

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.30584 of 2015
and M.P.No.1 of 2015

1.Boopathy

2.Nagarajan

3.Ramamurthy

4.E.O.Ponnuvelu ... Petitioners

-Vs-

P.M.Masilaamani ... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.951 pf 2014 on the file of Judicial Magistrate, Tambaram and to quash the same insofar as the petitioners are concerned.

For Petitioner : Mr.R.Bharathkumar

For Respondent : Mr.M.Ganeshan R. Suresh

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.951 of 2014 on the file of the Judicial Magistrate, Tambaram.

2.The respondent has filed a private complaint against the petitioners for offences under Sections 468, 471 and 120(B) of IPC.

3.The crux of the allegation is that one Rojammal was the absolute owner of the property and she filed a suit in O.S.No.2040 of 1989 before the District Munsif Court, Poonamallee, against the respondent and 7 others, for declaration of title and possession and the said Rojammal died on 15.08.1992. Subsequent to the death of Rojammal, the petitioners herein have created a fraudulent Will dated 05.12.1990. Therefore, the present complaint has been filed by the respondent seeking to take action against the petitioners for the above said offences.

4.The learned counsel for the petitioners brought to the notice of this Court the suit filed in O.S.No.2040 of 1989 was subsequently transferred and re-numbered as O.S.No.14 of 2008 before the District Munsif cum Judicial Magistrate, Sriperumbudur. In this suit, one specific issue that was raised was regarding the genuineness of the Will. The learned counsel brought to the notice of this Court the findings rendered by the trial Court to the effect that the Will has been duly proved and the same is a genuine one and that it was executed by the said Rojammal.

5.The learned counsel further submitted that the appeal that was filed as against the judgment was also dismissed for default and subsequently, the same was also restored.

6.The learned counsel by pointing out to the above proceedings submitted that a competent Civil Court has already given a finding with regard to the genuineness of the Will. That apart, the learned counsel also submitted that if a forged Will has been produced before the Court, it is for the Court to give a complaint under Section 195(1)(b) of Cr.P.C. by following the procedure under Section 340 of Cr.P.C.

7.The learned counsel submitted that the entire proceedings are abuse of process of Court and the same needs to be interfered by this Court in exercising its jurisdiction under Section 482 of Cr.P.C.

8.The learned counsel for the respondent submitted that a prima facie case has been made out in the complaint and it is for the petitioners to establish their case by way of defence during the course of trial. The learned counsel also submitted that even though the Will is a subject matter in civil proceedings, if the same has been forged and created by the petitioners, the same can become an independent cause of action for filing a criminal complaint.

9.This Court has carefully considered the submissions made on either side.

10.The crux of the complaint is regarding the genuineness of the Will relied upon by the petitioners in order to claim the right over the property from the above said Rojammal. The genuineness of the Will has been confirmed by the findings of the competent Civil Court, The said finding, according to the learned counsel for the petitioners, has not been set aside till date. Therefore, the respondent cannot be permitted to proceed further with the criminal complaint against the petitioners by raising the ground of 'forged Will'.

11.The learned counsel for the petitioners brought to the notice of this Court that the fourth petitioner died during the pendency of this petition. Therefore, insofar as the fourth petitioner is concerned, the proceedings shall stand abated.

12.In view of the above, the proceedings in C.C.No.951 of 2014 on the file of Judicial Magistrate, Tambaram, is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Tambaram

+lcc to Mr.R.Bharathkumar, Advocate, S.R.No.6818

Crl.O.P.No.30584 of 2015
and M.P.No.1 of 2015

RK(CO)
GSP(15/02/2019)

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