conspired to grab the said property and obtained a false death certificate by misrepresenting that the defacto complainant's mother/ Chinnammal died on 03.10.1994; that they obtained a legal heirship certificate for the said Chinnammal; that the petitioners based on the death and Legal Heirship certificates, claimed 1/7<sup>th</sup> share in the property. The said report was registered in Crime No.89 of 2012. After investigation, the FIR was closed as "Mistake of Fact". The second respondent filed a Protest Petition before the learned Judicial Magistrate, Tambaram. The first respondent conducted further investigation and once again closed it as "Mistake of Fact". The learned Judicial Magistrate, Tambaram had taken cognizance for the offence under Section 420 IPC on the basis of the second Protest Petition, which is impugned in the present Quash Petition.

3.Mr.S.Santhanam, the learned counsel for the petitioners submitted that the sum and substance of the allegation in the Protest Petition is that the petitioners created a fake death certificate of the said Chinnammal on 03.10.1994. The first petitioner is the son in law, and the petitioners 2 to 4 are the grand



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children of late Chinnammal. The wife of the first petitioner was one of the Legal heirs of Chinnammal. The learned counsel submitted that this Court in W.P.No.28940 of 2014 found that the death certificate dated 03.10.1994 was genuine; that the second respondent is attempting to convert a dispute with regard to property rights into a criminal case; that the FIR filed belatedly is an afterthought; that the first respondent police after thorough investigation found the said complaint to be false; that there are other proceedings by the Revenue Authorities to confirm that the death certificate of Chinnammal of the year 1994 is genuine; that therefore, the allegation forgery is not made out; that the learned Judicial Magistrate, Tambaram had without application of mind taken cognizance for the offence under Section 420 IPC; that there was no representation made or deception practised by the petitioners against the second respondent; and hence prayed for quashing of the impugned proceedings.

4.Mr.M.Vijayakumar, the learned counsel for the defacto complainant/second respondent submitted that the points raised by the petitioners have to be adjudicated only in the trial. Even though the learned Magistrate had taken cognizance for only the offence under Section 420 IPC, it is open to the



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learned Magistrate to alter the charge at a subsequent stage, if other offences are made out. The petitioners had attempted to grab the property of the second respondent and his brothers by obtaining a false death certificate of their mother and the subsequent documents. Therefore, the learned counsel for the second respondent would submit that it is a case which has to be tried and cannot be quashed at the very inception. The learned counsel also pointed out to the proceedings of the Tahsildar dated 19.03.2013, wherein, he had stated that the death certificate of Chinnammal issued on 15.10.1994 mentioning her date of death as 03.10.1994 was not a genuine document. Hence, the learned counsel prayed for dismissal of the quash petition.

5. Mr.A.Damodaranm, the learned Additional Public Prosecutor appearing for the first respondent submitted that the first respondent had conducted a thorough investigation and filed a final report finding that the FIR was false giving elaborate reasons for the same.

6. On perusal of the records, it is seen that the petitioners are the Legal heirs of one of the daughters of Chinnammal. The said Chinnammal had seven children (four daughters and three sons). The second respondent is one of the



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sons of late Chinnammal. The main allegation in the FIR and in the Protest

Petition is that the petitioners had obtained a false death certificate claiming that Chinnammal died on 03.10.1994. The FIR was first investigated by the Land Grab Cell, Kancheepuram. They on investigation found that Chinnammal died only on 03.10.1994 and the second respondent along with his brothers had created forged documents to show that they were the only Legal heirs to deprive the female heirs of their right in the property left by Chinnammal. The finding is extracted below:

“எனவே இவ்வழக்கில் ஆவணங்களை பார்வையிட்டதில் இருந்தும், சாட்சிகளின் வாக்குமூலங்களில் இருந்தும், பார்க்கும் போது வாதியின் தாயார் சின்னம்மாள் 03.10.1994ம் தேதி இறந்துள்ளார் என்று தெளிவாக தெரிகிறது. மேற்படி 09.03.1995ம் தேதி திருமதி, சின்னம்மாள் என்பவர் உயில் ஆவணம் எழுதியிருக்க முடியாது. மேலும் விசாரணையில், மேற்படி சின்னம்மாள் இறந்து விட்ட பிறகு அவரின் ஆண் வாரிசுகளான பூபதி, விஸ்வநாதன், ராஜகோபால் ஆகியோர் மட்டும் சின்னம்மாளின் சொத்துக்களை அபகரிக்க



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வேண்டும் என்ற நோக்கத்தில் அந்த உயில் ஆவணம்  
போலியாக தயார் செய்யப்பட்டு உள்ளது என்று  
தெளிவாகத் தெரிகிறது. இவ்வழக்கின் வாதி திரு.பூபதி  
என்பவரும், ஆவரது சகோதரர்களும் சேர்ந்து அவரின்  
தாயார் பெயரில் இருந்த சொத்தை அவர்களின்  
சகோதரிகளுக்கு பாகம் கொடுக்கக் கூடாது என்ற  
உள்நோக்கத்தில் போலியான இறப்பு சான்று மற்றும் வாரிசு  
சான்று தயார் செய்தும், அந்த ஆவணத்தை பயன்படுத்தி  
தனது தாயார் பெயரில் இருந்த சொத்தை மேற்படி  
வாதியும் அவரது சகோதரர்களும் உயில் சாசனம் மூலம்  
பிரித்து பத்திரப் பதிவு செய்துக் கொண்டுள்ளார்கள்.”

The investigation also found that another death certificate was obtained for the said Chinnammal on 03.12.1999 by the defacto complainant's brother A.Vishwanathan and that certificate is false.

7.Further, the Revenue Divisional Officer had in his proceedings dated 19.06.2013 had stated that on enquiry, it was found that late Chinnammal had seven children; that she died on 03.10.1994; that the Legal Heirship certificate



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issued by Tahsildar dated on 07.12.1995 showing all the seven children as Legal Heirs was valid; that the Legal Heirship certificate of the year 2004 showing the second respondent and his brothers as the only Legal heirs was liable for cancellation. It is seen that the proceedings are subsequent to the order of Tahsildar relied upon by the second respondent. The Revenue Divisional Officer found that the date of death of Chinnamal is 03.10.1994. The second respondent had challenged the said order before this Court, by way of W.P.No.28940 of 2014. This Court by the order dated 22.06.2022 dismissed the said Writ Petition. It appears that the second respondent and his brothers had obtained Legal Heirship certificate showing them as the only Legal heirs suppressing the fact that there were female heirs to late Chinnammal. It is also seen that one of the daughters had also filed Suit for Partition in O.S.No.24 of 2013 and the Preliminary Decree was passed holding that there were seven children to late Chinnammal and the children were each entitled to 1/7<sup>th</sup> share.

8.It is further seen that subsequent to the Closure Report filed by the investigating officer on 27.12.2013, the respondent had filed the petition in C.M.P.No.852 of 2014 praying for a direction to the first respondent to conduct



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further investigation. The first respondent conducted further investigation thereafter and found that the case of the second respondent had to be dropped as “mistake of fact”. The first respondent found that the second respondent and his brothers had intention to deprive the other Legal heirs of property and obtained a false Legal Heirship certificate making it appear that the sons of Chinammal were the only Legal Heirs. The final report further found that the death certificate dated 03.10.1994 was genuine. Hence, the first respondent closed the complaint once again on 15.06.2016. It is in these circumstances that the petitioners had filed the Protest Petition.

9.The learned Magistrate has taken cognizance for the offence under Section 420 IPC. The order taking cognizance, does not disclose as to how the learned Magistrate had come to a conclusion that the offence under Section 420 IPC is made out. The allegations in the Protest Petition, even if accepted to be true do not constitute the offence of cheating. On the other hand, it is seen from all the records, the second respondent and his brothers had obtained false Legal Heirship certificate which is confirmed by the proceedings of the Revenue Divisional Officer and from the two investigation reports. The impugned



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proceedings stems out of a property dispute, where the second respondent and his

two brothers are claiming to be the Legal heirs excluding the female heirs.

The Civil Court has rendered a finding that all the seven children are entitled to 1/7<sup>th</sup> share in the property. The Protest Petition on the basis of which the learned Magistrate has taken cognizance, is a third attempt to make false accusation against the petitioners and to criminalise their acts. In the facts and circumstances of the case, the impugned complaint is clearly an abuse of process of law besides the fact that the allegation under Section 420 of IPC is not made out. Hence, the impugned complaint is liable to be quashed.

10. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

12.04.2023

*dk*

NCC: Yes/No

Index : Yes/No

Speaking /Non Speaking Order

10/12



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To

1.The Judicial Magistrate  
Tambaram.

2.The Deputy Superintendent of Police  
District Crime Branch  
Kancheepuram.

3.The Public Prosecutor  
High Court of Madras  
Chennai – 600 104.



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**SUNDER MOHAN. J,**  
dk

Pre Delivery Order in  
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