

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.24126 of 2014 and
Crl.M.P.No.1 of 2014

1.S.Sivakami
2.R.Kesavan

... Petitioners/Accused 1 & 2

Versus

1.State by,
Inspector of Police,
Thiruvananthapuram Police Station,
Villupuram.

2.Ilangovan ... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the F.I.R in Crime No.88 of 2014, dated 12.03.2014 pending on the file of respondent police and quash the same.

For Petitioner : M/s.A.Mohamed Ismail

For 1st respondent: M/s.M.Prabavathy,
Additional Public Prosecutor

For 2nd respondent: M/s.P.Kavitha Balakrishnan

ORDER

This Criminal Original Petition to quash F.I.R in Crime No.88 of 2014, pending on the file of 1st respondent police.

2.On the complaint of the 2nd respondent/defacto complainant, a case in Crime No.88 of 2014 has been registered for the offence under Sections 420, 465, 467, 468, 471 of IPC against the petitioners and six others. The 1st petitioner, who is residing at Thiruvananthapuram had joined with the seven others, created a forged patta No.833 for the land in Survey No.109/4B1-400417 sq.m and 109/4B2-00858 sq.m by false particulars for the land belonging to one Vijayakrishnan, son of Balachandran. Further, the 1st petitioner had given a power of attorney to the 2nd petitioner. Based on the power of attorney, the sale deed has been executed to the 2nd petitioner and others. During investigation, the 2nd respondent/defacto

complainant produced sale deeds, patta, EC copy of the disputed property in the name of Vijayakrishnan and the investigation was initiated.

3.The learned counsel for the petitioners would submit that the 1st petitioner is the owner of the property in Survey No.109/4B-2 to the extent of 9232 Sq.ft situated at Thirunavalloor Village, Ulundurpet, Villupuram. The 1st petitioner issued patta No.833 in respect of the said property by the Deputy Tahsildar. The petitioner was an absolute possession and enjoyment of the property. After the marriage of the 1st petitioner, she leased out the said property to third parties, who were enjoying the property. Since the 1st petitioner decided to alienate the property, she appointed the 2nd petitioner as her lawful power of attorney vide document No.30 of 2012, dated 18.07.2012 and the same was duly registered by the Sub Registrar, Thirunavalloor.

4.This being so, one Vijayakrishnan had filed an appeal before the Revenue Divisional Officer, Thirukovilur in Application No.6080 of 2012, challenging the patta issued in favour of the 1st petitioner and the same is pending. Further, the said Vijayakrishnan had represented by its power of attorney/2nd respondent had filed a suit in O.S.No.52 of 2013 before the learned Subordinate Judge, Villupuram. The petitioner is the lawful owner and the patta No.833 was issued by the revenue authorities. The 2nd respondent by giving a criminal colour to the civil dispute had given a false complaint against the petitioners and others. The 1st respondent police though aware of the pending of civil proceedings for the said property and without awaiting for the finding of the civil Court, had registered a case against the petitioners.

5.The learned Additional Public Prosecutor appearing for the 1st respondent would submit that in this case investigation has been initiated and documents were received from the revenue authorities. In the meantime, the petitioners approached this Court, obtained interim stay dated 05.09.2014 in Crl.M.P.No.1 of 2014 for filing of the final report, hence investigation could not be concluded. She would further submit that there are prima facie materials to proceed against the petitioners and others.

6.The learned counsel for the 2nd respondent would submit that he is the power agent. One Vijayakrishnan's grand father Subramania Iyer had purchased the property in Survey No.109/4B2 0.09.0 ares from one Sudhara Mudhaliyar vide Document No.1167/1947 on 21.07.1947. Thereafter, it was inherited by Subramania Iyer and sub divided into Survey No.109-4B2 and patta No.1301 was issued. On the death of Balachandran on 11.09.1992, the said property was inherited by the Vijayakrishnan and the 2nd respondent is the power of attorney of Vijayakrishnan. The 1st petitioner claimed that

the property in Survey No.109/4B2 was a Natham Poramboke and patta No.833 issued to the 1st petitioner, which is false. The property in Survey No.109/4B2 is not a Natham poramboke. The title of the property and patta stand in the name of Vijayakrishnan. Through Patta No.833 the 1st petitioner claiming right over the property, is a forged one. Further, from the records and evidence it is seen that the Natham patta was forged one. According to the 1st petitioner the patta No.833 issued on 14.07.2012. On coming to know about it, the said Vijayakrihsnan filed appeal before the Revenue Divisional Officer in Appeal No.6080 of 2012. Thereafter, he immediately executed the power of attorney in the name of the 2nd petitioner on 18.07.2012. On 19.07.2012, the registered sale deed for the portion of the property executed to A3 and A4 and on 20.07.2012 to A5 and A6, would go to show that these sale deeds have been executed to create encumbrance and to usurp the property. During enquiry of the Revenue Divisional Officer, Thirukovilur, the 1st petitioner appeared but failed to produce any documents. The 2nd respondent submitted documents from the year 1947 and also patta copy No.1301. After detailed enquiry, the Revenue Divisional Officer, Thirukovilur by order dated 28.04.2017 in br/K/M/vz;/m3-6080-2012, found patta No.833 in the name of the 1st petitioner is a forged one and had directed the Tahsildar, Ulundurpet to remove the name of the 1st petitioner in Survey No.109/4B2 and to record the patta No.1301 in the name of the Vijayakrishnan in the A register of the village.

7.The learned counsel for the 2nd respondent would further submit that the 1st petitioner has been participating in all the proceedings and he was aware that she was holding a forged patta, obtained in connivance with the revenue official namely one VAO Senkathir. The petitioner had also given representation to the Tahsildar, Ulundurpet, Revenue Divisional Officer, Thirukovilur and the District Collector, Villurpnam to take appropriate action against the VAO Senkathir. Further, 2nd respondent filed writ petition before this Court to initiate enquiry and take departmental action against the said VAO Senkathir, who was in connivance with the other accused, created forged revenue records.

8.Considering the rival submissions and on perusal of the materials and the order passed by the Revenue Divisional Officer, this Court finds the contention of the petitioners is not sustainable. Further, the investigation is in the crucial stage, only thorough investigation would bring to light the role and complicity played by the petitioners and other accused, as well as the other revenue officials in creating forged documents and forged revenue records. The categorical finding of the Revenue Divisional Officer, Thirukovilur is that the Patta No.833 is a forged one.

9.Hence, this Criminal Original Petition stands dismissed, with a direction to the 1st respondent to complete

the investigation and file the final report within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

vv2

To

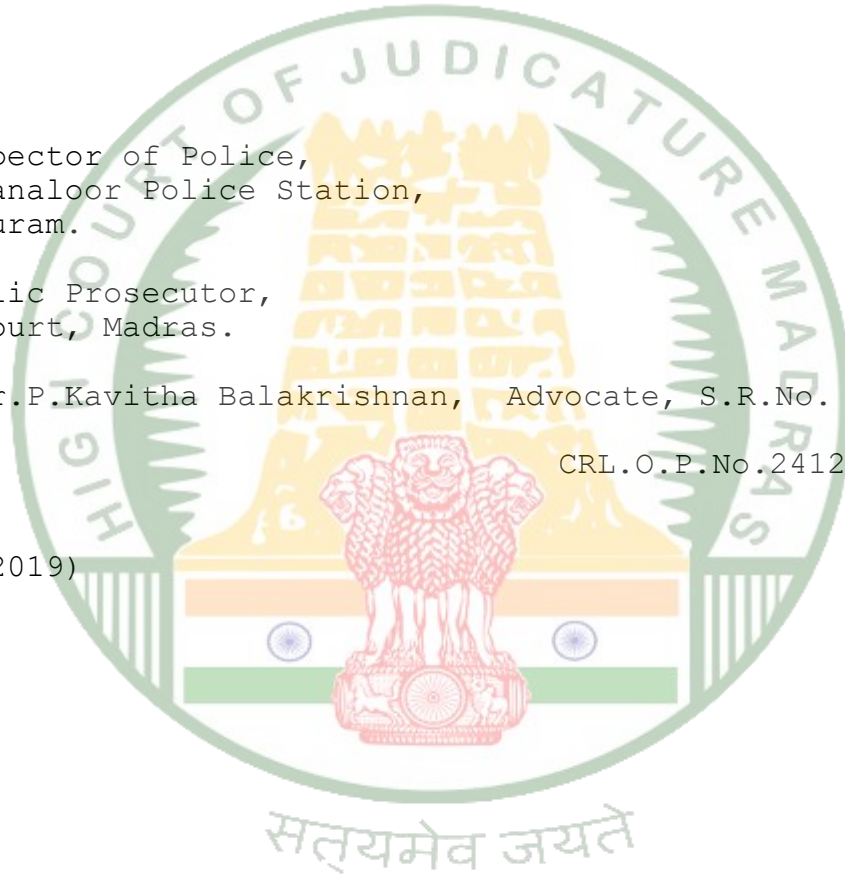
1.The Inspector of Police,
Thiruvanalloor Police Station,
Villupuram.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Kavitha Balakrishnan, Advocate, S.R.No. 95843

CRL.O.P.No.24126 of 2014

SR(CO)
GN(18/12/2019)



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