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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 10.09.2018
ORDERS PRONOUNCED ON : 12.09.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrIOP(MD)Nos.3034 of 2018 and 15632 of 2018 and
CrIMP(MD)No.1388 of 2018

CrIOP(MD)No.3034 of 2018

1.Kulandhai alias Savarimuthu

2.Savarimuthu James ... petitioners/Accused Nos. 1&2
Vs

1.The Inspector of Police, ... 1st Respondent/Complainant
District Crime Branch,
Thanjavur District.
[In Crime No.13/2017]

2.Anbarasan ... 2nd respondent/Defacto Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the case in Crime No.13 of 2017 on the file of the first respondent and quash the same.

For Petitioners : Mr.C.Arul Vadivel @ Sekar

For Respondent No.1 : Ms.S.Bharathi,
Government Advocate (crlside)

For Respondent No.2 : Mr.KPS.Palanivel Rajan
for Mr.B.Jameel Arasu

CrIOP(MD)No.15632 of 2018

Pratapa Simha Raja Saheb rep by his Power Agent R.Anbarasan
... petitioner/Defacto Complainant
Vs

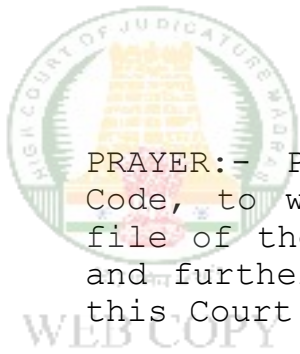
The State by

1.The Director General of Police,
Santhome High Road,
Chennai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Thanjavur.

3.The Inspector of Police,
District Crime Branch,
Thanjavur District.
[Crime No.13 of 2017]

... Respondents/Respondents



PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to withdraw the investigation in Crime No.13 of 2017 on the file of the third respondent onto the file of the second respondent and further direct to file the final report within a time fixed by this Court.

For Petitioner : Mr.K.P.S.Palanivel Rajan
For Respondents : Ms.S.Bharathi,
Government Advocate (crlside)

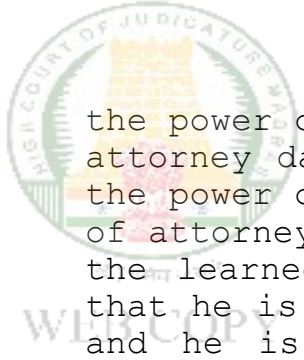
COMMON ORDER

Both the cases are dealt together and a common order is passed, since the issues involved and the parties involved are the same in both the cases.

2.The Cr1OP(MD)No.3034 of 2018 has been filed by the petitioners, who have been arrayed as accused in Crime No.13 of 2017 to quash the FIR filed against them.

3.It is seen from the records that the second respondent has given a complaint against the petitioners on the ground that survey No.248/3, 253/3, 253/4 originally belong to late Pratapa Simha Raja Saheb by virtue of a judgment and decree in OS No.3 of 1919 dated 16.09.1925. The above said person executed a deed of Kudikkani on 09.05.1927 in favour of one Veerappa Urthiyar. The said Veerappa Urthiyar executed a registered sale deed in favour of one Chinnappa Udayar without any right or title over the property. Thereafter one Gnanaprakasa Udayar, S/O. Thomu Udayar created revenue records, as if patta No.389 was given to him by the Government under the Estate Abolition Act and added his legal heirs namely the petitioners herein in the connected revenue records. Thereafter the second respondent claims that he was appointed as a general power of attorney by one Serfoji Raja and five others. He challenged the patta before the Tahsildar, Thanjavur and during the proceedings the petitioners claimed right over the property on the strength of patta No.389 dated 12.09.1961 standing in their names. The further case of the second respondent is that the Government has taken a stand in the pending writ petition that the patta No.389 was given from the year 1962 to 1966 only and the patta shown to be issued in the year 1961 is a bogus document. Therefore, the second respondent has filed a complaint stating that the petitioners have obtained patta illegally and fraudulently and in order to justify the adding of the names of the petitioners in the patta, the above said Gnanaprakasa Udayar executed a sale in the year 1970 in favour of the petitioners.

4.It is seen from the records that the second respondent claims himself as a Power of attorney holder. On the one hand he claims as



the power of attorney holder of M.R.Murugappan by virtue of power of attorney dated 28.04.2010. On the other hand, he also claims to be the power of attorney agent of Serfoji Raja and five others by power of attorney dated 16.11.2010. On a pointed question from this court, the learned Counsel appearing for the second respondent submitted that he is only relying upon the power of attorney dated 16.11.2010 and he is not placing reliance on the power of attorney dated 28.04.2010.

5.The facts of the case, as revealed by the materials placed on record would go to show, how the second respondent has abused the process of law and made the petitioners who are aged about 91 years and 69 years to run from one Authority to another, in order to safeguard their interest in the property.

6.After the power of attorney was executed in favour of the second respondent, he filed a petition before the Tahsildar on 18.11.2010 to cancel the patta standing in the name of the petitioners and transfer it to the name of Serfoji Raja and others. All of a sudden the Revenue Divisional Officer, Thanjavur started making enquiry. This became the subject matter of challenge before this Court in WP(MD)No.11706 of 2011. This Court by an order dated 05.09.2012, quashed the proceedings initiated by the Revenue Divisional Officer, Thanjavur and gave liberty to the second respondent to workout his remedy in accordance with law.

7.The second respondent filed a revision petition before the Director of Survey and Settlement, Chepauk, Chennai on 21.09.2012, questioning the patta granted in favour of the petitioners and to grant fresh patta in favour of Serfoji Raja and others. This petition was dismissed by the Director of Survey and Settlement, Chepauk Chennai by an order dated 22.10.2012. The second respondent filed an appeal against this order before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai and this appeal was also dismissed by the Principal Secretary by an order dated 15.11.2012. As against this order, the second respondent filed WP(MD)No.34377 of 2012 and the said writ petition is pending.

8.The second respondent not being satisfied with the proceedings initiated on the Revenue side, started giving criminal complaints against the petitioners. The first complaint was given by the second respondent before the Anti Land Grabbing Cell, Thanjavur and after a detailed enquiry, this complaint was closed on 13.03.2013. Thereafter, he gave another complaint on 16.12.2013 before the Anti Land Grabbing Cell, Thanjavur and the same was also closed after a detailed enquiry. The third complaint was given by the second respondent before the Medical College Police Station, Thanjavur on 03.05.2014 and also filed a Criminal Original Petition before this Court to direct the Police to register an FIR. The



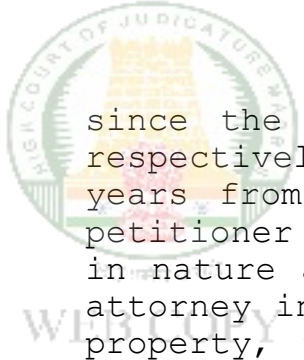
second respondent also filed a petition in CrIOP(MD)No.5027 of 2015 to transfer the investigation from Thanjavur Medical College Police Station to any other agency.

9.This Court in CrIOP(MD)No.5027 of 2015 by order dated 03.07.2015 directed the Superintendent of Police, Thanjavur to monitor the investigation and complete the same within a period of four months. Pursuant to the orders passed by this Court, a detailed investigation was conducted and a closure report dated 04.01.2016 was filed by the Inspector of Police, South Police Station, Thanjavur. The closure report reveals the fact that the second respondent has not curiously brought even one owner of the property before the Police in spite of specific directions. The Police also found that the second respondent has a power of attorney executed by another person named M.R.Murugappan and the second respondent has used this power of attorney and has executed a sale agreement in favour of his own wife on 30.04.2010. The subject matter of the property was the same in the other power of attorney also and the second respondent never explained the Police as to how he got another power of attorney and also dealt with the property in favour of his wife. The Police have also gone to the extent of giving a finding that it is the second respondent, who was trying to grab the property from the petitioners.

10.After the closure report was filed, the second respondent filed CrIOP(MD)NO.544 of 2016 before this Court for transferring the investigation to CBCID. This Court after considering the entire materials on record and also the status report filed by the Police, dismissed the petition filed by the second respondent by order dated 21.03.2017.

11.The second respondent did not stop even thereafter. The fourth complaint was given before the Superintendent of Police, Thanjavur on 19.07.2017 by the second respondent and this complaint was registered in Crime No.13 of 2017 by the District Crime Branch, Thanjavur. This FIR is the subject matter of challenge before this Court.

12.The learned Counsel for the petitioners would submit that the second respondent himself is a suspected person, who has got two power of attorneys from two different sets of people for the very same property. The learned Counsel would further submit that one complete round of proceedings before the Revenue Authorities upto the Principal Secretary was completed and the writ petition is pending before this Court and the second respondent started giving one complaint after the other, which were all closed after a detailed enquiry and was filing one petition after the other before this Court which were all disposed of. The learned Counsel for the petitioners would submit that this is a fit case to quash the FIR,



since the petitioners, who are aged about 91 years and 69 years respectively are running from pillar to post for the last eight years from one authority to another. The learned Counsel for the petitioner would submit that this is clearly a case, which is civil in nature and if at all, the Principals who have executed power of attorney in favour of the second respondent, have no right over the property, they can only file a civil suit before the appropriate Court since the right in question is traced from the year 1919.

13.The learned Counsel for the second respondent would submit that the closure of the earlier complaints by itself is not a ground to quash an FIR. The second respondent would further submit that the Police ought not to have conducted such a detailed enquiry on the earlier occasions without registering an FIR. The learned Counsel would also submit that the Police must be allowed to investigate this matter and the investigation should not be interfered with at this stage.

14.The learned Government Advocate appearing for the first respondent would submit that the Police is investigating the case only on the ground that the patta relied upon by the petitioners, which is dated 12.09.1961 is a forged one.

15.This is a classical case of how a person claiming himself to be a power of attorney agent has been trying through all means to destabilise the the petitioners, who are aged about 91 years and 69 years to run from one authority to another, one police to another for the last eight years. The very conduct of the second respondent is highly questionable. The second respondent claims himself to be a Doctor. However, he is relying upon two different power of attorneys executed by the two different sets of people for the very same property. Insofar as one power of attorney dated 28.04.2010, he has used this power and executed a sale agreement in favour of his wife on 30.04.2010 for the very same property. Insofar other power of attorney dated 16.11.2010 is concerned, he has used this power to prosecute before the Revenue Authorities and also gave one complaint after the other against the petitioners. Even at this stage, the first respondent Police who have registered an FIR have not even found if the Principals, who are said to have executed the power of attorney in favour of the second respondent, are really available. The earlier closure report filed by the Anti Land Grabbing Cell, South Town Police Station, clearly reveals that the second respondent did not produce even one owner before the authorities.

16.The very nature of right that is claimed in this case is purely civil in nature and it is something which, the Police can never decide. The proceedings before the authorities challenging the patta granted in favour of the petitioners is pending before this Court in WP(MD)No.34377 of 2012. When this being so, it is not known



how the respondent Police, entertained the fourth complaint and registered an FIR in this case.

17. The facts mentioned above would clearly reveal that the second respondent abused the process of law. The very claim made by the second respondent that he is power of attorney agent itself creates a huge suspicion since the second respondent used two sets of power of attorney for the very same property and till today none of the authorities have seen the Principals who have executed these power of attorneys. The petitioners are aged about 91 years and 69 years and at the evening of their life, they are made to face one proceedings after the other for the last eight years. This is a fit case, where this Court has to exercise its jurisdiction under Section 482 of Criminal Procedure Code in order to prevent the abuse of process of law and since the nature of dispute is civil in nature. To secure the ends of justice, the FIR registered by the first respondent Police deserves to be quashed by this Court.

18. In the result, the CrIOP(MD)No.3304 of 2018 is allowed. The FIR filed in Crime No.13 of 2017 by the first respondent is hereby quashed. Consequently, CrIMP(MD)No.1388 of 2018 is closed.

19. In view of quashing of the FIR, nothing survives in CrIOP(MD)No.15632 of 2018 and consequently the same is dismissed.

Sd/-

Assistant Registrar(RTI)

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Sub Assistant Registrar(CS-II)

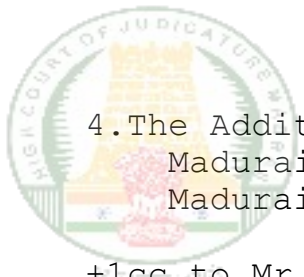
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To

1. The Director General of Police,
Santhome High Road,
Chennai.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Thanjavur.

3. The Inspector of Police,
District Crime Branch,
Thanjavur District.



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

+1cc to Mr.C.Arul Vadivel, Advocate in SR No.83781

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Cr1OP(MD)Nos.3034 of 2018
and 15632 of 2018

NM/RP/SAR 2/01.10.18/7P/6C