



Crl.O.P.No.2017 of 2023 & Crl.M.P.No.1139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 01.07.2024

Pronounced on: 08 .07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.2017 of 2023
& Crl.M.P.No.1139 of 2023

1. Mr.D.Paul David.
2. Mrs.D.Gunaseeli.
3. Mrs.Sofia.
4. Mr.Joshnua.

... Petitioners/Accused

/versus/

Mr.D.Jayakaran.

.... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.12970 of 2022 on the file of the XIII Metropolitan Magistrate Court, Egmore and quash the same.

For Petitioners : Ms.S.Sridevi

For Respondent : Mr.C.D.Johnson

ORDER

The petitioners herein are the accused in C.C.No.12970/2022 on the file of XIII Metropolitan Magistrate Court, Egmore, Chennai.



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2. The private complaint under Section 190 r/w 200 of Cr.P.C for offences under Section 120-B, 379, 406, 468, 471 and 506(ii) I.P.C taken on file by the Learned Magistrate on the complaint filed by Mr.Jayakaran/the complainant herein.

3. The complainant is none other than the brother of petitioners 1 to 3. The 4th petitioner is the son of 2nd petitioner.

4. The complaint in nutshell:

Dhanraj @ Sivabalan and Mrs.Lydia Gnanambal are the parents of the complainant and petitioners 1 to 3. They were living with their younger son D.Jayakaran at Door No: 73, 12th Street, North Jeganatha Nagar, Villivakkam, Chennai. The said property is the self acquired property of Dhanraj @ Sivabalan. While so, Mrs.Lydia Gnanambal, a retired Head Mistress died on 30/12/2016. Dhanraj @ Sivabalan died on 28/02/2021. The complainant continue to live in the ground floor of the house along with his family.

5. The case of the complainant is that, his mother at the time of her death, left behind 70 sovereigns of gold jewels and substantial bank balance.



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His father Dhanraj @ Sivabalan, who was suffering from memory loss, had taken note of the details of the jewels left by his wife. His elder brother (A-1) and sisters (A-2 and A-3), who used to visit his father frequently during his life time had stealthily removed the jewels. The first accused got himself nominated as sole nominee of his father to operate the account in Indian Overseas Bank and withdrew the money without leaving any balance. These facts came to the knowledge of the complainant when he and his family members cleaned the room of his father, after his demise. His father was having cash of Rs.30,000/- in his brief case at the time of his death. The said brief case with money been stolen by his elder brother A-1. A sum of Rs.50,000/- being the retirement benefit of the mother, swindled away by the first respondent/accused. A-1 with the aid of A-2 and A-3, further making attempt to alienate the residence of the father without giving his share in the jewels, Bank balance and other valuables. The accused persons, conspired together and took away all the jewels, valuable securities, original documents of the properties, the bank pass book and debit cards. By forging the signature of Dhanraj (father) documents created to withdraw money from the department as well as Bank. Complaints given to the police not been acted upon. They were closed as the dispute is civil in nature. Hence, the private complaint.



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6. The petitioners claims that the averments in the complaint are

figment of imagination and conceived by the complainant, who is working as an Advocate Clerk in the High Court. The complainant is occupying the house in which the petitioners 1 to 3 along with respondent/complainant have equal share. The 1st petitioner when attempted to demolish the house which is more than 40 years old and in dilapidated condition, the complainant to deprive the petitioners from getting the lawful share, has come out with the impugned complaint which is on the face of it show that it is clear abuse of process of law. The police on enquiry has found that the contentions of the complainant are false and therefore, closed the complaint as mistake of fact. It is the complainant, who was living with the parents and he alone had access to the jewels and cash kept by the father as well as the mother. In fact, about 70 sovereign of jewels held by the mother was distributed among the daughters equally, soon after the death of his mother and the remaining jewels were in possession of father. On his demise, the complainant, who had close proximity with jewels bound to explain. It is highly unbelievable to say that the petitioners and others frequently visited the house of Dhanraj @ Sivabalan and taken away the jewels and cash and that came to the knowledge of the complainant and his family members only with they cleaned the room after the death of Dhanraj @



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7. Further, the Learned Counsel for the petitioners submits that regarding the properties left by Dhanraj @ Sivabalan, the petitioners 1 to 3 contemplates to file partition suit. Sensing that such suit will disturb his exclusive enjoyment of the house, the present private complaint is filed after all his attempt to foist case through police failed.

8. The Learned Counsel appearing for the petitioners referring the sworn statement of the complainant and the statement of the witnesses recorded at the enquiry stage submitted that the contradictions between the evidence of witnesses would clearly show that the complaint is false and deserves to be quashed.

9. Per contra, the Learned Counsel for the respondent/complainant states that the Magistrate while taking the private complaint on file, has recorded the statement of witnesses as part of the enquiry. The accused cannot delay the process for untenable grounds. The content of the complaint cannot be tested whether it is sufficient to convict. Prima facie evidence to try the



complaint is sufficient.

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10. Heard the Learned Counsels and records perused.

11. The complainant is residing at No.73, 12th Street, North Jeganatha Nagar, Villivakkam, Chennai. Dhanraj @ Sivabalan and his wife Mrs.Lydia Gnanambal till their life time were also living in the same house. The complainant claims that he was taking care of his parents. Whereas, the petitioners 1 to 3, the son and daughters of Dhanraj @ Sivbalan and Mrs.Lydia Gnanambal. All married and living separately elsewhere with their family. While so, the allegation that 1st petitioner and others had taken away the jewels during the visit to see their mother and father, appears to be highly imaginary. The complaint and the sworn statement also is not certain about the weight and nature of the jewels. Besides there is contradictions between the witnesses in this regard.

12. As far as the allegation of forgery and receipt of the settlement amount of the mother, the document relied by the complainant would indicate that Dhanraj @ Sivabalan has authorised the 1st petitioner to receive the



settlement money of Rs.50,000/-. This has occurred during the year 2017.

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13. The affidavit of Dhanraj @ Sivabalan been produced to show that all the legal heirs including Dhanraj @ Sivabalan and the complainant had authorised 1st petitioner/D.Paul David to receive the amount. In this document not only Dhanraj @ Sivabalan but also D.Jayakaran/the complainant has signed. In the complaint, D.Jayakaran alleges that this document the signature Dhanraj is forged. However, he has not denied his signature found in the said affidavit.

14. Contrarily, it is contended by the petitioners that Mrs.Lydia Gnanmbal in his service record had nominated the 1st petitioner as nominee and therefore, he has received Rs.50,000/-, the settlement amount which is not only in capacity of representatives of all the legal heirs but also as nominee of Mrs.Lydia Gnanmbal.

15. From the records, this Court finds that the dispute between the legal heirs of Dhanraj @ Sivabalan in sharing the properties left by Dhanraj been given a criminal colour by way of private complaint. The police who had



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probed the matter in detailed had found that there is no truth in the complaint of D.Jayakaran to take cognizance for investigation. While entertaining the complaint under Section 200 of Cr.P.C., the Judicial Magistrate has proceeded with examination of witnesses in the process of inquiry. No doubt, the Judicial Magistrate, on completion of inquiry, may dismiss the complaint as bereft of evidence or for some other reason, but even before initiating inquiry, the Judicial Magistrate should have gone into the averments more specifically for ascertaining whether there is any reason to cause summons to the accused. In this case, the factual aspects leads to the conclusion that causing summons to the accused and conducting enquiry is not only futile exercise but will tantamount to provide criminal colour for civil dispute between the siblings.

16. Therefore, this Court holds that the complaint in C.C.No.12970 of 2022 on the file of the XIII Metropolitan Magistrate Court, Egmore, Chennai is liable to be quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No.
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To:-

1. The XIII Metropolitan Magistrate Court, Egmore, Chennai.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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