

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.18182 of 2011 and
M.P.No.1 of 2011

1.L.Annamalai
2.L.Sekar
3.A.Menaka

... Petitioners

Vs

The Inspector of Police,
Valathi Police Station,
Villupuram District.

... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.78 of 2011 pending on the file of the learned Judicial Magistrate, Gingee and quash the same.

For Petitioners : Mr.R.Sunilkumar

For Respondent : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)

ORDER

This criminal original petition is preferred by the petitioners/Accused A1 to A3 to call for the records pertaining to C.C.No.78 of 2011 pending on the file of the learned Judicial Magistrate, Gingee for quashing the same.

2.Brief case of the petitioner/accused A1 to A3

The prosecution case is that on 7.3.1996 the 1st petitioner/accused had purchased an extent of 2 acre and 12 cents of agricultural land from the de-facto complainant A.Neelavathi Ammal, wife of Arumuga Gownder for a consideration of Rs.60,140/- and registered as document No.162 of 1996 at Sub Registrar office Valathi. Thereafter the suit for partition was filed by one Elumalai against defacto complainant claiming to be the son through the second wife of Arumuga Gounder, named as 3rd defendant in the suit. The 1st petitioner/accused had purchased

of the suit properties described in the suit in O.S.No.145 of 1996 on the file of the learned Additional District Munsif Court, Gingee. The suit was dismissed on 23.10.2003 holding that the suit properties were the absolute properties of defacto complainant. The plaintiff Elumalai and others not entitled for partition with the sale deed dated 7.3.1996. Thereafter the defacto complainant sold an extent of 47½ cents to the petitioner/accused A1 wife and sale deed was registered in Doc.No.804 of 2003. The defacto complainant sold a portion of the suit properties to meet her living expenses for the last 16 years, to defend the cases before all the three courts and to repay the loans obtained by her. The second appeal in S.A.No.436 of 2005 against the judgment of the Appellate court filed before this Court and the same is pending.

3.Pending second appeal, the said Elumalai in the suit after loosing in both the courts attempted to interfere with the possession of suit properties objecting to the defacto complainant, filed an application in CMP 9707 of 2006 in S.A.No.436 of 2005 seeking interim injunction restraining Elumalai from interfering with her suit properties. The defacto complainant has now lodged a criminal complaint against the petitioners/accused alleging cheating, causing mischief and criminal intimidation. The complaint was registered by the respondent police for the alleged offences under sections 420,427 and 506(1) of IPC in Crime Number 297 of 2010. The respondent police filed the final report before the learned trial court against the petitioners/accused on the same was taken on file in S.T.C.No.78 of 2011. Aggrieved over the same, this quash petition is filed.

4.The learned counsel for the petitioners/accused submits that the first sale deed was executed not less than 15 years ago on 7.3.1996 and the complainant was all along defending the suit along with the first petitioner and the present complaint is nothing but an abuse of process of law and an after thought for obvious reasons.

5.The learned counsel for the petitioners/accused submits that the complaint cannot be maintained against the petitioners in view of the execution of sale deeds by the complainant and registered by the competent authority accepting the fact that the entire sale consideration was received.

6.The learned counsel for the petitioners/accused submits that the respondent ought not to have ventured into this futile

exercise in view of the fact that the larger issue is pending before this Hon'ble Court as S.A.No.436 of 2005.

7.The learned Government Advocate (Criminal Side) appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

8.I heard Mr.R.Sunilkumar, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

9.In the case on hand, admittedly a civil litigation is pending between the parties and an attempt has been made by the defacto complainant to change the colour of the litigation. On reading the complaint supported with the 161 statements, nothing is found against the petitioners/accused except the oral statement. In fact no single document has been produced in supporting the complaint by the complainant. Once a civil litigation is pending there is no criminal case to be maintained for the same set off allegation and very filing of complaint is not maintainable in the eye of law. Therefore, I am inclined to quash the case against the petitioners/accused.

10.In the result, this criminal original petition is allowed and the proceedings pending against the petitioners/accused in C.C.No.78 of 2011 on the file of the learned Judicial Magistrate, Gingee, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CCC)

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Sub Assistant Registrar

vs
To

1.The Judicial Magistrate,
Gingee.

2.-Do- Thro, The Chief Judicial Magistrate,
Villupuram District.

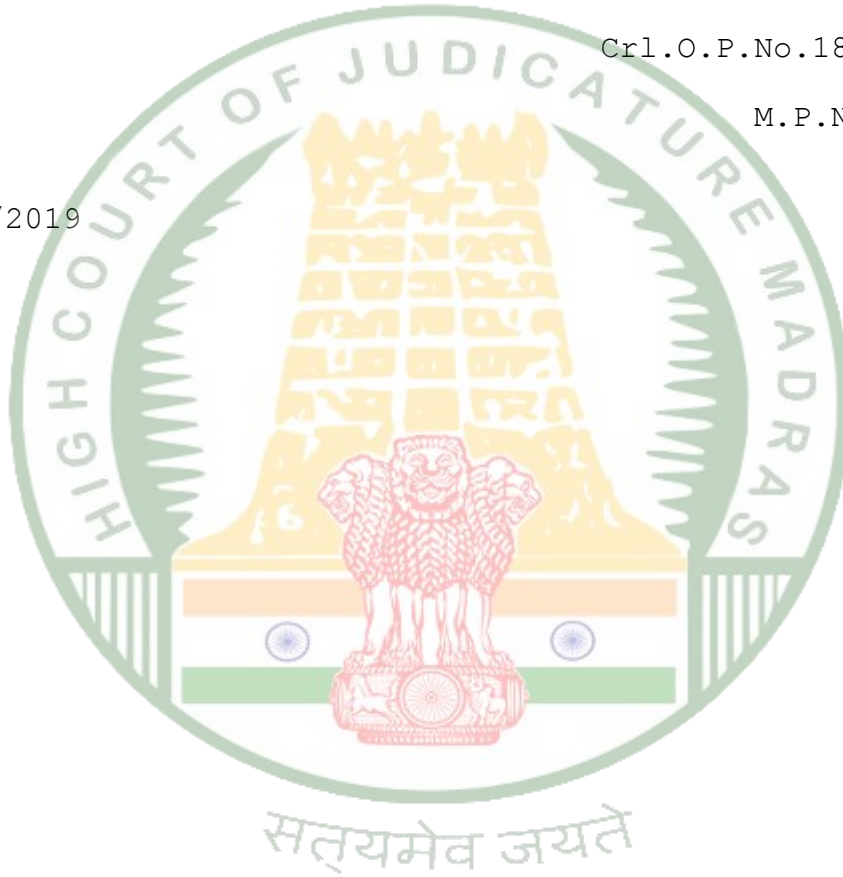
3.The Inspector of Police,
Valathi Police Station,
Villupuram District.

4.The Public Prosecutor,
High Court, Madras-104.

+lcc to Mr.R.Sunilkumar , Advocate Sr.25205

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and
M.P.No.1 of 2011

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