

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2015

Coram

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

Crl.O.P.Nos.16818, 16819 and 17610 of 2014
MP.Nos. 1 + 1 + 1 of 2014

1.C.Selvaraju
2.C.Kalichelvan
3.K.Malarkodi Petitioners/Accused 7to9 in Crl.OP.16818 of 2014

1.M.Amirthasekar
2.O.Pukhraj
3.A.Karanram Petitioners/Accused 10to12 in Crl.OP.16819 of 2014

1.M.Durai
2.M.Sathyan
3.D.Karthikeyan
4.D.Rajkumar Petitioners/Accused 1,4,5&6 in Crl.OP.17610of2014

Vs.

State rep by Special Sub-Inspector of police,
District Crime Branch,
Kancheepuram. Respondent/Complainant
(Cr.No.25/14)

2.A.Manivannan Respondents/Defacto Complainant in all the
Crl.O.Ps

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C.
to call for the records in respect of Cr.No.25 of 2014 on the file of
the first respondent and to quash the same.

For Petitioners : Mr.Muthukumarasamy, SC
for C.Vediappan
in Crl.OP.No.16818/2014
Mr.R.C.Paul Kanagaraj
for R.Gunasekaran &
for C.S.Dhanasekaran
in Crl.OP.Nos.16819 & 17610 of 2014

For Respondents : Mr.C.Emalias, APP for R1
in all the Crl.OPs.
Mr.K.S.Arumugam
in Crl.OP.No.16818/2014
Mr.Palani Selvaraj for R2
in Crl.OP.Nos.16819 & 17610 of 2014

COMMON ORDER

All the three criminal original petitions are arising out of Cr.No.25 of 2014 pending on the file of the first respondent/Special Sub Inspector of Police, District Crime Branch, Kancheepuram.

2.All the three criminal original petitions are filed by three set of accused viz., A7 to A9, A10 to A12 and A1, A4, A5 and A6 respectively.

3.The FIR in Cr.No.25 of 2014 is registered on 20.05.2014, based on the complaint given by the second respondent/defacto complainant in his capacity as Power Agent of Rani and Sankari and legal heirs of one Yasodha who are none-else than the sisters of A1 to A4 and paternal aunt of A5 and A6. The criminal complaint is lodged against the petitioners and two others in respect of the sale transaction entered into between them in respect of the property comprised in S.Nos.312/1-B, 312/2, 312/7, 315/6 and 315/8 of Sathankuppam village measuring 2.32acres. The complaint proceeds as if the property in dispute and other properties in Kelambakkam, Thaiyur kalvai and Sathankuppan did originally belong to Mannarpillai and his wife Ranganayakiamamal since deceased, who are none-else than the parents of A1/Durai A2/Ramadosh A3/Ravichandran(deceased) and A4/Sathyan and two of the principals of the Defacto complainant by name Rani and Sankari and Yasodha (Yasodha since deceased) and after the death of the parents, the brothers and sisters effected partition of the properties among themselves under one Koorchit, dated 14.07.1991 in the presence of panchayatars and when the female heirs filed OS.No.28 of 1998 for partition of their shares in all the properties left behind by their parents, the Trial Court, having found that there was no earlier partition decreed the suit for partition of 3/7shares of female heirs in respect of all the properties and the decree granted by the trial court was set aside by the lower appellate court by accepting the plea of earlier partition and the same was also confirmed by the High Court in SA.No.1149 of 2006 and the Courts below as well as the High Court have in their judgments upheld the genuineness and validity of the koorchit. As per the terms of koorchit, the entire extent of land measuring 1.16cents in Kalvai village and 2.50acre in Sathankuppan village were allotted to three sisters in equal shares. Whereas the brothers and the two sons of elder brother by name Durai who are arrayed as A1 to A4 and A5 and A6 without the knowledge of the female heirs, sold an extent of 2.06acres in Sathankuppan village to one A7/Selvaraj by sale deed dated 15.09.1997 bearing Doc.No.1877/1997 and executed unregistered power of attorney in respect of 26 cents of the same village in favour of A8/Kalaichelvan on 1.12.1999 who inturn executed a sale deed in favour of his wife Malarkodi on 09.03.2007 and A7/Selvaraj and A9/Malarkodi also obtained ratification deed from the legal representatives of the brothers on 11.02.2013 and 11.02.2013

respectively and thereafter executed power of attorney on 04.03.2013 in respect of 2.32cents in favour of A10/Amirthasekar A11/Pukhraj and A12/Karnakaram. The complaint further proceeds that the second respondent/Defacto complainant has been given general power of attorney on 13.09.2013 and 01.11.2013 by the female heirs and legal representatives of one of female heirs in respect of the property allotted to them under Koorchit and in order to safeguard the right of the female heirs in the property allotted to them under koorchit appropriate action is to be initiated against the above named individuals for their having entered into sale transactions by creating forged documents. The complaint was received on 21.10.2013 but was registered as FIR for the offences under Sections 465, 467, 468, 471 420 r/w.34 IPC on 20.05.2014 in pursuance of the order made by the Judicial Magistrate No.II, Chengalpattu.

4.In the course of investigation the above named accused have come forward with the present criminal original petitions for quashing the proceedings against them, on the following grounds : (i) the right of the parties, having been already decided in the first appeal as confirmed by this Court in the second appeal, arising out of the suit filed by the female heirs and the claim of the female heirs for partition over the properties having been rejected, the allegations of alienation of share without their knowledge is baseless and unfounded and no offence of cheating is made out (ii)The allegations so raised in the complaint do not disclose any ingredients constituting an act of forgery, criminal breach of trust and cheating (iii)the allegations raised in the complaint would reveal that the dispute between the parties is purely civil in nature and the complaint is lodged only to give criminal colour to the civil dispute and (iv)the unexplained inordinate delay in lodging the complaint on the basis of the document which is neither pleaded or referred to or produced and accepted by the civil courts in the earlier litigation is frivolous and is an abuse of process of law.

5.Per contra, the learned Additional Public Prosecutor has in his counter denied the civil nature of the dispute between the parties and according to the first respondent/IO the land belonging to the female heirs was unlawfully grabbed by the petitioners herein with the intention of cheating the female heirs.

6.The relief sought for is seriously opposed in the counter filed by the second respondent/defacto complainant who is the power agent of female heirs, wherein it is stated that there was earlier partition effected between 4 sons and 3 daughters of the original owners and they divided the family property by way of unregistered koorchit dated 14.07.1991 signed before the panchayatars and the validity of the partition on 14.07.1991 was upheld by the lower appellate court as well as in the second appeal decided by this court arising out of earlier suit. The male heirs colluded with each other and others and created false documents with an intention to cheat the

female heirs and they also entered into further transaction with dishonest intention, thereby, committed the acts constituting the offences punishable under the Sections as above referred to.

7. Heard the rival submissions made on both sides and perused the records.

8. The complaint filed by the second respondent is in respect of portion of the properties situated in various survey numbers in Sathankuppam village left behind by Mannarpillai and his wife Renganayakiammal/parents. The facts that the property under dispute and other property belonged to Mannarpillai and Ranganayaki who died leaving behind four sons and three daughters and after the death of both the parents, the brothers and sisters effected partition of the properties belonging to them on 14.07.1991 and the female heirs as well as the male heirs also already effected alienations in respect of the properties allotted to them under family partition to third parties are not seriously disputed.

9. As far as the sale transactions in question are concerned, the first one is dated 15.09.1997 and is in favour of A7/Selvaraju in respect of major portion of the landed property i.e., measuring an extent of 2.06 acres and the next one is in favour of A9 through A8 power agent in respect of 26 cents in different survey numbers in Sattankuppam village. The female heirs by names Yashodha, Rani and Sankarai during 1998 filed OS.No.28 of 1998 in respect of portion of the properties left behind by the parents. The female heirs did not admittedly include the properties allotted to them in the partition dated 14.07.1991 and the properties that were already sold by them after partition and the property in respect of which the relief of partition sought for, was in respect of the properties in the hands of male heirs including that of the property measuring 2.06 cents sold by the male heirs in favour of A7/Selvaraju. The suit was filed by the female heirs against the male heirs as well as the purchaser Selvaraju arraying them as the defendants 1 to 5.

10. The female heirs as the plaintiffs in the earlier suit averred in the plaint that there was partition in the year 1991 among all the legal heirs and a list was prepared on 14.07.1991, but the brothers/defendants 1 to 4 did not accept and act upon the same and the partition was not under any document and the suit was hence filed for effecting partition through Court of law. The female heirs as the plaintiffs also referred to the sale transaction between the defendants 1 to 4 and the fifth defendant. According to the plaintiffs, the sale in favour of the 5th defendant is with an intention to cheat the female heirs and the fifth defendant is not a bonafide purchaser and the sale in favour of the fifth defendant will not bind the shares of the female heirs.

11.The suit relief was resisted by the defendants 1 to 4 on two grounds (i)the suit for partial partition of the properties without including all the properties is not maintainable and (ii)there was oral partition among the parties in which plaint schedule properties 1 to 5 in Sathankulam village and Thaiyur village were allotted to the defendants and they obtained transfer of patta in their names and the female heirs sold other properties allotted to them in the partition, as such, the partition cannot be reopened again. The fifth defendant/purchaser contested the suit by saying that the property sold to him is the property allotted to the defendants 1 to 4 in the earlier partition and the fifth defendant is the bonafide purchaser of the property. The fifth defendant also claimed equity to allot suit item nos.1 to 5 to the shares of the defendants 1 to 4, in the event of any decree for partition is effected. It is very pertinent to mention at this juncture that neither of the parties referred to the koorchit dated 14.07.1991 before the trial court. The plaintiffs in their plaint referred only to a list of properties prepared on 14.07.1991. The claim of the defendants that the earlier partition effected was oral in nature and the family arrangement was not reduced into writing and was not registered is also admitted by one of the plaintiffs as PW1 in the witness box. However, the trial court by negating the theory of earlier oral partition and by negating the fifth defendant's claim that he is the bonafide purchaser, allowed the suit for partition of the plaintiffs 3/7share in all the suit properties.

12.Aggrieved against the same defendants 1 and 2 preferred AS.No.80 of 2003 along with IA.No.4/2004 for receiving additional documents. The lower appellate court reversed the judgment and decree of the trial court on the finding that there was family arrangement effected among male and female heirs on 14.07.1991 and the same was acted upon by all parties by selling their shares to various parties and the female heirs ought to have filed the suit prior to alienation of their shares to have complete effective partition of all the properties and there cannot be a partial partition. The findings of the lower appellate Court was also confirmed by this Court in SA.No.1149 of 2006 filed by the female heirs.

13.As far as A8/Kalaiselvan is concerned he was given power of attorney during 1999 by the male heirs in respect of small extent of the land and after the disposal of the second appeal during 2006, A8/Kalaiselvan executed sale deed in favour of A9/Malarkodi. It is pertinent to mention at this juncture that at the time of executing sale deed in favour of A7/Selvaraju, patta, chitta and adangal in respect of land in question stood in the name of male heirs and the same was after the disposal of the second appeal and after the sale deeds in favour of A7/Selvaraju and A9/Malarkodi the revenue records stood transferred in the names of A7/Selvaraju and A9/Malarkodi. A7/Selvaraju and A9/Malarkodi have also during 2013 executed power of

attorney in favour of A10 to A12 in respect of the property purchased by them.

14.The present complaint is filed by the second respondent/Manivannan in his capacity of power agent representing the female heirs on the strength of two deeds of power of attorney executed in his name. The document in the form of Koorchit dated 14.07.1991 is for the first time introduced only in this complaint nearly after 15years from the date of execution of sale deed in favour of A7/Selvaraj and institution of civil suit in OS.No.28 of 1998. It is the specific case of the defendants in the earlier suit that what is effected between the parties is only oral family arrangement and such claim is also upheld by the civil courts as such the parties to the litigation are bound by such finding.

15.Here is the case wherein, the allegations raised in the complaint are against three sets of accused (ie) the first set of accused are male heirs of the original owners of the property, the second set of accused are the purchasers of the property and the third set of the accused are the power agent of the subsequent purchasers of the property. The entire reading of the complaint would only go to show that the allegations raised therein are only to the effect that the property allotted to the female heirs under koorchit dated 14.07.1991 was sold by the male heirs without the knowledge of the female heirs. The complainant except stating in one place that the sale transaction effected in favour of A7 to A9 is by way of false document. No where stated that the sale transactions were entered into by the male heirs with an intention to cheat the female heirs.

16.The facts which remain undisputed is that the property was sold in favour of A7 and A9 by way of registered sale deeds executed by the male heirs and also the male heirs represented by the general power agent respectively. It is no body's case that the sale deeds were executed either by an act of impersonation or by forging any one's signatures. What was alleged in the complaint is that the properties were sold by the male heirs without the knowledge of the female heirs and without any right to do so. It is one thing to say, that the transaction effected is through forged document and an act of forgery and it is different aspect to say that it is done without any right over the property. While the first part of the transaction amounts to an act constituting an offence punishable under IPC, the second nature of transaction can only be questioned before the civil court. The second nature of the transaction being without any right is not binding on the actual owners if any and can be ignored by the actual owners or the same can be questioned before the civil court to declare the same as null and void. That is what done by the female heirs on earlier occasion. The stand taken by the female heirs as plaintiffs in the earlier suit is that the sale in favour of 5th defendant Selvaraju was not binding on their shares.

Whereas the male heirs contested the suit by claiming independent right over the property under dispute. The trial court also while answering the issue in respect of the sale transaction effected in favour of the fifth defendant/selvaraj found that the sale transaction is not a bonafide one. It is held so not on the ground that it was effected through forged document, but it was effected by the defendants 1 to 4 without proving that the same was exclusively allotted to them in the partition as such the sale transaction is without any right to do so. As such, different stand cannot be taken in the complaint lodged, that too, by the power agent after more than a decade. The female heirs, having filed the suit questioning the validity of the sale in question and having lost in their suit, cannot now reopen the issue on the ground of act of forgery and cheating by way of criminal complaint, that too, through their power agent. The power agent acting on behalf of the principal, cannot have any better right and cannot introduce any better or new case.

17. Under such circumstances, the criminal complaint filed on the basis of such document, that too, in respect of the sale transaction effected more than a decade ago and in respect of the sale transaction referred to in the suit is in my considered view to be treated as harassment to the respondent, what is initially treated as civil dispute is later on sought to be converted into criminal offence.

18. Even assuming it to be true that the partition was effected among the legal heirs under the koorchit dated 14.07.1991 and as per the partition, the female heirs are entitled to get the properties under dispute the remedy available to the parties is to go before the same civil court to enforce their right in respect of the same property. As already referred to, the patta, originally stood in the name of the male heirs and the same was thereafter transferred in the name of purchasers and the same was again retransferred in the names of all the female heirs only during November 2013. Here also, it is only stated that the sale deed effected by the male heirs without reference to the female heirs is not valid. Though the patta transfer order is stated to be issued in pursuance of an enquiry on the applications filed by the defacto complainant/Manivannan and A7/Selvaraj. The order does not indicate as to whether the same was passed after due notice to the surviving male heirs and after due enquiry in the presence of the male heirs. Even otherwise, the proceedings of the Tahsildar dated 28.11.2013 was challenged by the purchasers A7/Selvaraj and A9/Malarkodi by way of WP.No.34189 and 34190 of 2013 and the learned brother judge of this court has by order dated 17.12.2013 granted an order of interim stay of the operation of the impugned order. The interim stay was sought for by the writ petitioners only by contending that the Tahsildar has effected transfer of patta without any application of mind and without duly appreciating the findings of the lower appellate court and the High Court in the earlier suit and the learned brother judge

while dealing with WMP accepted the same and granted interim stay of the impugned order. It is also to be seen that A7/Selvarj has also lodged a complaint before the Inspector of police, Kelambakkam police station against the defacto complainant for their attempt to interfere with his possession and enjoyment of the property and also seeking police protection to his power agents and their employees so as to protect the property. The complaint was received on 21.04.2014 as CSR.No.153 of 2014. He has also approached this court by way of CrI.OP.No.11068 of 2014 for police protection to put up compound wall in the property under dispute. This Court, by order dated 29.04.2014 is pleased to grant police protection as prayed for. The defacto complainant has also filed a civil suit for getting injunction but was not able to get any interim order. In the meanwhile, the present complaint was lodged by the defacto complainant against the male heirs and the subsequent purchasers and their power agent for the offences as above referred to. The parties have been through out fighting by claiming right over the property in question. The discussion held above regarding the nature of the claim and conduct of parties would undoubtedly show that the dispute between the parties is purely civil in nature.

19. Even the reading of the allegations would not disclose any act of forgery or cheating or as defined under the statute. When the sale documents are executed by the male heirs in favour of the third parties by claiming independent right there is no execution of false document amounting to an act of forgery. If that is so, the question of using the forged document as genuine thereby constituting an act punishable under Section 471 does not arise herein.

20. It is no body's case that either the male heirs or the subsequent purchasers acted in any deceitful manner, thereby either the female heirs or the complainant are deceived to deliver any property to any person or to consent that any person shall retain any property or which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, so as to attract the mischief under Sections 415 and 420 IPC. Further, it is only a case of claim and counter claim and not otherwise and the civil nature of dispute is sought to be given criminal colour by instituting the present complaint through the power of attorney/complainant herein. The entire allegations in the complaint even if accepted on the face value does not make out any offence punishable under Section 463, 471, 415 and 420 IPC. As such, this court is of the considered view that the criminal proceedings instituted on such complaint is only an abuse of process of law and cannot be allowed to continue.

21. Both the learned counsel on record have, in the course of their arguments cited number of judgments for and against the power of this Court to quash the proceedings.

The judgments cited on the side of the petitioners are :

- (i) AIR 2000 SC 754 G.Sagar Suri and another V. State of UP and others.
- (ii) AIR 2005 SC 9 M/s.Zandu Pharmaceutical works ltd and others V. Md.Sharaful Haque and others
- (iii) (2005) 10 SCC 336 Uma Shankar Gopalika V. State of Bihar and another
- (iv) AIR 2008 SC 251 Inder Mohan Goswani and another State of Uttaranachal and others
- (v) (2009) 7 SCC 495 Devendra and others V. State of Uttar Pradesh and another
- (vi) AIR 2010 SC 3624 Kishan Singh (D) through L.Rs. V. Guralpal Singh and others and
- (vii) (2013) 3 SCC 330 Rajiv Thapar and others V. Madan Lal Kapoor.

The learned counsel for the second respondent/defacto complainant has relied on the following judgments :

- (i) 2003 11 SCC 251 M.Narayandas V. State of Karnathaka and others.
- (ii) 2013 11 SCC 559 C.P.Subhash V. Inspector of Police, Chennai and others.
- (iii) 2014 3 SCC 389 Vijayander Kumar and others V. State of Rajasthan and another and
- (iv) 2012 1 CTC 92 (High Court Madras) Periyamondi V. The Inspector of Police, Alanganallur Police Station, Madurai District and another.

22. In the authorities cited on the side of the second respondent, the Hon'ble Supreme Court has laid down the following general principles : (i) the power to quash must be exercised very sparingly. The court could not be justified in embarking upon enquiry as to reliability or otherwise of the allegations made in the FIR; (ii) in a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash the criminal proceedings; (iii) both the civil and criminal proceedings can be pursued independently in appropriate cases; and (iv) the real test is whether the allegations do disclose the criminal offence or not.

23. This court is bound by the general principles laid down by the Hon'ble Apex Court in the judgments cited on the side of both the petitioners and the respondents. However, this Court, on going through the allegations raised in the complaint, in the light of the principles laid down by the judgments cited on both sides and on going through the defence materials as permitted by the Hon'ble Supreme Court in the judgment reported in (2013) 3 SCC 330 (Rajiv

Thapar and others v. Madan Lal Kapoor) cited on the side of the petitioners, is inclined to uphold the stand taken by the petitioners not to allow the criminal proceedings to continue against the petitioners on the grounds that the dispute between the parties is civil in nature and the allegations made in the complaint or in the FIR, even if taken in the face value and accepted in its entirety, do not prima facie constitute any offence or make out the case against the petitioners and no evidence is collected to disclose the commission of any offence charged against the petitioners. The contention so raised by the petitioners is also fortified by the observations of the Hon'ble Supreme Court in the judgments reported in AIR 2008 SC 251 Inder Mohan Goswani and another State of Uttaranachal and others ; (2009) 7 SCC 495 Devendra and others V. State of Uttar Pradesh and another; AIR 2010 SC 3624 Kishan Singh (D) through L.Rs. V. Gurpal Singh and others.

24.The next ground on which the petitioners have sought the relief in the failure on the part of the complainant to explain the delay in lodging the FIR which would render the criminal proceedings an abuse of process of law as laid down by the Hon'ble Supreme Court in the judgment reported in (2009) 7 SCC 495 Devendra and others V. State of Uttar Pradesh and another. The criminal proceedings is also sought to be quashed by reason of the nature of the allegations raised in the earlier suit filed by the female heirs. In the judgment reported in AIR 2005 SC 9 (M/s.Zandu Pharmaceutical Works Ltd and others. v. Md. Sharaful Haque and others), the Apex court quashed the complaint for the failure of the complainant to raise any allegation regarding the act of cheating in the earlier suit and for the failure on the part of the complainant to lodge complaint for nearly 6 years.

25.In the judgment reported in (2005) 10 SCC 336 (Uma Shankar Gopalika v. State of Bihar and another), the dispute between the parties is arising out of hire purchase agreement for purchase of truck by the complainant and the complainant only repaid 3 installments to the financier. In the meanwhile, the truck loaded with goods became traceless and the same was informed to the police as well as the insurance company. According to the complainant, the accused approached him for permitting him to handle the insurance claim and the accused was permitted so and the insurance claim was allowed and the insurance company issued cheque for Rs.4,20,000/- and the same was encashed by the accused, but the accused failed to pay Rs.2,60,000 to the complainant as assured by him. The Supreme Court has held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception and if the intention to cheat has developed later on the same cannot amount to cheating. The Apex Court was of the view that the petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B

IPC and the case was a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. By holding so, the Supreme Court allowed the appeal and set aside the order of the High court, thereby quashing the police investigation and consequent prosecution of the appellant as well as the non-appellant.

26. In the case decided in AIR 2008 SC 251 (Inder Mohan Goswani and another State of Uttaranachal and others), there was an agreement for sale between one Sabha and third respondent and the third respondent was also given power of attorney and the third respondent had been, according to the complainant, postponing the payment of balance consideration. In the meanwhile, the Sabha at the instance of third respondent, executed fresh power of attorney in favour of his son/fourth respondent and the respondents 3 and 4 on the strength of such power of attorney, started executing sale deeds in favour of various parties, which compelled the Sabha to cancel the power of attorney executed in favour of the fourth respondent and Sabha also sold the remaining extent of land to 3rd party on his own, which compelled the respondents 3 and 4 to prefer two complaints alleging breach of contract and obligations. The Hon'ble Apex Court in para 43 has discussed in detail the ingredients, which are essential for commission of the offence under section 467 IPC as follows: (i) the document in question so forged; (ii) the accused who forged it; and (iii) the documents is one of the kinds enumerated in the aforementioned section and ultimately, found that the basic ingredients of offence under Section 467 are altogether missing even in the allegations of the FIR against the appellants and by no stretch of imagination, the appellants can be legally prosecuted for an offence under Section 467. It is further observed in para 44 that even if all the averments made in the FIR are taken to be correct, the case for prosecution under sections 420 and 467 IPC is not made out against the appellants and to prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom. It is also observed in para 45 of the same decision, that the court must ensure that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. In my considered view, such observation of the Hon'ble Supreme Court is squarely applicable to the facts of the present case.

27. In (2009) 7 SCC 495 (Devendra and others v. State of Uttar Pradesh and another), the facts involved therein are more or less same as that of the present case. There also, the dispute arose between co-sharers in relation to their respective shares and sale of certain share by some co-sharers to third party and threat to other co-sharers of their dispossession at the hands of vendor co-sharers or third party. One of the co-sharers in the joint property lodged FIR against appellant co-sharers by levelling allegation against them

that they executed a deed of sale in favour of a third party stating that they had one-third share in the joint property although they were not entitled therefor. The Hon'ble Supreme Court, having found that the appellants had not made any representation to the respondent complainant and that no contract and/or transaction had been entered into by and between the complainant and the appellants, held that it could not be said that by reason of the alleged act of the appellants, the complainant had been cheated. The Hon'ble Supreme Court in para 11 of the decision, observed that the dispute between them is confined to the extent of their respective shares and it must be determined only in a civil suit and if appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share over the entire properties, the same would not be binding on the respondent complainant. In my considered view, the same observation is squarely applicable to the facts of the present case, wherein, if the female heirs feel that they had any right over the property, which was sold by the male heirs without any right to do so, it is not binding on the female heirs. It is further held in para 20 that if somebody is aggrieved by the false assertions made in the said sale deed, it would be the vendees and not the co-sharers. The Apex Court in para 24 further held that when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing. It is observed in para 27 that when dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. The Apex Court thus in para 29, quashed the proceedings without expressing any opinion on the merits of the dispute which is civil in nature.

28. In AIR 2010 SC 3624 (Kishan Singh (D) through LRs v. Gurpal Singh and others), the dispute arose out of agreement to sell and there were agreements to sell, one in favour of A and another in favour of B and both filed suit for specific performance. While the suit filed by A was decreed and the sale deed was executed, the suit filed by B was dismissed. B also filed another suit to set aside the decree for specific performance granted in favour of A and the same was also dismissed and B also preferred appeal against the same during 2002. B also lodged FIR simultaneously through his power of attorney agent against the owners for the offences under sections 420, 423, 467, 468, 471 and 120B IPC raising similar allegations as raised in the civil suit. The Hon'ble Supreme Court in para 20 of the same decision, has discussed in detail regarding the dates on which the agreements were entered into and the dates on which the suit were filed by A and B and the dates on which the suit was disposed of and the FIR was lodged after filing the appeal and concluded the para by saying that there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation

whatsoever for the same. In paras 21 and 22, the Supreme Court has observed that prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version and if there is some delay in filing the FIR, the complainant must give explanation for the same, however, deliberate delay in lodging the complaint is always fatal. Thereafter, the Supreme Court has in para 24 taking note of the delay in filing the complaint in 2002, after rejection of their claim in the civil court, observed that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings and such an action would not be bona fide, and the criminal proceedings initiated by him against the respondents/accused amount to an abuse of the process of law. By observing so, the Apex Court confirmed the order of the High Court quashing the criminal proceedings against the accused.

29. Here also, after disposal of the Second Appeal filed by the female heirs, there was inordinate unexplained delay in preferring the complaint, arising out of which is the present CrI.OPs. The complaint does not contain any explanation for the delay on the part of the female heirs to come forward with such complaint, that too, through their power agent. As rightly pointed out by the learned counsel for the petitioners, all the particulars based on which the complaint came to be filed, are available to the female heirs, even as on the date of filing of the earlier civil suit. The female heirs, having been fully appraised of the civil nature of the dispute, have to only approach the civil forum for establishing their right if any. Having not chosen to do so, the present complaint filed a decade after the disposal of the earlier civil proceedings is only to harass the parties and is lacking in bonafide, as such, applying the view of the Hon'ble Apex court to the facts of the present case, the criminal proceedings lodged against the petitioners is liable to be quashed.

30. Thus this Court, by appreciating the facts and circumstances involved in the present case and considering the civil nature of the dispute between the parties and the nature of the allegations raised in the complaint which do not disclose the ingredients of the offences charged and the failure on the part of the complainant in giving any explanation for the delay in lodging the FIR one decade after the disposal of the civil suit and also in the light of the observation of the Hon'ble Apex Court in the judgments as above cited is of the firm view that it is a fit case, wherein the FIR and other proceedings emanating from the same if allowed to continue amounts to abuse of process of law and is hence liable to be quashed.

31.In the result, all the three criminal original petitions are allowed and the FIR in Cr.No.25 of 2014 pending on the file of the first respondent stands quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

Dated:24.2.15

True Copy

Sub Assistant Registrar

To

1. The Public Prosecutor, High Court, Madras.

2. The Special Sub-Inspector of police,
District Crime Branch, Kancheepuram.

+1 cc to M/s.Palani Selvaraj, Advocate,SR.5976.

+2 cc's to C.Vediappan, Advocate,SR.6044

+2 cc's to M/s.R.Gunasekaran, Advocate,SR.6046

+2 cc's to M/s.L.S.Dhanasekar, Advocate,SR.6045.

ad(co)
krd 24/2

Cr1.O.P.Nos.16818, 16819 and 17610
of 2014

सत्यमेव जयते

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