

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2015

Delivered on : 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.13607 of 2015
and MP.Nos.1 & 2 of 2015

1.M.Kathirvel
2.K.Tamilmani
3.K.Parthasarathy
4.K.Padmanabhan ... Petitioners (Accused 1 to 4)

Versus

1.State rep. By
The Inspector of Police,
District Crime Branch Police Station,
Kancheepuram.
(Crime No.19 of 2010)

2.Ninthimathi .. Respondents (Complainant)

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.38 of 2015 on the file of the Judicial Magistrate-II, Chengalpattu and to quash the same.

For Petitioners: Mr.R.Vijayakumar, Senior Counsel
for M/s.R.Sasikumar

For Respondents:Mr.C.Emalias, Addl. Public Prosecutor [for R1]
Mr.M.Babu Muthumeeran [for R2]

O R D E R

This petition has been filed to quash the proceedings in C.C.No.38 of 2015 on the file of the learned Judicial Magistrate-II, Chengalpattu.

2. Heard the learned counsel for the petitioners; learned Additional Public Prosecutor appearing for the 1st respondent; learned counsel appearing for the 2nd respondent and perused the materials placed on record.

3. On a complaint lodged by Ninthimathi, the respondent police registered a case in Crime No.19 of 2010 against Kathirvel and 3 others for offences under Section 120[b], 465, 468, 471, 420, IPC and after conducting investigation, closed the same as

mistake of fact by filing a Final Report before the learned Judicial Magistrate II, Chengalpattu.

4. Tamilmani[A2], S/o.Kathirvel lodged a complaint against Ninthimathi, based on which, a case in Crime No.87 of 2011 under Section 419, 465, 468, 471, 420 IPC was registered by the Police and after conducting investigation, a Closure Report was filed before the Judicial Magistrate II, Chengalpattu.

5. Ninthimathi assailed the Closure Report filed by the police, in respect of the complaint given by her in Crime No.19 of 2010 and filed a protest application and the learned Judicial Magistrate II, Chengalpattu ordered further investigation. Police conducted further investigation and filed a Final Report against the petitioners herein, which has been taken on file as C.C.No.38 of 2015 by the learned Judicial Magistrate II, Chengalpattu, which is under challenge before this Court in this proceedings.

6. The crux of the complaint of Ninthimathi has been sustenantly stated in her counter as follows:

"2. The 2nd respondent/defacto complainant humbly submits that the land in Survey No.74/01-0.90.0 Hectares i.e.2.22 acres at Vedhanarayanapuram Village, Chengalpet Taluk, Kanchipuram district is originally belonged to one R.Sivaprakasam S/o.Radhakrishnan @ Raji Mudaliar of Mylapore, Chennai and patta for the said lands stands in the name of R.Sivaprakasam in patta No.87 and during the course of enjoyment, disposed the said lands to one Balasubramaniam of Chengelpet by a registered sale deed dated 06.04.1988 and he obtained the change of Patta in Patta No.70 in his name for the said lands and in order to convert the said lands into house site, has obtained the necessary orders from the Commissioner of Kattankulathoor Panchayat Union dated 14.02.1989 along with the permission of Alapakkam Panchayat and at this stage disposed the said lands to the defacto complainant by a registered sale deed registered as document No.845 of 2000 before SRO Chengalpattu dated 13.09.2000 and had obtained the change of patta in petitioner's [Ninthimathi] name in patta No.70 for the said lands and enjoyed the said lands as a rightful owner of the same.

3. The 2nd respondent/defacto complainant humbly submit that one Kathirvel S/o.Muthan and his sons K.Tamilmani, K.Parthasarathy and K.Padmanabhan entered into criminal conspiracy with an intention to commit the offence of fraud, cheating and grab the said land belongs to the petitioner to an extent of 2.22 acres. The said Kathirvel impersonated as Kathirvelu @ Sivaprakasam, S/o.Muthan @ Raji executed a settlement deed in favour of his sons who arrayed at A2 to A4 as if the land belong to Kathirvel. With the help of the forged documents they grabbed the entire land.

Aggrieved over this the petitioner/defacto complainant Ninthimathi lodged a complaint before the respondent police, Inspector of Police, District Crime Branch, Kancheepuram. Based upon the said complaint a case in crime No.19/2010 was registered under Section 120[b], 465, 468, 471 and 420 IPC against the said Kathirvel and three others."

7. Mr.Vijayakumar, learned counsel submitted that, a suit in OS.No.174 of 2007 filed by Ninthimathi is pending with regard to the disputed property and therefore, the present prosecution is an abuse of process of law. He also submitted that from the voters list, there is no one by name Sivaprakasam in door No.21 of Mundakanniamman Kovil Street and further the disputed property is Poramboke land, over which, Ninthimathi cannot have any title.

8. This Court is unable to countenance the aforesaid arguments because, the issues in the suit are materially different from the allegations in the Final Report. The allegation in the Final Report is that Kathirvel has impersonated Sivaprakasam who is the original owner of the property and has executed a Settlement Deed in favour of his sons A2 to A4, as if the land belongs to him. Police investigation reveals that Kathirvel is a dalit and the original owner Sivaprakasam is a non-dalit. The father of the original owner Sivaprakasam is one Radhakrishnan @ Raji and Kathirvelu [A1], styling himself as Kathirvel @ Sivaprakasam, S/o.Muthan @ Raju has executed the impugned Settlement Deed in favour of his son. Kathirvel's father's name is Muthan to which he has added a suffix, @ Raji to make the world believe that he is Sivaprakasam. Thus there are sufficient materials on record for the trial to proceed.

9. In the result, this petition is devoid of merits and accordingly, the same stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate No.II
Chengalpattu

2.The Inspector of Police,
District Crime Branch Police Station,
Kancheepuram.

3.The Public Prosecutor,
High Court, Madras.

2 ccs to Mr.R.Sasikumar, Advocate, Sr. 33429
1 cc to Mr.M.Babu Muthumeeran, Advocate, Sr. 33082

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