

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2015

Delivered on : 08.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.12568 of 2014
and M.P.No.1 of 2015

1.Shamugavadivu
2.V.S.Sarves Kailasam
3.Palanisamy
4.E.C.Duraisamy
5.Joseph
6.V.Narayanan ... Petitioners(A1 to A6)

Versus

1.State by Inspector of Police,
District Crime Branch,
Erode.

2.V.S.Prabhu ... Respondents(Complainant &
Defacto Complainant

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to the complaint in Crime No.45 of 2013 on the file of 1st respondent and quash the said F.I.R. as against the petitioners/accused.

For Petitioners : Mr.Munirathnam Naidu
For Respondents : Mr.C.Emalias, Addl. Public Prosecutor
[for R1]
Mr.M.Guruprasad [for R2]

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O R D E R

This petition has been filed to quash the FIR in Crime No.45 of 2013 on the file of the 1st respondent.

2. Heard the learned counsel for the petitioners; the learned Additional Public Prosecutor appearing for the respondents and perused the materials placed on record.

3. The facts of the case stands disclosed in the counter filed by the respondent police are as follows:

"2. I submit that the brief facts of the case are as follows:

One V.S.Prabhu [complainant], S/o.Late Sakthivel, No.55A, Madhavi Street, Teachers Colony, Erode filed a private complaint under section 156[3] Cr.P.C before the Chief Judicial Magistrate, Erode in CMP.No.1603 of 2013, wherein it is stated that the Shanmugavadivu [A1 and the 1st petitioner] and her son Sarves Kailasam [A2 and the 2nd petitioner] prepared a false unregistered Will dt.16.09.2011, as if the grandmother of the complainant late Maruthapushpam executed her share of property in favour of A1 and A2 upon the self acquired property of her pre-deceased son Senthil Subramanian [who is none other than the father of the complainant]. The complainant further stated that one Palanisamy [A3 and the 3rd petitioner] and Duraisamy [A4 and the 4th petitioner] have signed as witnesses in the said Will and one Joseph [A5 and the 5th petitioner] and based on the false Will, one V.Narayanan [A6 and the 6th petitioner] have purchased the property vide Sale Deeds dt.01.01.2013 and 21.01.2013. Hence, the complainant requested to take necessary action.

3. I submit that based on the direction of the Chief Judicial Magistrate in CMP.No.1603 of 2013, a case in Erode DCB Cr.No.45 of 2013 under Sections 120B, 420, 464, 465, 468 IPC was registered by Tr.N.Manivarman, the then Inspector of Police on 20.11.2013 at 12.00hrs and he took up the investigation of the case.

4. I submit that during the course of the investigation, Tr.N.Manivarman, the then Inspector of Police, enquired the following witnesses and recorded their 161[3] statements:-

1. V.S.Prabhu, the complainant.
2. V.K.Swaminathan, Uncle of the complainant.
3. V.K.Sheeladevi, Aunt of the complainant.
4. G.Gowrishankar, an Advocate who prepared the said Will.

5. I submit that apprehending arrest, A1 to A6 obtained Anticipatory Bail from this Hon'ble Court individually.

6. I submit that the Will dt.16.09.2011 is an important document for the prosecution case. In order to verify the genuineness of the said Will, it has to be sent to Forensic Sciences Department, Chennai for comparison by Handwriting Expert. Hence, the then Inspector of Police Tr.Manivarman summoned the accused under Section 160 & 91 Cr.P.C., to produce the said Will, but A1 informed that she Will produce the same before the competent court. Therefore, Tr.Manivarman, the then Inspector of Police filed a petition before the learned Chief Judicial Magistrate, Erode to cause production of the said Will by A1. The learned Chief Judicial

Magistrate, Erode vide his order dt.03.03.2014, issued a direction to A1 to produce the said Will dt.16.09.2011 before the court on or before 10.03.2014.

7. I submit that A1 with an intention to avoid and lodge the above direction of the lower court and also to escape from the clutches of law filed a petition before this Hon'ble Court in MP.No.1 of 2014 in Crl.OP.No.12568 of 2014 seeking to stay all further proceedings in Cr.No.45 of 2014. When the matter came up for hearing on 15.05.2014, this Hon'ble Court passed an order of "Interim Stay".

4. The crux of the allegation in the FIR is that Senthil Subramanian purchased huge properties, but unfortunately died on 14.05.2010, leaving behind Maruthapushpam [mother], Shanmugavadivu [widow/A1] and Sarves Kailasam [son/A2]. Thus the property of Senthil Subramanian devolved upon these three persons. Maruthapushpam the mother of Senthil Subramanian died on 27.10.2011. In order to usurp her little share in Senthil Subramanian's property, it is alleged that Shanmugavadivu [A1] and the other petitioners herein had created a bogus Will dated 16.09.2011, as if Maruthapushpam had executed it and by which, her share stood bequeath to her grand son Sarves Kailsam [A2].

5. The defacto complainant is one V.S.Prabhu whose father Sakthivel is a blood brother of Mr.Senthil Subramanian. In other words, both Sakthivel and Senthil Subramanian are the children of Maruthapushpam. Sakthivel is no more and therefore, according to his son the defacto complainant, he has a share in the property of his grandmother Maruthapushpam.

6. Be that as it may, the allegation is that the Will is a forged document and that requires a thorough investigation. When there are materials disclosing the commission of a cognizable offence prima facie, the FIR cannot be quashed as laid down by the Supreme Court in State of Haryana Vs Bhajan Lal reported in 1992 Supp [1] SCC 335.

7. In the result, this petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

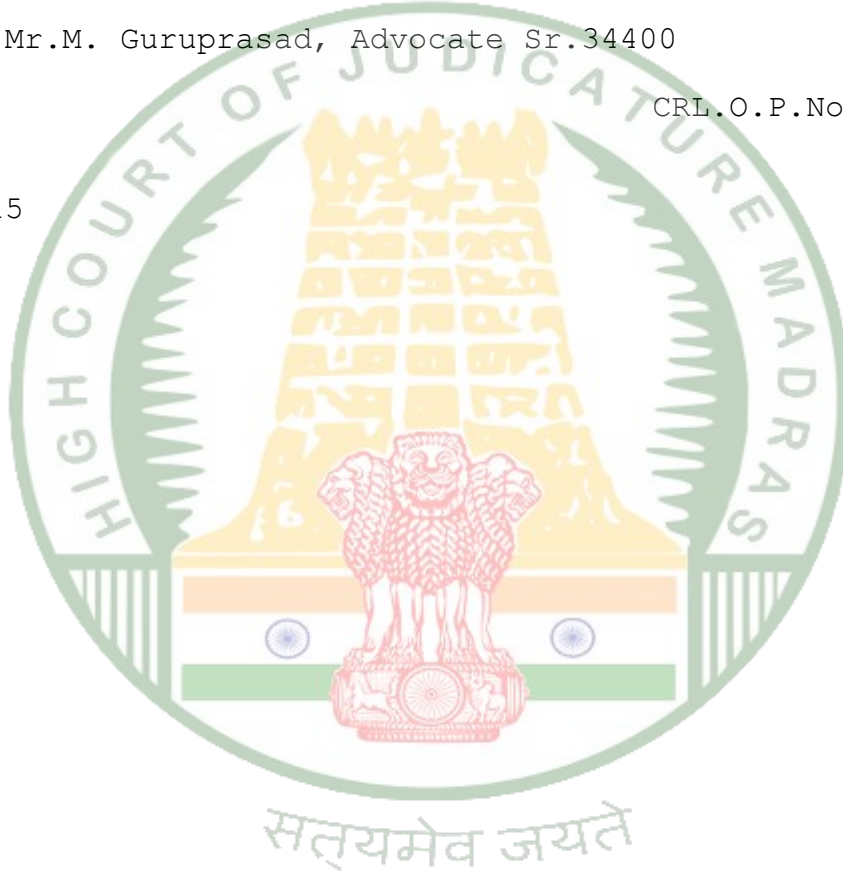
1. The Inspector of Police,
District Crime Branch,
Erode.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.M. Guruprasad, Advocate Sr.34400

CRL.O.P.No.12568 of 2014

BR(CO)
Eu 28.07.15



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