



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.O.P.(MD)No.23072 of 2014

and

M.P.(MD) .No.1 of 2014

1. C.J.Hemanth
2. Vasantha Jeyakaran
3. Sivasamy
4. Sangeetha
5. Dhivya

... Petitioners/Accused 1 to 5
Vs.

1. The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.54 of 2014).

2. M.VinothKannan ... Respondents/Complainant/Defacto
Complainant

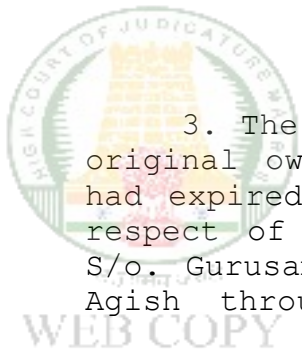
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in Crime No.54 of 2014 on the file of the first respondent police and quash the same as illegal with regard to the petitioners.

For Petitioners	: Mr.A.K.Manickam
For R1	: Mr.K.Anbarasan Govt. Advocate (Cr1.side)
For R2	: Mr.T.Lajapathi Roy

O R D E R

The petitioners, who are the accused Nos.1 to 5 in a case registered in Crime No.54 of 2014 on the file of the first respondent for the offences under Sections 468, 419 and 420 r/w. 34 of I.P.C., seek quash of proceedings.

2. The learned counsel for the petitioners submits that the F.I.R. merely informs that the revenue records had been tampered to wrongly inform one Gurusamy Chettiyar as the owner of property instead of Kamatchi Chettiyar, S/o. Suruliandi Chettiyar. The learned counsel for the petitioners further submits that the second petitioner has purchased the property only in the year 2001 and even if there be any wrong doing regards the same, she is only an innocent purchaser. The petitioners 4 and 5 have been arrayed as accused, merely since they happened to be the daughters of the second petitioner and they are not party to any document.



3. The learned counsel for the de-facto complainant informs that the original owner of property Kamatchi Chettiyar S/o. Suruliandi Chettiyar had expired on 25.09.1975 and a power of attorney had been executed in respect of property which stood in his name by one Kamatchi Chettiyar S/o. Gurusamy in favour of the other accused in this case by name Abdul Agish through registered document dated 20.03.1998.

4. Considering the rival submissions, this Court is to inform that it cannot be contended that there is no prima facie case calling for investigation. However, it is seen that there is no case as far as petitioners 4 and 5 are concerned. As such, the case in Crime No.54 of 2014 shall stand quashed as against them.

5. This petition stands allowed in respect of the petitioners 4 and 5 are concerned and the proceedings in Crime No.54 of 2014 on the file of the first respondent against them shall stand quashed. Insofar as the other petitioners are concerned, this petition shall stand dismissed with the observation that the first respondent shall exercise and take all care to ascertain whether the persons, who have purchased the property on the strength of the power of attorney had knowledge of the alleged falsity of the power of attorney of the year 1988, as otherwise there would be no reason to prosecute them. Respondents are to take note of the dictate of the Honourable Supreme Court in **Arnesh Kumar vs. State of Bihar** and another reported in **2014 (3) MLJ Cr1. (SC) 353**. For ready reference, paragraphs-14 and 15 of the judgment referred to is reproduced hereunder:

"14.Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under **Section 498-A** of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from **Section 41, Cr.PC**;

(2) All police officers be provided with a check list containing specified sub-clauses under **Section 41(1)(b)(ii)**;

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of **Section 41A** of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the



Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

15. We hasten to add that the directions aforesaid shall not only apply to the cases under **Section 498-A** of the I.P.C. or **Section 4** of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."

Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub- Assistant Registrar

To

1. The Inspector of Police,
District Crime Branch,
Theni.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.K.Manickam, Advocate in SR.No. 11992

Akv

Sm:16.04.2015:3P/4C

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