

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

**Crl.O.P No.5942 of 2010
and M.P.No.1 of 2010**

1. Sumathi
2. T.T.K.Duraisingam .. Petitioners
Vs.

1. State by
The Inspector of Police
C.B.C.I.D,
Chennai - 600 032.

2. Ramesh .. Respondents

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C.No.302 of 2009 on the file of the
Judicial Magistrate No.I, Poonamallee and quash the same.

For Petitioners : Mr.P.Kumaresan

For Respondents : Mr.R.Ravichandran
Govt. Advocate (Crl. Side) for R1
Mr.G.Arulmurugan for R2

ORDER

This Criminal Original Petition has been filed by the second
and third accused under Section 482 of the Code of Criminal
Procedure, praying to call for the records in C.C.No.302 of 2009 on
the file of the Judicial Magistrate No.I, Poonamallee and quash the
same as against the petitioners.

2. It is averred in the petition that the petitioners along with another accused have been charge sheeted for the alleged offences under Sections 465, 468, 471 and 423 IPC r/w 109 IPC. The second respondent Temple claims that it is the absolute owner of the property by virtue of valid registered sale deed, dated 20.07.1955 executed by one Subathra Devi in Document No.1307 / 1955 and the petitioners are alleged to have entered into the transaction with A1 for the purpose of grabbing the property belonging to the second respondent temple. The entire material collected does not disclose any offence as against the petitioners.

3. In respect of disputed property, (i) Andalammal, (ii) Kamalammal, (iii) Gajalakshmi Ammal @ Pattammal and (iv) Kuttiammal inherited right over the property as per partition deed entered into between the family members in 1951. After the demise of Andalammal, the property was jointly possessed and enjoyed by Kamalammal, Gajalakshmi and Subadra Devi. C.P.Loganathan married the sisters Kamallammal and Gajalakshmi. Gajalakshmi had no issues. Kamalammal begot a female child namely Dillibai. She inherited the property as a sole legal heir for the above said family members and she sold the property to the petitioners. The encumbrance certificate does not reflect the transfer to the Temple. There is no fraud, deceit, concealment of any fact or

misrepresentation in executing the document on the part of the petitioners. Therefore, the case against the petitioners is to be quashed.

4. The second respondent in its counter averred that the properties to an extent of 0.99 cents in S.F.No.86 and 5.81 acres in S.No.87 of Okkiam Thoraipakkam village absolutely belongs to Sengazhani Vinayagar Koil, Pidari Ariathamman Koil, Mari Vembuli Amman Koil, Dhagi Sengazhani Amman Koil and Gangai Amman Koil. Out of the donations and other collections received through temples, certain properties were purchased and one of the property belonging to one Mrs. Subadra Devi @ Kuttiammal was purchased through a registered sale deed under Document No.1307 / 1955, dated 20.07.1955 in Saidapet Registrar's Office. The above land originally belonged to Mrs. Andalammal. The said Andalammal had three daughters (i) Kamalambal, (ii) Gajalakshmi @ Pattammal and (iii) Subadra Devi @ Kuttiammal. They got partition to the property through a registered partition deed, dated 12.01.1951. Subadra Devi @ Kuttiammal got the schedule mentioned properties and from her, the Temple purchased the said property. The Deputy Tahsildar in his proceedings, dated 12.03.2004 issued patta in the name of the Temples, represented by its Trustees.

5. While such being the position, one Mr.Aravindan, representing himself to be power of attorney of the legal heirs of the sisters of Subadra Devi, including Dillibai, the vendor of the second respondent forged some documents with the intention to usurping the temple lands and sought to cancel the patta issued in favour of the temple based on the forged and fabricated documents. On a detailed enquiry by the District Collector, Kancheepuram, based on the request of the Commissioner, HR & CE Department and the Registration Authorities, the foul play of Aravindan, Venugopal and Dillibai in fabricating and removing the original documents from the Registrar's Office came to light.

6. On the complaint given by the Inspector General of Registration and Chief Controlling Revenue Authority, case was registered by the Crime Branch, Chennai as against Venugopal, Aravindan, Dillibai and others for offences under Sections 465, 466, 467, 471, 477 and 120(B) r/w 34 IPC.

7. While so, with a malafide intention of grabbing the temple property, Mrs.Dillibai, who was a party to all the proceedings earlier and facing criminal prosecution has joined hands with the petitioners 1 and 2 and executed power of attorney in favour of the first petitioner, who in turn executed the sale deed in favour of her

husband, the second petitioner, with the intent to usurp the valuable property of the temple worth more than Rs.80 crores. Therefore, a case was registered in Crime No.407 of 2007 against the petitioners and Dillibai and they have been charge sheeted for the offence under Sections 465, 468 r/w 471 and 420 IPC. The petitioners have meticulously and with malafide intention of cheating and usurping the temple property has created a fabricating document by giving meagre amount and therefore the petition is to be dismissed.

8. The learned counsel appearing for the petitioners submits that the petitioners without any knowledge about the sale deed in favour of the second respondent Temple purchased the property believing the words of the first accused Dillibai and the documents given by her and there is absolutely no material as against the petitioners to attract the offences alleged to have been committed by them.

9. The learned Government Advocate and the learned counsel appearing for the second respondent per contra contends that the petitioners with malafide intention to grab the property created the documents by giving meagre sum to the first accused Dillibai and there are sufficient material for the offences charged against the petitioners.

10. There is no dispute that the first accused Dillibai is the sole legal heir of the family consisting of Andalammal, Kamalammal, Gajalakshmiammal @ Pattammal and Subadra Devi @ Kuttiammal and the disputed property was allotted to Kuttiammal under the partition deed of 1951.

11. It is case of the prosecution that in 1955, Kuttiammal conveyed the property to the second respondent Temple through a sale deed, dated 20.07.1955. When patta in the name of temple was sought to be cancelled, the District Collector conducted a detailed enquiry and found the foul play of Aravindan, Venugopal and Dillibai in fabricating and removing the original document from the Registrar's Office which led to the registration of the criminal case as against them. Due to the removal of the original document from the Registrar's Office by the above said persons, the sale deed of the year 1955 in favour of the temple was not reflected in the Encumbrance Certificate.

12. It is contended by the learned counsel appearing for the petitioners that after some years in 2006, the first accused who already involved in a case of similar nature, made the petitioners to believe by showing the partition deed and sold the property to the petitioners and the petitioners are bonafide purchasers and got the property for consideration.

13. This Court has gone through the entire charge sheet and 161 statement of the witnesses. There is absolutely no material to show that the petitioners had knowledge about the sale deed in favour of the temple or the previous case as against the first accused and others with respect to the property.

14. Another contention of the respondents is that the petitioners created the sale deed for meager value when the property was worth in Crores. The Sub-Registrar sent the document to the authority concerned for valuing the stamp duty as he considered under-valued. No decision seems to have been arrived at by the authority as to the valuation. To make out a case that the sale deed was executed with a dishonest intention by giving nominal amount, there is no material about the market value of the property. Statements of witnesses do not disclose that the petitioners gave nominal amount or meagre amount to the first accused comparing with the market value and got executed the sale deed.

15. The learned counsel appearing for the second respondent cited several Judgments of the Hon'ble Supreme Court and contended that this Court can invoke the jurisdiction under Section 482 Cr.P.C very sparingly and the inherent powers is to be

exercised only in a case where a complaint does not disclose any offence or is frivolous, vexatious or oppressive. It is suffice to quote two decisions of the Hon'ble Supreme Court referred by the learned counsel appearing for the second respondent.

16. In **State of Bihar v. Rajendra Agrawalla**, reported in **(1996) 8 SCC 164**, the Hon'ble Supreme Court held as follows :

"5... So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In a recent judgment of this Court to which one of us (Hon. K.Ramaswamy, J) was a member it has been held, following the earlier decision in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 :

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise

the FIR / charge-sheet complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet."

17. In **Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy** reported in **(2011) 12 SCC 437**, it has been held as follows :

"32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding institute on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the charge-sheet ought to be taken note of as a whole before arriving at any conclusion. It is the material concluded during the investigation and evidence led in court which decides the fate of the accused persons."

18. Thus it is well settled that the High Court should not exercise its inherent powers to repress a legitimate prosecution and it would not be proper to analyse the case in order to determine whether a conviction is sustainable.

19. In this case on hand as already pointed out, in the

statements of witnesses and the record in support of the charge sheet, there is nothing to make out that the petitioners with dishonest intention got executed the power deed as well as the sale deed in their favour, especially when there is not even a whisper as to their knowledge about the earlier sale deed in favour of the temple or the earlier criminal case with respect to the same property as against the first accused and others. The statement of witness that the second petitioner was doing real estate business in that area and the fact that sale deed executed in favour of the second petitioner / A3 was undervalued alone are not suffice to make out offences alleged in the charge sheet as against the petitioners.

20. Following the settled principles as to invoking the jurisdiction of this Court under Section 482 Cr.P.C, this Court is of the considered view that the case against the petitioners in C.C.No.302 of 2009 on the file of the Judicial Magistrate No.I, Poonamallee is to be quashed to secure the ends of justice and accordingly the same is quashed.

In fine, this Criminal Original Petition is allowed and the case against the petitioners / A2 and A3 in C.C.No.302 of 2009 on

P.KALAIYARASAN, J

tsvn

the file of the Judicial Magistrate No.I, Poonamalee, is quashed.
Consequently, connected miscellaneous petition is closed.

10.11.2016

Index : Yes / No

tsvn

To

1. The Judicial Magistrate No.I,
Poonamallee.
2. The Inspector of Police
C.B.C.I.D,
Chennai - 600 032.
3. The Public Prosecutor,
High Court of Madras, Chennai.

CrI.O.P No.5942 of 2010