



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Thirtieth day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL MP(MD) No.12029 of 2016
IN
CRL OP(MD) No.16034 of 2016

1 GOPALSAMY
2 RADHA KRISHNAN
3 THIRUMALRAM
4 JEYARAM
5 SEETHARAM
6 KALYANARAM
7 ILANGO
8 DHEENDAYALAN
9 MANIKANDAN

... PETITIONERS/3rd Party

Vs

1 BALA NAMATCHIVAYAM

... 1st RESPONDENT/PETITIONER

2 THE SUPERINTENDENT OF POLICE
O/O. SUPERINTENDENT OF POLICE,
RAMANATHAPURAM

3 THE INSPECTOR OF POLICE
CHATIRAKUDI POLICE STATION,
RAMANATHAPURAM DISTRICT.

... RESPONDENT 2 & 3/RESPONDENT 1 & 2

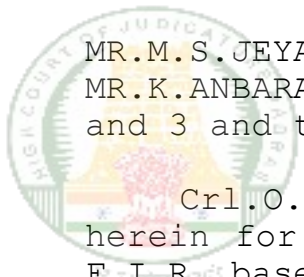
Prayer in CRL MP(MD). 12029/ 2016 :

Petition filed under Section 482 of Cr.P.C to Recall the order dated 01.09.2016 made in Crl. O. P. NO. 16034 of 2016 on the file of the Honourable Court and set aside the same and consequently dismiss the Criminal Original petition as devoid of merits and also pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case.

Prayer in CRL OP(MD). 16034/ 2016 :

Petition filed under Section 482 of Cr.P.C to direct the 2nd Respondent to register the FIR based on the petitioner complaint dated 17.08.2016 within the time limit that may be stipulated by this Honourable Court.

Order : This petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof on the file of the High Court and upon hearing the arguments of M/S.S.SIVA THILAKAR, Advocate for the petitioner and



MR.M.S.JEYAKARTHICK, Advocate for the 1st respondent and MR.K.ANBARASAN, Government Advocate, on behalf of the Respondents 2 and 3 and this court made the following order:-

Crl.O.P.(MD) No.16034 of 2016 was filed by the first respondent herein for a direction to the 3rd respondent herein to register the F.I.R. based on his complaint dated 17.08.2016.

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2.The case of the petitioners is that they instituted a suit in O.S.No.29 of 2000 before the District Munsif Court, Paramakudi for declaration and injunction. After contest, the suit was decreed, but the judgment and decree was revised by the Sub Court, Paramakudi in A.S.No.28 of 2003. Against the judgment and decree, the petitioners have preferred second appeal in S.A.No.461 of 2004 before this Court and interim injunction was granted by this Court in C.M.P.No.2449 and 2450 of 2004. The first respondent gave a complaint to the third respondent, alleging that A.S.No.28 of 2003 ended in favour of his parties and there is no interim injunction in the second appeal and it is further alleged that by fabricating documents, the petitioners herein have received Rs.8,00,000/- from the Government. The petitioners herein were not added as respondents in Crl.O.P.(MD) No.16034 of 2016 and based on the representation made by the first respondent herein, this Court issued a direction to the third respondent herein to conduct enquiry on the complaint of the first respondent dated 17.08.2016.

3.The petitioners have filed the present application to recall the order, contending that the first respondent by suppressing the material facts has obtained a direction from this Court and therefore it has to be recalled.

4.It is the specific case of the petitioners herein that the property in dispute was originally owned by one Perumal Pillai and by Survivership they have right and they have been in possession of the property and the order has been obtained by suppressing the material facts and by playing fraud on the Court.

5.I have considered the rival submissions and perused the materials available on record.

6.In the typed set of papers filed by the petitioner herein, it is seen that on 20.01.2005, this Court in CMP Nos.2449 and 2450 of 2004 has made the interim injunction already granted absolute, on 28.12.2014. But the first respondent, who is aware of the pendency of the second appeal and interim injunction granted by this Court, has lodged the complaint dated 17.08.2016 deliberately suppressing the fact and also filed Crl.O.P.(MD) No.16034 of 2016 for direction to register the complaint.

7.It is settled law that if any order is obtained by omitting material facts and by committing fraud on the Court is void. Since it has been proved that by suppressing the material facts the first respondent herein has obtained an order in the original petition, this Court is of the opinion that the order has to be recalled.



7. In such view of the matter, the order dated 01.09.2016, is recalled. If the third respondent has registered any complaint based on the order passed by this Court, he is directed to close the case.

Sd/-

Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

TO

- 1 THE SUPERINTENDENT OF POLICE
O/O. SUPERINTENDENT OF POLICE,
RAMNAD.
- 2 THE INSPECTOR OF POLICE
CHATIRAKUDI POLICE STATION,
RAMNAD DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+3 cc to M/S.S.SIVA THILAKAR, Advocate SR.No.78462

ORDER DATED : 30/11/2016

CRL MP (MD) No.12029 of 2016
IN

CRL OP (MD) No.16034 of 2016

Allowing the Criminal
miscellaneous petition and
giving directions etc., as
stated within.

SMA/GSV-PM/SAR-2/27.12.2016:3P/7C