

In the High Court of Judicature at Madras

Dated : 29.02.2016

Coram

The Honourable Mr.Justice R.SUBBIAH

Crl.O.P.Nos.16551 &17143 of 2014

and

M.P.Nos.1 & 1 of 2014

1.N.Arun Prakash

2.Jayanirmala

..... Petitioners in Crl.O.P.16551/2014

3.M.Gopalakrishnan

4.Narayanasamy

..... Petitioners in crl.O.P.17143/2014

..vs..

1.Inspector of Police,

Anti Land Grabbing Special Cell,

Office of the Commissioner of Police,

Coimbatore.

2.B.Santharam

..Respondents in both Crl.O.Ps.

Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records and to quash the FIR in Crime No.39 of 2014, dated 20.05.2014 on the file of the first respondent-police.

For Petitioners : Mr.M.Aravind Subramaniam

For Respondents : Mr.C.Emalias, APP (for R1)

Mr.N.Manokaran for Mr.V.Anandhamurthy
(For R2)

* * * * *

WEB COPY
COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners praying to quash the First Information Report in Crime No.39 of 2014 pending on the file of the 1st respondent.

2.Since both the criminal original petitions have been filed seeking to quash the same FIR, they are disposed of by way of this common order.

3.The petitioners in Crl.O.P.No.17143 of 2014 are the accused 1 & 2 and the petitioners in Crl.O.P.No.16551 of 2014 are the accused 3 & 4 respectively, in the said case. The 2nd respondent herein viz., Santharam lodged the complaint with the

1st respondent-Police as against the petitioners herein and two others and the same was registered in Crime No.39 of 2014 for the alleged offences under Sections 120(B), 468, 471 & 420 IPC.

4.The brief facts, which are necessary to dispose of these petitions, are as follows:-

4-1.The land measuring to an extent of 7.16 acres in S.F.No.36 in Krishnarayapuram Village, Coimbatore, originally belonged to one Ramasamy Naidu. The said Ramasamy Naidu had two children; a daughter by name Kamala @ Kamalam and a son Nithyanandam. The said Kamala @ Kamalam has two sons viz. Santharam (2nd respondent herein/complainant) and Yuvaraj. The son of Ramasamy Naidu namely Nithyanandam died on 02.12.1995. The said Ramasamy Naidu died on 01.04.1998. The petitioners 1 & 2 viz., N.Arun Prakash and Jayanirmala are the son and wife of the said Nithyanandam respectively. The petitioners 3 & 4 viz., Gopalakrishnan & Narayanasamy are the attestors to the alleged Will dated 23.03.1997.

4-2.It is the case of the prosecution that out of the total extent of 7.16 acres of the land, the said Ramasamy Naidu and Nithyanandam settled 4.00 acres of land in favour of the complainant's mother Kamala @ Kamalam on 10.05.1974 vide Settlement Deed registered as Doc.No.1766/1974. The remaining portion of 3.16 acres of land was retained by the said Ramasamy Naidu and Nithyanandam and subsequently, they sold the said entire 3.16 acres of land by way of 16 sale deeds between the period from 02.12.1980 to 13.09.1982. The said 4.00 acres of land was only with the mother of the complainant. While so, by forging an unregistered Will dated 23.03.1997 as if it was executed by the said Ramasamy Naidu, and by creating forged sale deeds and Power of Attorney Deeds, the petitioners (A1 & A2) claimed right over 0.94 $\frac{3}{4}$ acres in S.F.No.36. Further, in the said Will dated 23.03.1997, the Legal Heirs Certificate issued by the Tahsildar on 27.10.1999 which is of a later date to the date of Will was referred, which shows that the said Will is a forged one. Based on the said forged Will dated 23.03.1997, the 1st accused also executed seven sale deeds during the year 2013. Thus, the accused persons, by forging the Will dated 23.03.1997 as if it was executed by the said Ramasamy Naidu, and by creating forged sale deeds, sold the properties belonging to the 2nd respondent/complainant. Hence, the complaint has been lodged by the 2nd respondent herein and the same was registered in Crime No.39 of 2014. Now, the petitioners have come forward with the present petitions seeking to quash the FIR.

5.The learned counsel for the petitioners submitted that out of the total extent of 7.16 acres of land, the 1st petitioner's grand-father Ramasamy Naidu and father Nithyanandam settled 4.00 acres in favour of Kamala @ Kamalam (mother of the complainant), vide Settlement Deed dated 10.05.1974 registered as Doc.No.1766/1974. Thereafter, the said Ramasamy Naidu and Nithyanandam were jointly entitled to $\frac{1}{2}$ share in the remaining extent of 3.16 acres. Subsequently, after retaining an extent of 0.94 $\frac{3}{4}$ acres of land in the total extent

of 3.16 acres, they sold the other portions of land to various persons under 16 sale deed during the period from 01.12.1980 to 13.09.1982. It is further case of the petitioners 1 & 2 that the said Nithyananam died on 30.11.1995. After the demise of Nithyananam, his father Ramasamy Naidu executed a Will dated 23.03.1997 in favour of the petitioners 1 & 2 in respect of the said 0.94 $\frac{3}{4}$ acres. After demise of Ramasamy Naidu, the 2nd petitioner herein executed a Release Deed dated 08.03.2013 in favour of her son 1st petitioner, releasing her 1/3rd share in the 0.94 $\frac{3}{4}$ acres of land in the total extent of 3.16 acres and thus, the 1st petitioner became absolute owner in respect of 0.94 $\frac{3}{4}$ acres of land in the total extent of 3.16 acres, comprised in S.F.No.36 in Krishnarayapuram Village, Coimbatore. Thereafter, the 1st petitioner formed a layout and conveyed the same to the third parties.

6.It is further submitted by the learned for the petitioners that in fact, the 2nd respondent herein/complainant along with his mother and brother, filed a suit in O.S.No.1517 of 2013 on the file of the learned Subordinate Judge at Coimbatore, seeking to declare the Released Deed executed by the 2nd petitioner in favour of the 1st petitioner and also the subsequent Sale Deeds executed by the 1st petitioner in favour of the third parties, as null and void. Therefore, according to the petitioners, the matter is purely civil in nature and if the said Suit is decreed, automatically all the said Sale Deeds and Release Deed would be set aside. It is further submitted by the learned counsel for the petitioners that the dispute between the parties is only with regard to the right over the property and that the Civil dispute has been converted into criminal complaint by the respondents. In this regard, the learned counsel for the petitioners has also relied upon the decision of the Hon'ble Supreme Court reported in (2014) 10 SCC 633 [Binod Kumar Vs. State of Qiqihar] and submitted that the converting civil liability is nothing but abuse of process of Court.

7.By relying upon the decision reported in (2013) 6 SCC 800 [Sarabjit Singh Vs. State of Punjab and others], the learned counsel for the petitioners has further submitted that in the absence of any material to support the allegations in the FIR, the FIR is liable to be quashed.

8.Apart from the above submissions, the learned counsel for the petitioners has also submitted that originally the petitioner had lodged complaint on 25.10.2013 with the Commissioner of Police, Coimbatore and the same was forwarded to the Land Grabbing Cell and after conducting enquiry, the said complaint was closed on 09.10.2013. For the second time, the 2nd respondent has filed the present complaint dated 20.05.2014, containing the very same allegations of land grabbing to the same extent of land against the petitioners as stated in his previous complaint. The 1st respondent-Police has also registered the present complaint in Crime No.39 of 2014. Thus, the learned counsel for the petitioners submitted that it is nothing but a second complaint and it has been given only to harass the petitioners. Further, the present complaint has been

filed only to gather evidence for the civil suit filed by the 2nd respondent, which is not permissible. According to the learned counsel for the petitioners, since earlier complaint was closed, the FIR registered on the basis of the second complaint is not maintainable. Thus, the learned counsel for the petitioners sought for quashing the First Information Report.

9. Countering the submissions made by the learned counsel for the petitioners, the learned counsel for the 2nd respondent submitted that it is incorrect to state that the matter is purely civil in nature. The 2nd respondent's grand-father Ramasamy Naidu and his uncle Nithyananam (father of the 1st accused and husband of the 2nd accused), settled 4.00 acres of land out of total extent of 7.16 acres as early as in the year 1974 itself in favour of the 2nd respondent's mother Kamala @ Kamalam. Thereafter, during the period from 02.12.1980 to 13.09.1982, the said Ramasamy Naidu and his son Nithyananam sold the remaining extent of 3.16 acres by way of 16 sale deeds, to the third parties and thereafter, they did not have any land in the said S.F.No.36 in Krishnarayapuram Village, Coimbatore. While so, by creating a forged Will, dated 23.03.1997 as if it was executed by the late Ramasamy Naidu, stating that out of 3.16 acres, 0.94 $\frac{3}{4}$ acres was retained by him, now, the accused 1 & 2 are claiming that they are owning 0.94 $\frac{3}{4}$ acres in S.F.No.36 and based on the said forged Will, they also executed sale deeds in favour of different persons. The petitioners 3 & 4 herein/A3 & A4 stood as witnesses to the said forged Will dated 23.03.1997. Therefore, according to the learned counsel for the 2nd respondent, there is a clear intention of cheating on the part of the petitioners/accused.

10. It is further submitted by the learned counsel for the 2nd respondent submitted that in the said forged Will dated 23.03.1997, they have referred a legal heir certificate issued by the Tahsildar on 27.10.1999 which is of a later date to the date of Will, and the same would clearly show that the said Will is a forged one. It is further submission of the learned counsel for the 2nd respondent that though the said Will can be challenged in the Civil Court, in the instant case, by forging the Will, the accused have executed sale deeds in favour of different persons; therefore, the allegation made in the complaint would show that there is criminal liability on the part of the petitioners. Therefore, according to the learned counsel for the 2nd respondent, the FIR cannot be quashed at this stage. In support of this contention, the learned counsel for the 2nd respondent has also relied upon the following decisions_

- i) 2014(1) MWN (Cr.) 259 (SC) [Vijayander Kumar Vs. State of Rajasthan]
- ii) 2004(1) SCC 691 [State of M.P Vs. Awadh Kishore Gupta]
- iii) 2012(10) SCC 155 [State of M.P. Vs. Surendra Kori]
- iv) 2013(2) SC SCC 801 [Arun Bhandari Vs. State of U.P]

11. With regard to the second contention made by the learned counsel for the petitioners that the present FIR is registered based on the second complaint, the learned counsel for the 2nd

respondent submitted that the earlier complaint was closed on 09.10.2013; thereafter, the 2nd respondent has given the present complaint. The earlier complaint was not culminated into FIR. The present complaint was given along with further materials. Since the earlier complaint was closed, second complaint is permissible in law. In support of this contention, the learned counsel for the 2nd respondent has also relied upon the following decisions_

1) (2013) 5 SCC 148 [Surender Kaushik and others Vs. State of Uttar Pradesh and others]

2) (2012) 1 SCC 130 [Shivshankar Singh Vs. State of Qiqihar and anothers]

12. The learned Additional Public Prosecutor has also submitted that though there is a civil dispute pending between the parties, the allegations made in the complaint would clearly show that the matter appears to be criminal in nature. Therefore, at this juncture, the complaint cannot be quashed, as the investigation is under progress.

13. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

14. The submissions made by the learned counsel for the petitioners are mainly on the following grounds_

1) The matter is purely civil in nature; but, the 2nd respondent/complainant is trying to convert the civil dispute into criminal liability. Already civil suit is pending between the parties and the 2nd respondent is trying to gather evidence for his civil suit.

2) The second complaint filed by the 2nd respondent is not legally sustainable.

15. On seeing the factual aspects of the case, this Court finds that it is the specific allegation of the 2nd respondent/complainant that the petitioners 1 & 2 have created a forged Will dated 23.03.1997 and thereafter, they sold the property belonging to the 2nd respondent and his mother & brother. It is the case of the 2nd respondent that out of the total extent of 7.16 acres, 4.00 acres of land was already settled in favour of the 2nd respondent's mother Kamala @ Kamalam as early as in the year 1997 vide Settlement Deed dated 10.05.1974. The remaining portion of the land viz., 3.16 acres was sold by his grand-father Ramasamy Naidu and his uncle Nithyananam, by way of 16 sale deeds during the years from 1980 to 1982, to various third parties. Thereafter, the said Ramasamy Naidu and Nithyananam did not have any property in S.F.No.39 in Krishnarayapuram Village, Coimbatore. The land measuring 4.00 acres was owned by the 2nd respondent's mother, which was settled in her favour. Further, out of the said 4.00 acres of land, after retaining 1.60 acres of land, the 2nd respondent's mother Kamala @ Kamalam sold the remaining portion of the land to various persons during the period from 09.03.1981 to 22.05.1986. Thereafter, the 2nd respondent's

mother Kamala @ Kamalam executed a settlement deed in favour of the 2nd respondent and his brother in respect of 2/3rd share in 1.60 acres. Now, by creating forged Will dated 23.03.1997, the 1st petitioner has executed seven sale deeds in respect of 0.94 ¾ acres in S.F.No.39. In my considered opinion, the allegations made in the complaint would prima facie show that a criminal liability has been foisted on the part of the petitioners, however, the genuineness of the such allegations cannot be gone into in the present petition, at this stage, because this Court is not conducting any roving enquiry on the allegations made in the FIR, under Section 482 of Cr.P.C. In this regard, it would be appropriate to refer the decision reported in (2004) 1 SCC 691 [State of M.P. Vs. Awadh Kishore Gupta], wherein it has been observed as follows:-

"10..... When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.”

A reading of the dictum laid down in the said judgment would show that at the time of exercising the jurisdiction under Section 482 of Cr.P.c., this Court cannot conduct any enquiry on the allegations made in the complaint.

16. Though the learned counsel for the petitioners submitted that the civil suit is pending between the parties and only to gather evidence for the civil suit, the 2nd respondent has filed the present complaint, this Court is of the opinion that since a civil remedy is available to the party, it cannot be said that the petitioner is debarred from filing the criminal complaint, if the act of the accused would also give rise to a criminal liability.

17. It is yet another submission of the learned counsel for the petitioners that earlier complaint was already closed, thereafter, the present complaint was filed for the second time by the 2nd respondent on the same allegations. But, this Court finds that, as contended by the learned counsel for the 2nd respondent, earlier complaint was not culminated into FIR; thereafter, the present complaint has been filed with additional documents. On seeing the prime facie case only, the Police have registered the case. Under such circumstances, it cannot be said that the present complaint is not sustainable in law. In this regard, a reference could be placed in the decision, which was relied upon by the learned counsel for the 2nd respondent, reported in (2012) 1 SCC 130 [Shivshankar Singh Vs. State of Qiqihar and another], wherein it has been held by the Hon'ble Supreme Court as follows:-

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

19. The Protest Petition can always be treated as a complaint and proceeded with in terms of Chapter XV of Cr.P.C. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second Protest Petition can also similarly be entertained only under exceptional circumstances. In case the first

Protest Petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh Protest Petition is filed giving full details, we fail to understand as to why it should not be maintainable."

The dictum laid down in the said judgment would show that absolutely there is no bar for entertaining the second complaint. The second complaint is not maintainable, only when the earlier complaint was disposed on full consideration. In the present case, on seeing prima facie case in the complaint lodged by the 2nd respondent, the 1st respondent-police has registered the FIR. Under such circumstances, this Court does not find any illegality in registering the present complaint lodged by the 2nd respondent. Therefore, the submission made by the learned counsel for the petitioners in this regard, cannot also be accepted.

18.On the whole, I am of the opinion that there is no merit in the present criminal original petitions and the same are liable to be dismissed.

19.In fine, the criminal original petitions fail and the same are dismissed. However, the petitioners are at liberty to produce all the documents before the Investigating Officer in support of their claim.

Consequently, connected Miscellaneous Petitions are closed.
ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Inspector of Police,
Anti Land Grabbing Special Cell,
Office of the Commissioner of Police,
Coimbatore.

2.The Public Prosecutor, Madras High Court,
Madras.

+ 1 cc to Mr.V.Anandhamurthy, Advocate Sr 12739
+ 2 ccs to Mr.M.Aravind Subramaniam, Advocate Sr 13090, 13091

KR/17/3/16