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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P. (MD)No.9247 of 2018

and

Crl.M.P. (MD)No.4032 of 2018

P.Rajendran

... Petitioner

Vs

The State rep. By
Officer of the Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Opposite to Anna Stadium
Race Course Road,
Kajamalai,
Trichy,
(Crime No.7 of 2014)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records pertaining to the FIR in Crime No.7 of 2014 on the file of the respondent police and quash the same.

For Petitioner : Mr.S.Vinayak

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

O R D E R

The petition is to quash the FIR registered against the petitioner P.Rajendran, former Thasildar at Thiruvembur Taluk, Trichy District, under Sections 167, 465, 467, 471 of I.P.C. and Section 13 (1)(C) r/w 13(2) of P.C.Act, 1988 in Crime No.7 of 2014 on the file of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Trichy.

2.The contention of the petitioner is that P.Rajendran, while exercising his quasi-judicial functions, has mutated the revenue record in favour of the legal heirs of Meenakshi Ammal, who is the original owner of the property bearing Survey No.729/1A, Patta No.1888, situated at Suriyoor Village. However, based on the complaint given by one Palanisamy and pursuant to the direction of the Hon'ble High Court, case has been numbered by the Department of Vigilance and Anti Corruption against six persons for the alleged offences of foisting record, forgery, misconduct of the public servant and using the forged document as genuine. The further contention of the petitioner herein is that he, as a Thasildhar, is a judge and he is protected under the Judges (Protection) Act. He has exercised quasi-judicial function by including the name of Vijaya Kumar and Ganga Devi along with the other co-owners in



respect of the property bearing Survey No.729/1A by issuing a joint patta. While exercising his quasi-judicial functions, if at all there is any error in the order of issuing joint patta, the remedy available to the de facto complainant is to prefer an appeal against the order and there cannot be any criminal prosecution against the petitioner.

3.It is also contented by the learned counsel for the petitioner that it is only a civil dispute between the legal heirs of Subbiah and Meenakshi Ammal and a color of criminality has been given due to *mala fide*.

4.It is contended by the learned counsel for the petitioner that to attract the offence under the Prevention of Corruption Act, there must be some element of misconduct or allegation of obtaining or demand of any gratification.

5.The reading of the First Information Report does not disclose any ingredients to attract the offence under the provisions of the P.C.Act, more particularly, Section 13(1)(c) of PC Act which deals with misconduct of the public servant, who indulge in dishonest or fraudulent means to misappropriate or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so.

6.With these submissions, the learned counsel for the petitioner would vehemently submit that the F.I.R, which is bereft of details and does not make any criminality against the petitioner, has to be quashed.

7.Per contra, the learned Additional Public Prosecutor for the respondent submitted that the petitioner herein, who was serving as a Thasildar of Tiruveumbur Taluk, Trichy District, during the period August 2012 to September 2013, three days prior to his transfer, has dishonestly and fraudulently included the names of Vijaya Kumar and Ganga Devi in Patta No.1888, while the computerised data discloses only names of seven persons, who belong to the family of the Ravilal Patel and Nallasamy. He has added the name of Ganga Devi and Vijaya Kumar as joint owners, who have nothing to do with the property covered under patta No.1888 by stealthily creating a forged document, the petitioner has caused pecuniary advantage in favour of those two persons, by making them as joint owners of property, due to his dishonest and fraudulent act done in order to misappropriate the property in favour of Vijaya Kumar and Ganga Devi, he has created false document and used it as a genuine document for creating a title over the property. Therefore, the learned Additional Public Prosecutor would submit that the ingredients for the offence of Section 13(1)(c) punishable under Section 13(2) of PC Act as well as Sections 465, 467 and 468 IPC are made out. He would also submit that on receipt of the information on 15.05.2014, preliminary enquiry was conducted and thereafter F.I.R was registered on 26.09.2014. After completion of the investigation, when the prosecution was about to file the final



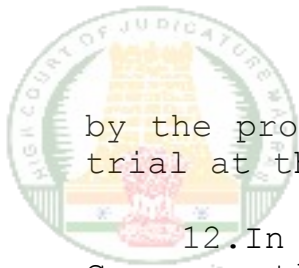
report after obtaining sanction to prosecute, this petitioner has filed the Criminal Original Petition to quash the First Information Report and also obtained stay. In view of the order of stay, respondent is not in a position to file a final report.

8. The learned counsel in support of his argument would rely upon the judgment of Madhya Pradesh High Court in *State of Madhya Pradesh Vs. Rajeev Jain* reported in 2001 (4) MPHT 58, wherein, the Collector (Stamps) while discharging his quasi-judicial functions, the Madhya Pradesh High Court has considered him as a Judicial Officer and held that he is protected under Judicial Officer's Protection Act. Here, It is a case, where a Thasildar who is supposed to discharge his duty, while carrying out the mutation of revenue records, more particularly, patta, has to make preliminary enquiry through his subordinates and based on their report, has to carry out the mutation of records. From records, this Court finds that in this case, when the property has been sold out by Meenakshi Ammal to the Patel family, as early as in the year 1995, the Thasildar in the Revenue Department, namely, P. Rajendran, the petitioner herein has fraudulently and dishonestly suppressed the alienation of the property as early on 26.07.1995 and stealthily included the legal heirs of the erstwhile owner, along with the actual owners. This does not fall within the definition of discharging an official duty or quasi-judicial function. It is a pure and simple fraudulent act committed by the petitioner and his assistants.

9. The learned Additional Public Prosecutor would submit that the V.A.O. and R.I, who were accomplices to the fraudulent and dishonest act, are also arrayed as accused.

10. The learned counsel for the petitioner would submit that the mutation of record by the petitioner herein has not so far been appealed or challenged by the person aggrieved. Therefore, third party, by name Palanisamy, can have no grievance regarding the mutation of records.

11. This Court is unable to accept any of the submission made by the counsel for the petitioner. An officer of the rank of Thasildar, in connivance with this subordinates had fabricated documents which he has domineered, so as to create records as if one Vijayakumar and Ganga Devi are co-owners of a property which they are not. If he thinks that he is a judge and can create document to include anybody name in anybody's property as the co-owners and say that, he is discharging the function of the judge and he is protected under the Protection of Judge's Act, the Court is bound to point out that he is neither a judge nor his act is a quasi-judicial function. This Court restraint itself from recording anything more about the submission, except to dismiss the petition and also to direct the prosecution to file a final report within two weeks. The trial Court shall furnish the copies of documents relied



by the prosecution to the accused persons forthwith and conduct the trial at the earliest.

12. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar (CS-III)

To

The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Opposite to Anna Stadium
Race Course Road,
Kajamalai,
Trichy.

+1cc to Mr.S.VINAYAK, Advocate, SR.No. 78221

CRL.O.P. (MD) No. 9247 of 2018
and
Crl.M.P. (MD) No. 4032 of 2018
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RMI
KK/RP/SAR-3/05.09.2018/4P-3C