

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:
THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.12619 of 2018 & Crl.M.P. No.6784 & 6785 of 2018

1 Ayyananan
 2 Tamil Selvi
 3 Lalitha
 4 Easwaran
 5 Senthamil Selvi

Petitioners

Vs

1 State by:
 the Inspector of Police
 District Crime Branch
 Salem District (Cr. No.9 of 2013)

2 R. Balamurugan

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.112/2017 pending on the file of the Judicial Magistrate No.II, Mettur, Salem District and to quash the same.

For petitioners Mr. N. Sudharsan
 For R1 Mrs. Kritika Kamal P.
 Government Advocate (Crl. Side)

ORDER

On the complaint lodged by Balamurugan, the second respondent herein, the first respondent police registered a case in Cr. No.9 of 2013 and after completing the investigation, have filed a final report in C.C. No.112 of 2017 before the Judicial Magistrate Court No.II, Salem, under Sections 120-B, 406, 420, 468 and 471 IPC against ten accused, challenging which,

<http://www.judis.nic.in> A.5, A.6, A.8, A.9 and A.10 have preferred this quash application.

2 Heard Mr.Sudharsan, learned counsel for the petitioners and Mrs.Kritika Kamal, P., learned Government Advocate (Crl. Side) for the first respondent State.

3 The sum and substance of the allegation in the charge sheet is that the de facto complainant has had business dealings with A.1 and A.2. Admittedly, the de facto complainant had borrowed money from A.1 and A.2. While so, it is the specific case of the prosecution that the principal accused fabricated the Power of Attorney as if it was executed by the sisters of the de facto complainant from Singapore and on the strength of the said Power of Attorney, the property belonging to the de facto complainant's family has been sold to the accused/petitioners herein.

4 The learned counsel for the petitioners/accused contended that the petitioners/accused are innocent purchasers and that they cannot be implicated in the offence.

5 However, a perusal of the charge sheet would show that after the execution of the sale deed in favour of the petitioners/accused, further rectification deeds have also been registered. Therefore, it cannot be stated that there are no *prima facie* materials against the petitioners/accused for the purpose of framing a charge.

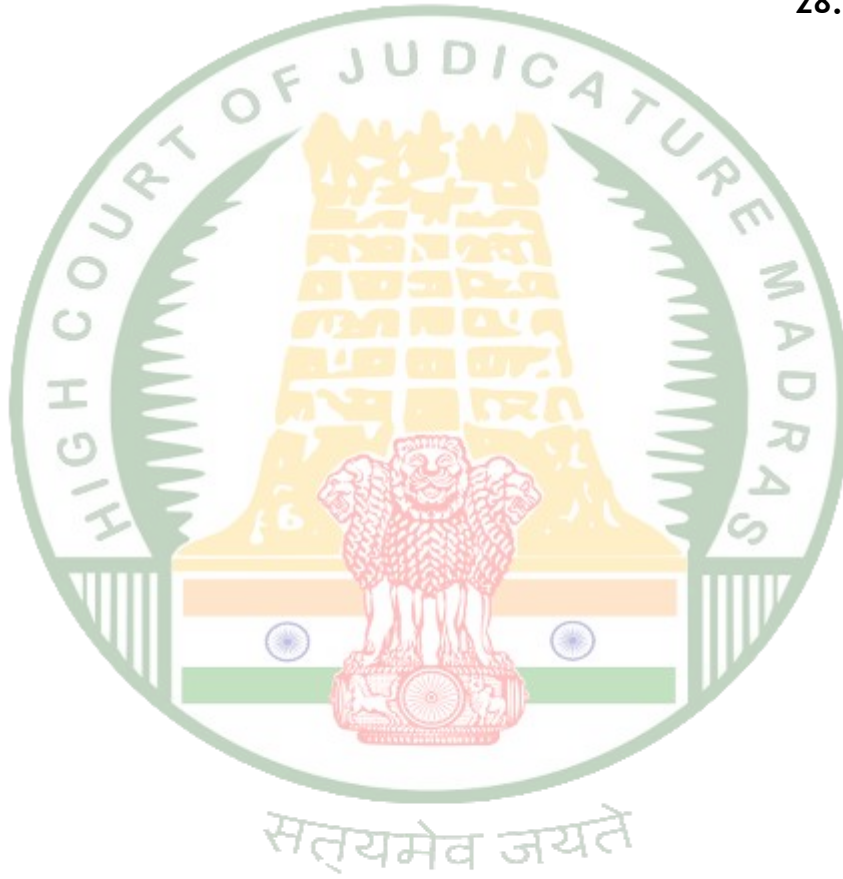
6. However, the learned counsel for the petitioners sought permission of this Court to dispense with the personal appearance of Tamil Selvi (A.6), Lalitha (A.8), Easwaran (A.9) and Senthamil Selvi (A.10) before the Trial Court.

7. Accepting the submission made by the learned counsel for the petitioners, this Court directs Tamil Selvi (A.6), Lalitha (A.8), Easwaran (A.9) and Senthamil Selvi (A.10) to appear before the trial Court for receiving the charge, for questioning under Section 251 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, Tamil Selvi (A.6), Lalitha (A.8), Easwaran (A.9) and Senthamil Selvi (A.10) shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (CrI) 288]**. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in *State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]*. If the accused abscond, the trial Court shall direct registration of an FIR against him under Section 229-A IPC.

With the above directions, this Criminal Original Petition stands dismissed. Crl.M.P. No.6784 of 2018 stands closed.

28.04.2018

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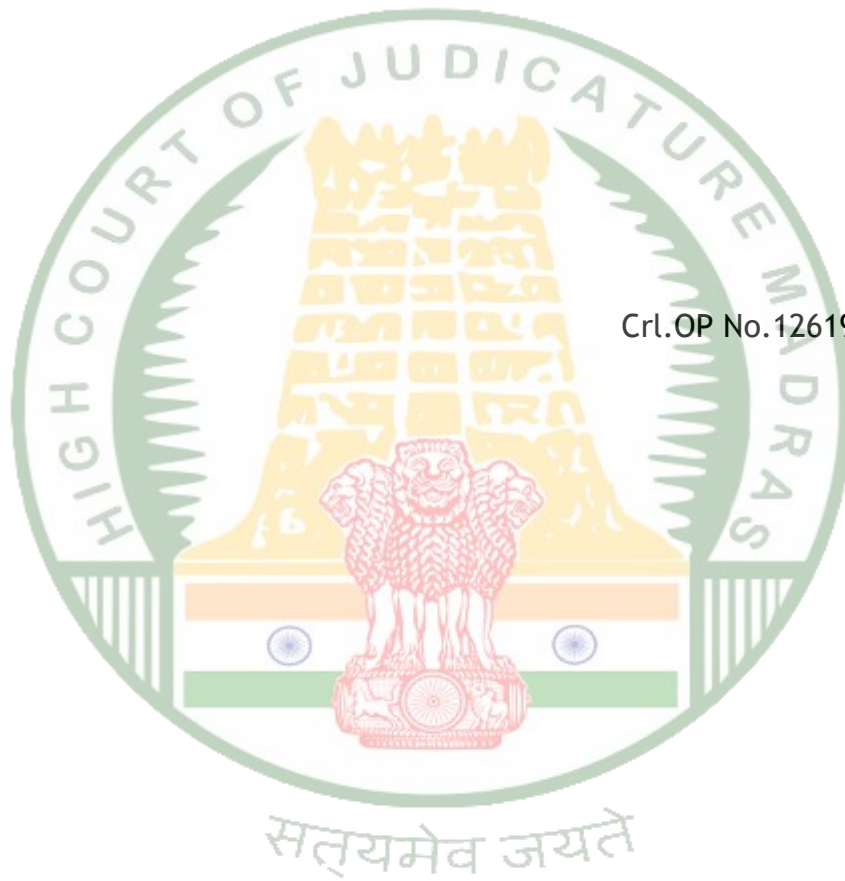
- 1 The Inspector of Police
District Crime Branch
Salem District
- 2 The Judicial Magistrate No.II
Mettur
Salem District
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104



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P.N.PRAKASH,J.

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