

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.22037 of 2010

and
M.P.No.1 of 2010

1.Palanisamy Gounder
2.Ramasamy gounder
3.Kumarasamy
4.Baladhandapani Petitioners

vs.

1.The Deputy Superintendent of Police,
Avinashi Sub-Division,
Tirupur District.
(D.C.B Crime No.13/2008)
2.J.S.Mahalingam Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the Criminal proceeding pending against them in Spl.S.C.No.24 of 2010, on the file of the Learned District and Sessions Judge, Coimbatore and quash the same.

For Petitioners : Mr.P.M.Duraisamy

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

Mr.S.P.Meenakshi Sundaram (for R2)

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JUDGMENT

The petitioners are before this Court to quash the charge sheet laid against them for the offences under Sections 420, 466, 468, 473 and 474 IPC r/w 3(1) (iv) of SC and ST Act, 1989 in Spl.S.C.No.24 of 2010 on the file of the learned District and Session Judge, Coimbatore.

2.The case of prosecution is that the first and second accused herein are brothers and the third accused 3 is the son of 1st accused and 4th accused is the son of 2nd accused and they all belong to Gounder community.

3.The properties described in S.F.No.518/2, 3 and 4 measuring an extent of 8.87 acres in Puthupalayam Village within the jurisdiction of Avinasi Police Station was assigned to the people belonging to scheduled caste in the year 1934 by the government. The said land was assigned with a condition not to alienate the said property to any person and a conditional patta was issued to that effect. One such patta was issued to one Ponnan Chakkili son of Mara Chakkili. Later it was transferred to the legal heirs of the above said Ponnan Chakkili.

4.When the facts are being so, in the year 1952 the father of the first and second accused namely Kandasamy Gounder purchased the above said land for a sum of Rs. 100 from one Maran son of Ponnan Chakkili with an intention to cheat poor Harijan people. After the demise of Kandasamy Gounder, his sons the petitioners 1 and 2 herein are in enjoyment of the said property and subsequently the accused number 1 and 2/petitioners 1 and 2 herein executed a registered Settlement Deed dated 24.01.2008 in favour of their sons, the accused 3 and 4 by a bogus documents used as genuine. Therefore the accused herein, who are the non members of SC and ST have wrongfully occupied the land allotted to SC/ST people by the government and thereby the accused 1 to 4 committed an offence punishable under section 420, 446, 468, 473 and 474 IPC r/w 3(1)(IV) of SC and ST Act, 1989.

5.The case of the petitioners herein is that they are arrayed as accused 1 to 4 respectively for the alleged offences punishable under Sections 420, 446, 468, 473 and 474 IPC r/w 3 (1)(iv) of SC and ST Act, 1989. The 1st respondent herein has registered the above said case on the complaint of the 2nd respondent herein.

6.It is the case of the petitioners that as for as the SC and ST Act is concerned, the investigation should be conducted by an Officer not below the rank of Deputy Superintendent of Police. Whereas in this case on hand, the record reveals that the entire investigation was conducted by the Sub-Inspector of Police, District Crime Branch, Coimbatore, thereby the 1st

respondent police had violated the Mandatory Provision of Rule 7 (1) of SC and ST (P.A) Rules, 1995.

7. That apart absolutely there is no material available on record to establish that an offence of forgery was committed by the petitioners herein. Further contention of the petitioners is that though the complaint and corresponding F.I.R. alleges the 1st and 2nd petitioners herein in respect of the disputed land, neither the charge sheet nor any official witness speaks about the alleged forgery committed by the petitioners herein. Hence there is no material available on record against the petitioners herein to prove the offences under Section 466, 468, 473 and 474 IPC.

8. Yet another contention of the petitioners that even as per the charge sheet the father of the petitioners 1 and 2 herein namely Kandasamy Gounder purchased the disputed lands in S.F.No.518/2, 3 and 4 of Puthupalayam village, Avinasi Taluk in the year 1952 itself from one Maran belonged to Scheduled Caste community and the same was alleged to have been transferred in the name of the petitioners 3 and 4 herein by way of Settlement Deeds dated 24.01.2008. But contrary to charge sheet, the statement of witness recorded by the police speaks that the disputed lands were assigned to the Scheduled Caste people only in the year 1997. Hence the petitioners contented that absolutely there is no material available on record so as to attract the offence under Section 3(1) (iv) of SC and ST Act, 1989.

9. It is also contented by the petitioners that there is also no material evidence against them to prove that they had any dishonest or fraudulent intention to defraud the SC people and the civil dispute has been given a criminal color and therefore no offence under Section 420 IPC is made out against the petitioners herein. It is well settled proposition of law that when there is no prima facie case made out against the petitioners herein and there is no material available on the record to get the accused convicted even at the end of criminal proceeding, they need not undergo the ordeal of trial and hence the petitioners herein prays that the above criminal proceedings against them is liable to be quashed.

10. Per contra, the learned counsel for the respondents would submit that there are sufficient material available on record to prove that the petitioners herein has committed the offence of cheating and forgery and the same could be

established only during the course of trial, not at the initial stage in this quash petition. They further contented that the statement recorded from the witnesses would also speak about the criminality of the offences committed by the petitioners and therefore the ordeal of trial is necessary in this case to prove that the petitioners has committed the offences for which they are charged. There is a prima facie case against the petitioners herein and they cannot be allowed to escape from the clutches of law by quashing the charge sheet.

11.I have heard Mr.P.M.Duraisamy, learned counsel for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.S.P.Meenakshi Sundaram, learned counsel for the 2nd respondent and perused the entire material available on record.

12.In this case, even according to the version of prosecution the father of petitioners 1 and 2 namely Kandasamy Gounder has purchased the property from one Ponnai Chakkli. The said land was originally assigned to the above said Ponnai Chakkli with a condition that the land should not be sold to anybody.

13.According to the prosecution, by violating the above condition the father of the petitioners 1 and 2 herein had purchased the said land. After his demise the petitioners 1 and 2 herein enjoyed the same and thereafter they have executed a Settlement Deed in favour of their son, the petitioners 3 and 4 herein. Thereby the petitioners have committed the offence stated above.

14.In the opinion of this Court, the above said transaction would not attract the criminal prosecution and in fact it is purely a civil in nature. If at all the Ponnai Chakkli has violated the conditional assignment, it is for the authorities to take action to cancel the assignment of land and the patta issued in the name of Ponnai Chakkli or his legal heirs. For the violation of conditional order the petitioners herein cannot be penalized.

15.As rightly contented by the petitioners herein the respondents herein are trying to give a criminal colour to a civil dispute and hence the charges against the petitioners in respect of offences under Sections 420, 446, 468, 473 and 474 IPC and the offence under Section 3(1) (iv) of SC and ST Act,

are quashed for the reasons stated supra.

16.In view of foregoing reason, this Court is of firm view that order of criminal trial in this matter is absolutely unnecessary and the same would absolutely wasting the precious time of the Court and therefore this Criminal Original Petition is allowed and the proceedings in Spl.S.C.No.24 of 2010, on the file of the Learned District and Sessions Judge, Coimbatore, is liable to be quashed against the petitioners and accordingly quashed.

17.In the result:

(a) this Criminal Original Petition is allowed;

(b) the case in Spl.S.C.No.24 of 2010, on the file of the learned District and Sessions Judge, Coimbatore, is quashed. Consequently, connected miscellaneous petition is closed,

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1.The District and Sessions Judge,
Coimbatore.

2.The Deputy Superintendent of Police,
Avinashi Sub-Division,
Tirupur District.

+1cc to Mr.P.M.DURAI SWAMY, Advocate, S.R.No. 467/18

Pre-Delivery Judgment in
Crl.O.P. No.22037 of 2010
and
M.P.No.1 of 2010

TR(18/01/2018)