

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P. No.23919 of 2010
and
M.P.No.1 of 2010**

1.Ellammal

2.Natesan

3.Pandarinathan

... Petitioners

vs.

1.State By:

The Inspector of Police,
E-5, Koovathur Police Station,
Kancheepuram District.

2.Arumugha Naicker

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in respect of the C.C.No.138 of 2009 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, Kanchipuram District and quash the same as far as the petitioners are concerned.

For Petitioners

: Mr.N.Nagu Sah

For Respondents

: Mr.P.Govindarajan (for R1)
Additional Public Prosecutor

No Appearance (for R2)

JUDGMENT

The Petitioners have filed the instant quash petition to quash the proceedings in Calendar Case No.138 of 2009 on the file of the District Munsif Cum Judicial Magistrate, Thirukalkundram. In the said case, the final report was filed for the offence under Sections 420, 467, as against A1 to A3 and A4 is charge sheeted, who has not filed any petition, for the offence under section 471 of IPC.

2.The case of the Petitioners is that the 2nd Petitioner is the husband of the 1st Petitioner and the 3rd Petitioner is the nephew of the 1st Petitioner. According to the counsel for the Petitioner, the properties found in Survey No.263 (Old Paimash No.367 and 368) of Perundharvu Village, Cheyur Taluk, Kanchipuram District stood purchased vide sale deeds dated 07.04.1949 and 24.05.1961 by the father of the 1st petitioner. The said properties were inherited by the 1st Petitioner and her mother namely Chinnammal on 01.09.1970 followed by the death of the father of the 1st Petitioner. The 1st petitioner along with her mother sold a smaller extent of the above said property through registered sale deed. At the same time the 1st Petitioner after the death of her mother, sold the aforesaid property, as title holder, to the 4th accused by way of the registered sale dated 21.12.2005 vide Document No.3016/2005. Whereas, the Defacto

complainant filed an original suit in O.S.No.37 of 2006, on the file of the learned District Munsif Court, Mathuranthagam against the Petitioners and the 4th accused for the larger relief of declaration and permanent injunction and the said suit is pending. But, on the other hand, simultaneously, the Defacto complainant has also filed the instant case.

3.The learned counsel for the Petitioners would submit that none of the offence is committed by these Petitioners as the 1st Petitioners are the actual title holder. Moreover, when the civil suit itself is being contested, the instant criminal prosecution would be an impediment to the civil case that too for declaration. Apart from that to prove the title of the 1st Petitioner, she has filed all the necessary documents before the civil Court. So, the launching of prosecution is nothing but an act of coercion. So, the proceeding of calendar case is liable to be quashed.

4.Per contra, the learned Additional Public Prosecutor appearing for the 1st Respondent has contended that since the investigation has revealed the commission of offence by these Petitioners along with the 4th accused, final report is filed and the same is taken on file by the Learned Magistrate concerned. Moreover, there is no bar to lodge a criminal prosecution in the event of filing of a civil case in respect of a same

property. Further sufficient evidence is available and the merits of the criminal case cannot be decided in the quash proceeding. Fair trial would be the remedy for the parties concerned, hence the quash petition is liable to be dismissed.

5.I heard Mr.N.Nagu Sah, learned counsel appearing for the petitioners and Mr.P.Govindarajan, learned Additional Government Pleader appearing for the 1st respondent and all the relevant material available on record are perused. There is no appearance on behalf of the 2nd Respondent/Defacto complainant.

6.The materials available on record would show that this is the case, wherein the title of the properties mentioned above is disputed by the 1st Petitioner and the Defacto-Complainant. Though, it is an admitted fact that a civil suit is pending in connection with the same property that was not adverted into by the investigation officer. As for as criminal case is concerned that though lodging of criminal prosecution is not a bar to initiate civil proceedings, in this case not only the documents, but the evidence of parties concerned would show a detailed trial is to be conducted in order to testify the documents on either side. So, an impartial enquiry is to be conducted in the civil proceedings.

7.In such an event the instant proceedings of the calendar case would be an impediment for the same. Moreover, all the documents pertaining to the title of the aforesaid property are subjected to be analyzed by way of a full-fledge trial in the civil jurisdiction. In these circumstances, this Court is not able to find that the petitioners are having Mens rea to cheat the Defacto Complainant.

8.Therefore, in the interest of justice and also on the perusal of the statement of witnesses it is not advisable to allow the prosecution to further proceed with the calendar case in C.C.No.138 of 2009, on the file of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram.

9.In the result, this Criminal Original Petition is allowed and the Calendar Case No.138 of 2009, on the file of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, is hereby quashed. Consequently, connected miscellaneous petition is closed.

WEB COPY

23.06.2017

Note:Issue order copy on 13.09.2017

Internet : Yes

Index : Yes

vs

To

The District Munsif-cum-Judicial Magistrate,
Thirukalukundram, Kanchipuram District.

M.V.MURALIDARAN,J.

VS



**Crl.O.P No.23919 of 2010
and
M.P.No.1 of 2010**

WEB COPY

23.06.2017