

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.4200 of 2011
and
MP.No.1 of 2011

1. K.Dhanasekar
2. K.Kesavalu
3. D.Manohar
4. K.NandakumarPetitioners

Vs.

The State
Represented by the Inspector of Police
C3, Seven Wells Police Station,
Crimes, Chennai-600 001. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and quash the complaint in Crime No.528/2008 pending on the file of the Inspector of Police, C3, Seven Wells Police Station, Crimes, Chennai-600 001, the respondent herein.

For Petitioners : Mr.A.Thiagarajan

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed to call for the records and quash the complaint in Crime No.528/2008 pending on the file of the Inspector of Police, C3, Seven Wells Police Station, Crimes, Chennai-600 001.

2. This quash petition has been pending since year 2011. When the matter was taken up for final hearing on 26.10.2016, there was no representation for the petitioners. Hence, the matter was directed to be posted today under the caption "for dismissal". Today, also there was no representation for the petitioners and therefore, this Court perused the records and heard the learned Additional Public Prosecutor.

3. On the complaint lodged by Mr.Ram Viswanathan, Secretary & Correspondent, Dr.G.M.T.T.V.H.S.School Managing Committee, the respondent police registered a case in Crime No.528 of 2008 on 29.07.2008 under Sections 129-B, 406, 418, 465 and 471 IPC against K.Dhanasekar, K.Kesavalu, D.Manohar, K.Nandakumar, Mrs.K.Malleeswari, R.Krishna Mohan, Yoganandam and Joseph, challenging which K.Dhanasekar, K.Kesavalu, D.Manohar and K.Nandakumar have filed the quash petition to quash the FIR.

4. This Court carefully perused the complaint lodged by the de-facto complainant which forms the basis for registration of the FIR. On a reading of the complaint, it is seen that the house and ground bearing Old Door No.15, New Door No.8, Rathina Mudali Street, Kondithope, Chennai-600 079 (hereinafter referred to as the "property"), originally belonged to one V.Rajammal who had purchased the property in the year 1933. V.Rajammal was a spinster. She left a Will dated 31.01.1963 appointing one S.Chandrasekara Mudaliar as Executor. The following is the recital in the complaint which is self explanatory:

"in the said Will she had directed him to pay a part of the rental income to her own blood brother Subramania Thegar and on his death to his wife Mrs.Sivammal on the one part and another part of rental income to Mrs.Varalakshmi, D/o.Uterine brother Sundara Ramanujulu Thevar, after deducting expenses towards payment of taxes, repairs, maintenance etc., The said Rajammal in her Will further directed the Executor Chandrasekara Mudaliar to sell the property only after the death of her blood brother Subramania Thevar and his wife Sivammal and pay a sum not exceeding Rs.15,000/- to Mrs.Varalakshmi, D/o.Sundara Ramanujulu Thevar on purchase a property in her name for the same amount and with balance sale proceeds an immovable property should be purchased in the name of Dr.G.M.T.T.V.School, Chennai-79 or else the entire monies should be deposited and handed over to the Board of Directors of our school and the income derived should be utilized for education and mid-day meals scheme for poor boys studying the said school. The owner Ms.Rajammal died on 11.10.1963 and subsequently the Executor S.Chandrasekara Mudaliar filed OP.No.193 of 1964 for grant of Probate and the same was granted vide order dated 26.04.1964 by the Hon'ble High

Court of Judicature, Madras. The said Ms.Rajammal has clearly stated in para 2 line 1 and 2 of page 1 of the said Will that she was unmarried and had no issues not has she adopted anyone as her children clearly and categorically. The property was being managed and administered by the Executor right from 1964 till his death some time in the year 1999-2000. The testatrix / owner Ms.Rajammal in her Will had directed the executor to sell the property only after the death of her blood brother Subramania Thevar and his wife Sivammal. But Mrs.Varalakshmi who was entitled to receive the sum of Rs.15,000/- only either by way of cash of deposit or by way of purchase of another property for the said amount, died on 03.03.1974, prior to the death of Subramania Thevar who died on 09.09.1974 and his wife Sivammal who died on 26.05.1980 and as such the right of Mrs.varalakshmi had lapsed and abandon. Moreover, there is no provision in the Will that the legal heirs of Varalakshmi are entitled to receive the sum of Rs.15,000/- much less any benefit at all and as such the only remaining beneficiary Dr.G.M.T.T.V. School became the sole and absolute owner of the entire property as per the wish and intentions of the Testatrix / Ms.Rajammal. But subsequently one K.Dhanasekar and his 3 brothers Kesavalu, Manohar and Nandakumar claiming themselves as legal heirs of Mrs.varalakshmi started to make false claim of 1/2 share in the said property, while conceding that the other 1/2 share of property belongs to Dr.G.M.T.T.V. School, Chennai-600 079, vide their legal notice dated 09.03.1983 sent to the Executor and the School."

5. From a reading of the above averments, it is seen that the property and proceeds therefrom should go to the school and not to any other person, whereas, the accused in this case are attempting to deal with the property illegally.

6. Thus there are prima facie materials in the complaint for the police to proceed further with the investigation. In the light of the law laid down by the Supreme Court in State of Haryana Vs Bhajan Lal [(1992) Supp [1] SCC 335], this is not a

fit case to quash the FIR and accordingly, the petition stands dismissed. Consequently, connected miscellaneous petition is closed.

7. It appears that the FIR has been registered by the local police C3, Seven Wells Police Station which is primarily equipped to deal only with the law and order issues. For investigation of the crimes relating to immovable property, there is a specialized branch of police, viz., Central Crime Branch. If the investigation in the case in Crime No.528 of 2008 has not been completed by C3, Seven Wells Police Station till date, then, the same shall be transferred to the file of the Deputy Commissioner of Police, Central Crime Branch, Chennai who shall assign the case to a competent officer of the rank of Inspector in the Central Crime Branch.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
C3, Seven Wells Police Station,
Crimes, Chennai-600 001.
2. The Commissioner of Police,
Central Crime Branch,
Chennai.
3. The Public Prosecutor
High Court, Madras.

Cr1.O.P.No.4200 of 2011

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