



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 08.03.2018

ORDERS PRONOUNCED ON : 23.04.2018

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CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Crl.O.P [MD] Nos.17648, 18232 & 18233 of 2013
and M.P.[MD]Nos.1, 1 & 1 of 2013 & 1 of 2015

M.Kandasamy	.. Petitioner/Accused No.1 [in Crl.O.P.No.17648 of 2013]
R.Rajkumar	.. Petitioner/Accused No.2 [in Crl.O.P.No.18232 of 2013]
M.Sivasankar	.. Petitioner/Accused No.3 [in Crl.O.P.No.18233 of 2013]

versus

1. The Inspector of Police, Anti Land Grabbing Special Cell, Contonement, Tiruchirappalli.	.. 1 st Respondent/Complainant (in all Crl.OPs)
2. M.Rajarathinam, Secretary, Rajaraja Cholan Nagar People's Welfare Association, No.87, Indian Bank Colony, Trichirappalli.	.. 2 nd Respondent/Defact Complainant [in all Crl.O.Ps]
3.A.Thiruvvelavan	.. Respondent [in Crl.O.P.Nos.18232 and 18233 of 2013]

COMMON PRAYER : Criminal Original Petitions have been filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with the First Information Report in Crime No.14 of 2013 on the file of the first respondent police and to quash the same.



For Petitioner : Mr.Nirjan.S.Kumar
[in CrI.O.P.No.17648 of 2013] for Mr.V.Balaji

For Petitioner : Mr.R.V.Rajkumar
[in CrI.O.P.Nos.18232 & 18233 of 2013]

For Respondent No.1 : Mr.A.Robinson
[in CrI.O.Ps.] Government Advocate

For Respondent No.2 : Mr.V.Sitharanjandass
[in CrI.O.Ps.] for Mr.D.Senthil

For Respondent No.3 : No Appearance
[in CrI.O.P.Nos.18232 & 18233 of 2013]

COMMON ORDER

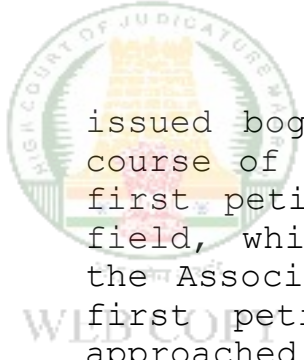
Since these three Criminal Original Petitions are arising in a single Crime No.14 of 2013, this Court is decided to pronounce a common order in all these Petitions.

2. The petitioners in CrI.O.P.Nos.17648 of 2013, 18232 of 2013 and 18233 of 2013 are arrayed as accused nos.1 to 3 in Crime No.14 of 2013 on the file of the first respondent police.

3. For the sake of convenience, the petitioners, namely, M.Kandasamy, R.Rajkumar and M.Sivasankar, in all these Petitions are referred to herein, as petitioner nos.1 to 3 respectively.

4. It is alleged that the Members of the Rajaraja Cholan Nagar People's Welfare Association purchased the lands between the year of 1982 - 1990 and thereafter, an order has been passed on 29.05.2001 by the Tahsildar / Revenue Authority for granting patta in favour of the Members of the said Association. In the meanwhile, without noticing the fact that patta stands in the name of the Members of the Association, the first petitioner purchased the above said land from one Ernest Raj, Julaika Beebi, Noorjahan Begum, Sharbunnissa, Mohammed Esa, Ayisha Gani, Mangaiyarkarasi and P.M.Iqbal, for which, the first petitioner created bogus sale deeds. Due to the non-payment of the requisite stamp fee, the said sale deeds are forwarded to the authorities concerned for enquiry under Section 47[A][1] of Indian Stamp Act. Subsequent to that, some of the sale deeds were returned to the first petitioner based on the orders passed by this Court.

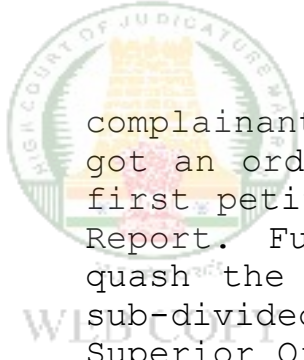
5. During the course of the above said transaction, the petitioners 2 and 3 herein being the surveyors along with other revenue people violated the Rules, Board Standing Orders and



issued bogus patta in the name of the first petitioner. In the course of same transaction, on 02.09.2012 at about 11.00a.m., the first petitioner along with other unknown persons stood in the field, which is now under dispute and threatened the Members of the Association by showing a deadly lethal weapons. Further, the first petitioner assaulted the de facto complainant. So, he approached this Court in Crl.O.P.No.3274 of 2013 for a direction to register the First Information Report. Thereafter, as per the order passed by this Court, the first respondent registered a case against these petitioners on 10.06.2013 in Crime No.14 of 2013 for the alleged offences punishable under Sections 147, 148, 217, 218, 294(b), 420, 465, 468, 467, 471 and 506 (ii) IPC r/w 120 (b) IPC. Against the said First Information Report, the petitioners being the accused approached this Court to quash the same as erroneous.

6. According to the case of the petitioners, the first petitioner purchased the lands in question by virtue of registered sale deeds in his favour in between the year of 1962-1969. Before purchasing the said lands, the first petitioner verified the Town Survey Re-settlement Register, in which, the name of his vendors are shown as Pattadhars. The copy of the sale deeds enclosed in Serial Nos.8 and 9 at page Nos.34 and 56 shows that the property in T.S.No.5 is corresponding to S.Nos.5/25, 5/26 and 5/1B. Similarly, in all sale deeds enclosed in the typed set of papers shows that the vendors of the first petitioner are having valid title over the property which was purchased by the first petitioner Kandasamy. The Civil Suit in O.S.No.744 of 2000 has been filed for the relief of specific performance ended in favour of the first petitioner, in which, the title of the disputed property confirmed in favour of the vendors of the first petitioner.

7. The order passed by the Tahsildar with regard to the Sub-division of the property was questioned by the affected flat owners by way of presenting the petitions and appeals. Thereafter, on 26.03.2014, the Revenue Divisional Officer cancelled the order passed by the Tahsildar in which the patta was granted in favour of the first petitioner and directed to sub-divide the property in T.S.No.5 measuring to an extent of 23.86 hectares, for granting patta in favour of the Members, who are challenged the sub-division. The said order being challenged by way of Revision before the District Revenue Officer. During the time of passing the order, the District Revenue Officer has restored the order passed by the Tahsildar and set aside the order passed by the Revenue Divisional Officer and restored the earlier position existing before 26.03.2014. Moreover, various persons had filed a suit against the vendors of the first petitioner in various Courts claiming title over the disputed property and for the relief of injunction. In the said suits ended in favour of the petitioners and thereafter for threatening the petitioners, the de facto



complainant filed Crl.O.P.No.3274 of 2013 before this Court and got an order for direction. Based on the above circumstances, the first petitioner prayed this Court to quash the First Information Report. Further, the petitioners 2 and 3 are also required to quash the said First Information Report by mentioning that they sub-divided the property only as per the direction given by their Superior Officers.

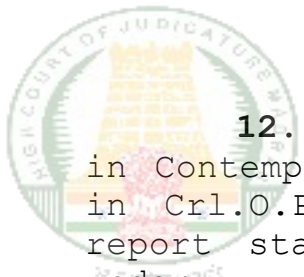
8. Now, in order to substantiate the claim made by the petitioners, the learned counsel appearing for the petitioners made a submission that the first petitioner has purchased the property between the year of 1962 - 1969 from the original Pattadhars and thereafter, in the year 1980, after made sub-division pattas were issued in favour of the first petitioner. Further, he added that the earlier petition filed by the de facto complainant before the first respondent for the same allegation now mentioned in the alleged First Information Report was closed after proper enquiry, after giving advise to the parties to work out their remedy in the Civil Court. He would also submit that during the pendency of these Petitions, this Court while passing the order in Contempt Petition [MD] No.412 of 2014 in M.P.[MD]No.2 of 2013 in Crl.O.P.[MD]Nos.17648 of 2013 observed various aspects in and around the case and issued a direction to the District Revenue Officer to dispose of the appeal pending with regard to the property within a period of eight weeks from the date of receipt of a copy of this order. In the same way, this Court passed an order in M.P.[MD]No.2 of 2013 in Crl.O.P.[MD]Nos.17648 of 2013 filed in the same Original Petition analysing the various aspects and came to the conclusion that *prima facie* case has been made out to show the unlawful activities of the de facto complainant and issued a direction to the first respondent for giving police protection to the first petitioner. In the said situation allowing to file a charge sheet in the petition mentioned First Information Report is nothing but abuse of process of law.

9. On the other hand, the learned counsel appearing for the first respondent would submit that since for deciding the title so many suits are pending with the Civil Court, the first respondent is not in a position to confirm the offence committed by the first petitioner. The learned counsel appearing for the de facto complainant would submit that even after knowing the entire facts and circumstances, the first petitioner purchased the property from the person, who is not having any title over the property. Further, after made influence over the Revenue Authority and after submitting the false records, the name of the first petitioner was entered into the revenue records thereby only with the dishonest intention, the first petitioner committed the offences as alleged in the First Information Report, for which, the petitioners 2 and 3 after made a conspiracy altered the revenue records.



10. On considering the rival submissions made by the learned counsels appearing on either side, it would be necessary to see the orders passed by the Civil Court and by the Divisional Revenue Officer. Initially, one of the first petitioner's vendor filed a suit for bare injunction against one Thangaraj and 11 others in O.S.No.547 of 1996 on the file of the Sub-Court, Tiruchirappalli and obtained an order of injunction on 10.10.1996. One another vendor of the first petitioner filed a suit in O.S.No.2308 of 2004 on the file of the District Munsif Court, Tiruchirappalli, against one Baskaran and 16 others for declaration of title and permanent injunction. The suit was decreed in favour of the vendors of the first petitioner on 01.10.2004. Another suit in O.S.No.1362 of 1995 was filed by the first petitioner's vendor for permanent injunction. Subsequent to the purchase made by the first petitioner in the year 2004, one S.Palaniappan filed a suit in O.S.No.677 of 2008 on the file of Additional District Munsif Court, Tiruchirappalli against the first petitioner. After full-fledged trial, the Court came to the conclusion that the plaintiff in the suit is not in possession and that the first petitioner herein has proved his title. A similar suit in O.S.No.681 of 2008 on the file of the same Court filed by one S.Govindan on the basis of a sale deed obtained by him on 27.08.1991 was also dismissed on 20.03.2012. Further, one another suit in O.S.No.237 of 2011 has been filed by one J.Latha against the first petitioner herein for permanent injunction is pending.

11. Further, the suit in O.S.No.1127 of 2008 has been filed by one Balu and another against the first petitioner is pending. In the same way, another suit in O.S.No.168 of 2007 has been filed by one Rakkayee and O.S.No.172 of 2007 was filed by one Renganath against the first petitioner is also pending. Yet, another suit in O.S.No.228 of 2009 has been filed by one Duraisamy Gunaseelan and five others for a declaration that the proceedings of District Revenue Officer dated 30.10.1987, culminated in the notification under Section 13 of the Tamil Nadu Survey and Boundary Act, 1923 is null and void and consequential permanent injunction restraining the defendants from giving effect or to endorse the order of the District Revenue Officer. Apart from that, one R.Manoharan has filed three suits against the first petitioner in O.S.Nos.140 to 142 of 2012 for the relief of specific performance based on the three different agreements, alleged to have been executed by the first petitioner in respect of the three different parcels of land in New Town Survey No.5. In all three suits, as per the order passed in I.A.Nos.541 to 543 of 2012, the first petitioner has been directed not to alienate the properties. Accordingly, in order to confirm the title with regard to the land in question, the above-mentioned suits are filed and as of now some of the suits are pending.



12. Moreover, in a report submitted by the first respondent in Contempt Petition [MD] No.412 of 2014 in M.P.[MD]No.2 of 2013 in Crl.O.P.[MD]Nos.17648 of 2013, the relevant portion of the report stated in paragraphs 36 and 37, which is extracted as under:

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"36. It is submitted that pursuant to the previous complaint, enquiry was conducted by the then Inspector, Anti-Land Grabbing Cell. After holding enquiry, a closure report was submitted by the then Inspector, Anti Land Grabbing Cell by directing the parties to approach the Civil Court to agitate their rights in L.A.O.P.No.8 of 2007 on the file of Principal Sub-Court and to abide by the verdict given by the Civil Court and the orders of District Revenue Officer regarding cancellation of patta. Thereafter, the present de facto complainant has neither filed a protest petition nor any private complaint. Instead the de facto complainant on the same set of facts, once again gave another complaint on 10.09.2012 and have approached this Hon'ble Court and got a direction to register the complaint, suppressing the earlier complaint. Pursuant to the directions of this Hon'ble Court, the then Investigation Officer has registered First Information Report in Crime No.14 of 2013.

37. It is submitted that the Investigation revealed that there are already civil suits pending wherein the title of the vendors of Thiru.M.Kandasamy is questioned. The pending litigations were listed in this report earlier. Having regard to the number of litigations and subject matters involved in those cases, it can be inferred that apart from the de facto complainant and the accused Thiru.M.Kandasamy, there are other parties who are claiming title and enjoyment in respect of the same properties for which patta had been issued in favour of Thiru.M.Kandasamy. In the above stated litigations, in certain suits decrees had been passed by the civil court, certain suits are pending before the civil court. When those civil suits are pending without ascertaining the entire details, the then Inspector of Police while registering the first information report in col.7 instead of registering the names of the accused mentioned in the complaint of the complainant, had entered the names of Sivasankaran, Kumaresan, Palthurai,



Abdul Jaleel and Radhakrishnan. Had the inquiry officer/inspector come to know that they are the accused certainly there would have been a mention about the same in the F.I.R. and in the deposition of witnesses and confession statements but the same is not mentioned. Further on the complaint of Thiru.Rajarethinam F.I.R. has been registered without quoting the names of the accused P.M.Iqbal, Mohammed Easa, Noorjahan Begam, Juleka Bibi, Charles, Earnestraj, Ayishakani, Mangayarkarasi, Dhanapal have not been mentioned in the F.I.R. in Col.7. The accused M.Kandasamy has purchased the property only from his vendors who are named above. Unless there is any allegation against them regarding fabrication of records or fraud or forgery, the subsequent purchaser M.Kandasamy cannot be complained especially in a case where there is no material or any form of evidence against the accused Kandasamy for committing cheating or fraud and forgery."

13. So, on culminating the entire things particularly on going through the number of suits pending against these petitioners / vendors and also on the strength of the report submitted by the first respondent, which would clearly reveals that the first respondent is not in a position to investigate the matter without conferring the title.

14. Before deciding these Petitions, it is necessary to note down one another aspect with regard to the acquisition made by the National Highways Authority. On 01.07.2004, the National Highways Authority issued a notification under Section 3[A][1] of National Highways Act for acquiring the portion of the lands purchased by the first petitioner, for which, the petitioner gave consent with condition for giving compensation under market value. In the said enquiry, one Jeyachandran and Kalarani alone made a rival claim as purchasers of independent plot. They objected in respect of all sub-divisions as they could not identify their lands with regard to the sub-division. Subsequently, the claim made by the first petitioner is referred to the Civil Court under Section 3[H][4] of National Highways Act to decide the ownership and for apportionment of compensation. As of now, the amount of compensation to the tune of Rs.4 Crores and odd has been deposited in the account of L.A.O.P.No.8 of 2007 before II Additional Sub Court, Tiruchirappalli. Against which, the first petitioner filed W.P.No.9627 of 2007 and this Court dismissed the said Writ Petition. Subsequent to that Writ Petition, W.A.No.570 of 2008 has been filed, against which, the order was confirmed reserving the petitioner's right to approach the Sub Court for withdrawal of any



amount deposited towards compensation.

15. On cursorily looking of all these aspects shows that the de facto complainant after admitting the possession of the first petitioner, they prayed for redemption of the lands as per the submission made by the learned counsel appearing for the petitioners, it appears that the entire property purchased by the first petitioner was fenced on the strength of the revenue records. In the said circumstances, without mentioning the suits with regard to the property and without mentioning the closure of the earlier complaint given by them, the de facto complainant got a direction from this Court and subsequently, a case has been registered against these petitioners.

16. The dispute between the first petitioner and the de facto complainant can be settled only by way of civil litigation. In order to dispose of this type of case, the Honourable Apex Court gave the guidelines in the celebrated judgment of **STATE OF HARYANA AND OTHERS vs. BAJANLAL** reported in **AIR 1992 SC 604: 1992 SCC [Cr1.] 426** wherein, it has held as follows:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the code.



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5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. Now, applying the principle laid down by our Honourable Apex Court with the dispute mentioned in the application, as of now in Crime No.14 of 2013 the Investigating Officer and the Revenue Divisional Officer, who is the competent authorities for making alteration in the revenue records are not having the sufficient materials to know who is the real owner for the property were claimed by the de facto complainant / first petitioner. According to the opinion given by the Investigating Officer and advise given by the District Revenue Officer, the alleged dispute have to be settled only in Civil Court. Moreover, it is a proved fact that the first petitioner had purchased the property only through the legal heirs of the earlier Pattadhars. In this occasion, we cannot come to the conclusion that the first petitioner is having with dishonest intention to cheat the de facto complainant and to grab the property of the people, associated in Rajaraja Cholan Nagar People's Welfare Association. So, ultimately the said aspect reflects that the dispute is in civil nature. The petitioners 2 and 3 in this case have acted only as per the orders of the Revenue Divisional Officer, which is nothing illegal. In a judgment reported in **2011 (1) MLJ (Cr1) 407 (SC)** in the case of **RAJESHWAR TIWARI AND OTHERS vs NANDA KISHORE ROY**, wherein our Honourable Apex Court has held as follows:



nature and cannot be adjudicated by the criminal Court or is an abuse of process of Court, the High Court is well within its power to exercise the jurisdiction under Section 482, Cr.P.C. and quash the same".

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18. Accordingly, after analysing the entire facts and circumstances, this Court comes to the conclusion that the following facts are identified in support of the petitioners.

- i. The petition mentioned First Information Report was registered after suppressing the earlier complaint lodged by the de facto complainant for the very same allegation.
- ii. The dispute between the de facto complainant and the petitioners have to be settled only by way of civil litigation.
- iii. There is no *prima facie* evidence to prove that the petitioners are having dishonest intention to grab the property in dispute.

19. In the light of the above discussions, I hold that this is a fit case for quashing the First Information Report. Accordingly, these Criminal Original Petitions are allowed and the First Information Report registered in Crime No.14 of 2013 against these three petitioners are quashed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police
Anti Land Grabbing Special Cell,
Contonement, Tiruchirappalli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.D.SENTHIL, ADVOCATE IN SR No. 63435

+ 10 CC TO Mr.V.BALAJI, ADVOCATE IN SR No. 62948

SRI

TE/SV-MMS/SAR-3 : 08/05/2018 : 10P/14C

COMMON ORDER IN
Crl.O.P. [MD] Nos.17648,
18232 & 18233 of 2013
23.04.2018