

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25 .03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.1684 of 2014 and
M.P.Nos.1 & 2 of 2014

1. Nalini
2. S.Paulpandian
3.P.Sahnmuganathan Petitioners

vs

M/s.Jaya Timber Depot,
Rep by its Partner,
P.Ramakrishnan,
No.12/18, C.L.C. Works Road,
Chrompet, Chennai-600 044 ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.16 of 2013 on the file of the Court of Judicial Magistrate at Tambaram and quash the same.

For Petitioners : Mr.K.M.Vijayan,
Senior Counsel
for Ms.R.T.Shyamala

For Respondent : Mr.B.R.Shankaralingam

ORDER

This petition has been filed to quash the private complaint having been taken cognizance for the offences under Sections 120 (b), 420, 464 and 466 I.P.C. in C.C.No.16 of 2013 as against the petitioners.

2. Mr.K.M.Vijayan, Senior Counsel appearing on behalf of Ms.R.T.Shyamala, the learned counsel for the petitioners submits that the respondent defacto complainant is the brother of the third petitioner. The first petitioner is the wife of the third petitioner and the second petitioner is the son of the first and third petitioners herein. The first petitioner is a partner in the business of Jaya Timber Depot and she is having 1 / 4 share in the partnership firm. The other partners of the firm are

Mr.E.Athigurusamy(died), P.Rajagopal and Mr.P.Ramakrishnan. The partnership firm is at Will and if any one of the partner died, the legal heir or the legal representative of the deceased partner can step into the shoes of the partner of the firm. The partnership firm is also registered one and the firm is not dissolved till date. At this juncture, suppressing these facts, the respondent filed the present complaint by way of private complaint before the learned Judicial Magistrate, Tambaram and the same has been taken cognizance in C.C.No.16 of 2013. The allegations levelled as against the petitioners are that and there was a koorchit entered between the family members. Accordingly, the partnership firm was allotted to the respondent complainant. Therefore, the petitioners have no right over the partnership firm of the respondent. While being so, the first petitioner executed a settlement deed in favour of her son namely the second petitioner herein. Through the settlement deed, the second petitioner settled 1 / 4 share of her right over the property of the partnership firm. He further submitted that in fact in the very same allegations, the respondent lodged a complaint before the Commissioner of Police and on the said complaint the petitioners were summoned and conducted enquiry and thereafter closed as mistake of fact as entire issues are civil in nature. Again, the respondent lodged a complaint before the Chrompet Police Station and the same was registered in Crime No.200 of 2010 for the offences under Sections 120(b), 406, 471, 420 I.P.C. and after enquiry it was also closed as mistake of fact as civil in nature.

3. He further submits that in fact thereafter the petitioners filed suit in O.S.No.699 of 2011 on the file of the District Munsif, Alandur for permanent injunction restraining the defacto complainant respondent from dispossessing or alienating the said property which was settled by the first petitioner. In fact in the said suit, status quo was ordered and suppressing the said fact, the respondent filed the present complaint. Thereafter the respondent also filed a suit in O.S.No.1028 of 2012 before the same District Munsif Court, Alandur against the petitioners 1 and 2 for declaration declaring the settlement deed as null and void and for permanent injunction against the petitioners and both the suits are still pending and as such the entire issues raised by the defacto complainant are civil in nature and no offence has been made out as against the petitioners as alleged by the petitioners. Even assuming the allegations which proved, to attract offences under Sections 120(b), 420, 464 and 466 no allegation and nothing is there to take cognizance for the said offences. Without considering the above facts and circumstances, the learned Judicial Magistrate, Tambaram have taken cognizance and as such he prayed for quashment of the said private complaint.

4. Per contra, Mr.B.R.Shankaralingam, the learned counsel for the respondent submitted that the private complaint has been filed after closure report filed by the Inspector of Police, Chrompet Police Station in Crime No.200 of 2010. The learned Judicial Magistrate, Tambaram after having been satisfied for the reason that the petitioners created fabricated documents without any right over the disputed property has taken cognizance. He further submitted that as per the koorchit, the disputed property namely M/s.Jaya Timber Depot was allotted to the respondent and as such the petitioners have no right over the said property. Even then, the first petitioner settled her share in the Depot in favour of the second petitioner. Therefore, he prayed for dismissal of this quash petition.

5. Heard, Mr.K.M.Vijayan, Senior Counsel appearing on behalf of Ms.R.T.Shyamala, the learned counsel for the petitioners and Mr.B.R.Shankaralingam, the learned counsel for the respondent.

6. The petitioners are A1 to A3 in C.C.No.16 of 2013 on the file of the learned Judicial Magistrate, Tambaram taken cognizance for the offence under Sections 120(b), 420, 464 and 466 I.P.C. Admittedly, the petitioners and the respondent are close relatives. The first and third petitioners are husband and wife and the second petitioner is their son. The third petitioner is none other than own brother of the respondent herein. According to the petitioners, the first petitioner is a partner in the business of M/s.Jaya Timber Depot and she is having 1 / 4 share in the partnership firm. With regard to this dispute, the first and second petitioners filed a suit in O.S.No.699 of 2011 on the file of the District Munsif, Alandur in which status quo was ordered against the respondent herein. In fact, the respondent also lodged a complaint before the Chrompet Police Station and the same was registered in Crime No.200 of 2010 and after conducting enquiry, the same was closed as mistake of fact and also recorded as 'all the issues are civil in nature'. The referred charge sheet was also served to the respondent on 29.08.2012. It is evident from issuing the documents annexed with the private complaint filed by the respondent. Thereafter, the respondent filed the present impugned private complaint and the learned Judicial Magistrate, Tambaram has taken cognizance in C.C.No.16 of 2013.

7. It is also seen that the respondent also filed a suit in O.S.No.1028 of 2012 on the file of the learned District Munsif Court, Alandur as against the first and second petitioners herein for declaration declaring that the settlement deed is null and void and also for permanent injunction. In fact, both the suits are pending on the file of the learned District Munsif Court, Alandur. On perusal of the entire complaint there is no piece of averment to attract the offences under 120(b), 420, 464

and 466 I.P.C as against the petitioners. The main allegation is that the first petitioner without any right over the property, which was allotted to the respondent by koorchit (family arrangement) executed settlement deed in favour of the second petitioner herein and nowhere stated where any document fabricated or forged by the petitioners. Further the offence under Sections 464 and 466 (464 making a false document) is not at all attracted as against the petitioners as stated above. The only allegation is that the first petitioner settled her 1 / 4 share and without any right executed settlement deed in favour of the second petitioner. Insofar as Section 466 (forgery of record of Court or public register, etc.) is concerned, in this regard also, there is no whisper of allegation to attract offence. Therefore, the entire complaint is clear abuse of process of law and it cannot be sustained as against the petitioners. That apart, the entire allegations are civil in nature and no offence is made out as against the petitioners.

8. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.16 of 2013 on the file of the Court of Judicial Magistrate at Tambaram is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Tambaram.
2. do through The Chief Judicial Magistrate,
Chengalpattu.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mrs.R.T.Shyamala, Advocate Sr.No.28108
+1 cc to Mr.B.R.Shankaralingam, Advocate Sr.No.27954

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M.P.Nos.1 & 2 of 2014

SKV(CO)
CSL/23.04.2019