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Crl.O.P.No.30018 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2023

PRONOUNCED ON : 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.30018 of 2022

and

Crl.M.P.No.18395 of 2022

R.Rosline

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Petitioner

Vs.

1.The Superintendent of Police,
Thiruvarur District, Thiruvarur.

2.The Deputy Superintendent of Police,
District Crime Branch,
Thiruvarur.

3.The Inspector of Police,
District Crime Branch,
Thiruvarur.

4.The Superintendent of Police,
CBCID, Head Quarters,
Chennai.

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to transfer the investigation of the case in Crime No.3 of 2018 pending on the file of the 3rd respondent to 4th respondent/The Superintendent of Police, CBCID, Head Quarters, Chennai.



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For Petitioner : Mr.C.D.Johnson

For Respondents : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

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ORDER

This Criminal Original Petition has been filed to transfer the investigation of the case in Crime No.3 of 2018, pending on the file of the 3rd respondent to 4th respondent.

2.It is the submission of the learned counsel for the petitioner that the petitioner's father-in-law late P.A.Erudhayasamy had two sons, namely, E.Selvam and E.Raja and four daughters. He owned various properties in and around Mannargudi Town. He executed a registered Will in favour of his two sons on 20.07.1987. The property should be enjoyed equally by both sons without any right of alienation. After his death on 20.07.1987, Selvam and Raja, partitioned the property through a partition deed, vide document No.1372 of 1989. The Will was probated in O.P.No.144 of 1993, on the file of the Sub Court, Nagapattinam. In order to grab the property of Raja, Selvam entered into another registered partition deed in document No.1187 of 1997. Petitioner got married to Raja in 2000 and blessed with a daughter namely, Mency Ambrose. Because of the continuous threat, torture and



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betrayal by Selvam, Raja committed suicide on 24.06.2010. Thereafter, Selvam and his sons, James and John, executed a General Power of Attorney deed in favour of one M. Amutha, in document No. 192 of 2011 at the Sub Registrar Office, Mannargudi, as if they are entitled for the property, suppressing the fact that the petitioner, her daughter and mother-in-law are entitled for the property. The accused had forged a death certificate to show that the petitioner's mother-in-law E.Gnanambal was dead on 25.02.2011. A women impersonated the petitioner along with the forged Family Ration Card, legal heir certificate and other Government documents. Further, they executed a sale deed in favour of Rajendran, represented by his power agent R.Chitra Rajendran in document No. 2458 of 2012, dated 21.06.2012. The property worth Rs.20,00,00,000/- shown to have been sold for Rs.1,51,00,000/-. Despite the complaint given by the petitioner's mother-in-law and registration of FIR in Crime No.03 of 2018, for the offences under Sections 419, 420, 468, 471, 506(1) and 120(B) IPC by the District Crime Branch, Tiruvarur, no effective investigation has been conducted so far. Under the influence of the then local Minister, third respondent let out the accused 8 and 9. Police have not taken any steps for arresting the accused. Therefore, Accused 4, 8 and 9 got anticipatory bail. Despite providing all



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necessary information with regard to the woman, who impersonated the petitioner, police had not taken any steps for arresting the impersonator and name her in the case. A4 and A5 participated in the political, public meetings at Mannargudi and Thiruvarur town. They hold political power and influential persons. Unless the investigation is transferred to CBCID, no proper investigation would be conducted by the third respondent. Therefore this petition.

3.The learned Government Advocate (Crl.Side) submitted that during the course of the investigation, A1 to A3 were arrested and remanded to judicial custody. A4 and A5 obtained anticipatory bail in this Court. A6 and A7 filed anticipatory bail in this Court and this Court directed the respondent police to issue notice to them under Section 41A(4) Cr.P.C. to appear for enquiry. Accordingly, they appeared for enquiry. A8 and A9 obtained anticipatory bail and A10 obtained bail. A11 impersonator is not identified. He further submitted that the Police is taking steps for identifying the accused. The investigating officer is taking steps for apprehending the absconding accused. Investigation will be completed soon and final report will be filed.

4.Considered the rival submissions and perused the records.



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5. During the course of hearing in this case, it is the submission of the learned counsel for the petitioner that when the petitioner's mother-in-law is alive, a forged death certificate was created to show that petitioner's mother-in-law E.Gnanambal is dead. Someone has impersonated the petitioner and appeared before the Sub Registrar Office for registration of the sale deed. Despite the petitioner providing all the necessary information with regard to impersonator, third respondent has not chosen to arrest the impersonator. Some accused are not deliberately arrested.

6. This Court, on going through FIR allegations, found that the petitioner claims that she along with her daughter and mother-in-law is entitled for the share of her deceased husband Raja in the land measuring 20,500 sq.ft. in town S.Nos.3589/2A, 3590/2A, 3590/1B, 3589/3A, 3592/2, situated near Mannargudi Bus stand. However, her husband's brother Selvam along with his sons, James and John, had executed a power of attorney in favour of the fourth accused Amutha by creating a forged death certificate of the defacto complainant and impersonated the petitioner. A sale deed was executed in favour of A6 and A5. It is claimed in the sale deed that a sum of



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Rs.51,00,000/- was received by the petitioner for education and other expenses of her minor daughter Mency Ambrose, but no such money was paid to the petitioner.

7.In support of his submission, the copy of the sale deed dated 20.07.1987 executed by her father-in-law late P.A.Erudhayasamy, partition deed between Selvam and Raja executed on 01.07.1989 and another partition deed dated 28.05.1997 are produced. Copy of the power of attorney deed executed by Selvam and his sons in favour of Amutha on 02.05.2011 and sale deed executed by Amutha in favour of Chitra on 21.06.2012 are also produced. There is no dispute with regard to the execution of the Will and the aforesaid partition deeds. When it comes to the execution of power of attorney deed by Selvam and his sons in favour of Amutha on 02.05.2011, the recitals of the power of attorney deed shows that since Raja had no male heirs, his brother sons, namely, James and John are enjoying the the property as his heirs. This is obviously not correct for the reason that Raja has surviving mother, wife and daughter. In the sale deed dated 21.06.2012, it is claimed that a sum of Rs.51,00,000/- was paid for the education and other expenses of minor Mency Ambrose. It is seriously disputed by the petitioner



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about this payment. She stated that she never received this payment. The defacto complainant E.Gnanambal is alive and kicking. However, it appears that the accused had fabricated the death certificate. Copy of the fabricated death certificate is produced for the perusal of this Court.

8.It appears that accused Chitra mortgaged this property with HDB Financial Services Limited and obtained loan. The defacto complainant had earlier filed Crl.O.P.No.17104 of 2018 for transfer of investigation. This Court, on 26.04.2019, disposed of the petition stating that transfer of investigation cannot be considered at that stage. However, a direction was given to the sixth respondent therein, namely, the Inspector of Police, District Crime Branch, Thiruvarur, to secure the absconding accused namely, A4, A6 & A7 and complete the investigation and file a final report within a period of three months from the date of receipt of a copy of that order. The order was passed on 26.04.2019. It appears that investigation is not completed till date. Fifth respondent therein, namely, the Deputy Superintendent of Police, District Crime Branch, Thiruvarur District, was directed to monitor the investigation and was also directed to ensure that the sixth respondent therein secures the absconding accused. It is brought to the notice of this Court that



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the directions of this Court are not properly complied. In fact, petitioner have given the details of the absconding impersonator, but the third respondent herein is not keen on conducting investigation, arresting the accused, including the impersonator and filing of final report.

9.As per the directions of this Court, the Superintendent of Police, Thiruvarur, has also filed an affidavit dated 17.04.2023. His affidavit is similar to the status report filed by the Inspector of Police, dated 05.01.2023. Rather, it is just a reproduction of the status report dated 05.01.2023 from paragraph Nos.2 to 13. There are some cosmetic changes made with reference to the further investigation. The affidavit of the Superintendent of Police has not reflected the application of his mind to the facts and circumstances of the case, investigation conducted so far and the nature of relief asked by the petitioner. Thus, it is clear that the investigation in this case is not properly conducted by the third respondent for apprehending the accused involved in this case and complete the investigation to file a final report.

10.Thus, this Court is of the view that this is a fit case for transfer of



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investigation to some other agency, especially to CBCID. Accordingly, this

Court directs that this case has to be transferred to CBCID. Fourth respondent is directed to appoint an officer not less than the rank of Deputy Superintendent of Police, CBCID of the jurisdictional district with a direction to conduct further investigation in this case and take all appropriate and legal measures to identify the accused, arrest the accused, especially the impersonator, complete the investigation and file a final report in the manner known to law within a period of three months from the date of receipt of a copy of this order.

11.In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order

27.04.2023

To:

9/11



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Thiruvarur District, Thiruvarur.
- 2.The Deputy Superintendent of Police,
District Crime Branch, Thiruvarur.
- 3.The Inspector of Police,
District Crime Branch, Thiruvarur.
- 4.The Superintendent of Police,
CBCID, Head Quarters,
Chennai.
- 5.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
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