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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD).No.562 of 2017 and
CRL.M.P.(MD)Nos.515 & 516 of 2017

1. Mythili
2. Balamurali . . Petitioners/Accused Nos.1 & 2

Vs.

1. The State represented by,
   The Inspector of Police,
   Fort Police Station(Crime),
   Tirunelveli.
   (Crime No.935 of 2014) . . Respondent/Complainant

2. Prabhu . . Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.248 of 2016 on the file of the learned Judicial Magistrate No.I, Thiruchirappalli District and to quash the same.

For Petitioners : Mr.N.Mohideen Basha
For R-1 : Mr. K.S.Durai Pandiyan,
Additional Public Prosecutor.
For R-2 : M/s.S.Vinod Sathya Lazar

ORDER

This Criminal Original petition is filed for quashing the Charge Sheet in C.C.No.248 of 2016 on the file of the learned Judicial Magistrate No.I, Thiruchirappalli District.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

3. The case of the petitioners is that the defacto complainant in this case is the son of Late Govindaraj and Late Raja Rajeswari. The following facts are not in dispute:-

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The petitioner is the second wife of one Govindharaj. The first petitioner's husband had earlier married the first petitioner's elder sister and the second respondent/defacto complainant is the son of the said Govindharaj and his first wife,namely, the sister of the first petitioner.

4. Therefore Late Govindharaj is the husband of the first petitioner and the father of the defacto complainant. It is admitted that the maternal grand father of the second respondent, by name, Venkatachalam Chettiyar was running a fancy store, in the name and style of Devi Fancy Mart, at Door No.143/1, Theradi Bazaar, Tiruchirappalli. It is also admitted that the said shop belongs to Tiruchirappalli Corporation.Thus, the said Venkatachalam Chettiyar was only a tenant in respect of the shop owned by the Tiruchirappalli Corporation.

5. It is stated that after the lifetime of the said Venkatachalam Chettiyar, the second respondent's mother was carrying on the business in the shop even in the year 1996 and that thereafter, the father of the defacto complainant, one Govindharaj was doing the business. It is stated in the complaint that the said Venkatachalam Chettiyar died in the year 1998 and that from the year 1983, the defacto complainant was helping his father in the business. It is further stated in the complaint that the father of the second respondent died on 11.07.2011, and that the petitioners have forged a document as if the said Venkatachalam Chettiyar transferred all his right in favour of the first petitioner and that on the basis of the forged document, the tenancy right was transferred in the name of the first petitioner. Since the second accused, namely, the second petitioner also attested the forged documents as a witness and his name was also included as second accused. Sum and substance, the complaint is about forgery of the document so as to claim exclusive right over the property in which defacto complainant also is entitled to a share.

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6. Learned counsel for the petitioners submitted that the allegations contained in the First Information Report, does not disclose any cognizable offence and that the allegations are bald, vague and bereft of particulars and that therefore the same is liable to be quashed.

7. The second submission is that the complainant has no locus standi to file this complaint and that it is only the Tiruchirappalli Corporation, the owner of the shop is really aggrieved and competent to file this complaint. The learned counsel for the petitioners further submitted that the complaint is in relation to a civil dispute which cannot be adjudicated in a criminal Court.

8. First of all, it is to be noted that the complaint clearly discloses cognizable offence and in the complaint specific overtact is alleged against the petitioners who are accused Nos.1 and 2. The fact whether the petitioners have forged the documents and committed the offence is a matter of evidence and it cannot be decided either on the basis of the complaint or on basis of the defence raised by the learned counsel the petitioners in this proceedings. The disputed question of fact cannot be gone into at this stage in this petition for quashing the proceedings.

9. The second submission is about the locus standi of the second respondent to lodge a complaint. The allegations against the petitioners is that the forged document was created for the purpose of claiming exclusive title/right over the property which belongs to the defacto complainant's grand father. The fact that the petitioners have obtained a document from the grand father of the defacto complainant is not in dispute. In such circumstances, the truth or otherwise of the allegations and the factual issues raised before this Court is a matter for evidence and hence this Court is not in a position to the appreciate the contention of the petitioners based on their assertions. It is only the trial Court

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which is competent to decide either on the basis of materials and evidence that may be placed before the trial Court at the time of trial.

10. The next submission of the learned counsel for the petitioners is that the matter is purely civil in nature cannot be appreciated. Though the dispute is regarding the lease hold right of the property, the exclusive right claimed by the petitioners on the basis of the alleged forged documents cannot be ignored. Since the allegations are with regard to commission of forgery by making the document as if the defacto complainant's grand father had executed the document in favour of the first petitioner, this Court is not in a position to hold that the dispute is purely civil in nature. Hence, the Criminal Original petition is dismissed. It is open to the petitioners to raise all the factual issues before the trial Court. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
   Thiruchirappalli District.

2. The Inspector of Police,
   Fort Police Station(Crime),
   Tirunelveli.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+1cc to M/S.S.VINOD SATHYA LAZER, Advocate SR.No.90316.

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