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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.614 of 2019

R.C.Mini,
D/o.S.Charulatha,
APRA 49, 'Nirala',
Amita Sankar Road,
Kannamoola,
Thiruvananthapuram-695011.

... Petitioner/Petitioner

Vs.

1. The Inspector of Police,
Central Crime Branch Team-XVI,
Veperi, Chennai.

2. K.Vinoth Kumar,
S/o.Late K.P.Shyamala,
Door No.7/15, Karunambigai Colony,
Velacherry, Chennai-600042.

3.V.Uma Sankarashwari

... Respondents/Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
against the order dated 01.04.2019 passed in Crl.M.P.No.202 of
2018 on the file of the CCB & CBCID Metropolitan Magistrate
Court, Egmore.

For Petitioner : Mr.R.Krishna Prasad for
M/s.Sarvabhauman Associates

For R1 : Mrs.P.Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set
aside the order dated 01.04.2019 passed in Crl.M.P.No.202 of
2018 on the file of the CCB & CBCID Metropolitan Magistrate
Court, Egmore.



2. It is the case of the petitioner that the vacant land in question measuring 4,358 sq.ft. in Velacherry village in S.No.130/1 and 130/2, originally belonged to one Dhamodaran Pillai, who is said to be the great grandfather of the petitioner. According to the petitioner, Dhamodaran Pillai left a registered Will in favour of the petitioner bequeathing the said property to her absolutely. Dhamodaran Pillai died on 26.01.1995. Thereafter, the petitioner has filed probate proceedings before this Court to probate the said Will. On notice, Vinod Kumar, the second respondent herein, entered caveat in the probate proceedings, on account of which, the petition has now been converted to T.O.S.No.39 of 2003. The said case is still pending on the file of this Court. While that being so, the petitioner filed a complaint, based on which, a case in Crime No.298 of 2014 was registered on 01.07.2014 under Sections 465, 467, 471, 420 and 468 r/w 120-B IPC, against Vinod Kumar and two others.

3. After completing the investigation, the police filed closure report before the CCB & CBCID Metropolitan Magistrate Court, Egmore, Chennai. On receipt of notice, the petitioner, being the de facto complainant in the case, filed protest petition in CrI.M.P.No.202 of 2018, which has been dismissed by the learned Metropolitan Magistrate on 01.04.2019, challenging which, the petitioner is before this Court.

4. Heard Mr.R.Krishna Prasad, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Govt. Advocate (CrI. Side) for the first respondent/State.

5. At the outset, it may be necessary to state here that, this Court cannot, either in exercise of its power under Sections 482 Cr.P.C. or 397 Cr.P.C., direct the police to conduct the investigation in a particular manner, so as to incriminate the respondents/accused.

6. The learned counsel for the petitioner submitted that the property in question originally belonged to Dhamodaran Pillai; after his death, one Shyamala Kumari obtained a legal heirship certificate in D.Dis No.74861 of 1997 dated 08.07.1999 from the Tahsildar, Mambalam, Guindy Taluk, to the effect that she is the only daughter of the deceased Dhamodaran Pillai; based on the legal heirship certificate, the Tahsildar, Mambalam, Guindy Taluk, transferred the patta of the land from the name of Dhamodaran Pillai to Shyamala Kumari; on coming to know of this, the petitioner approached the District Collector, who, by proceedings dated 05.10.1999, cancelled the legal heirship



certificate and patta. He further submitted that Shyamala Kumari filed a suit in O.S.No.7334 of 1999 challenging the cancellation of the legal heirship certificate and patta, which, she withdrew on 24.06.2004; Shyamala Kumari died on 14.04.2002; after the death of Shyamala Kumari, her husband and children executed a sale deed dated 09.03.2005, registered as document No.1067 of 2005 on the file of the Sub-Registrar Office, Velacherry, in favour of Khurinji Homes; on coming to know of this in the year 2014, the petitioner lodged the present complaint, based on which, the FIR was registered in Crime No.298 of 2014 and the same has now been closed as stated above.

7. The learned counsel for the petitioner contended that after the cancellation of the legal heirship certificate and patta, the property ought not to have been sold by the legal heirs of Shyamala Kumari to Khurinji Homes.

8. Per contra, in the closure report filed by the police, they have stated that the petitioner did not appear for enquiry and cooperate with them. Further, during the course of the investigation, the police were not able to collect the documents relating to the cancellation of patta on 05.10.1999. The police have also stated that the probate proceedings are pending before the High Court with regard to the genuineness of the Will that is said to have been executed by Dhamodaran Pillai in favour of the petitioner and that is being contested by Vinod Kumar, son of the deceased Shyamala Kumari. Under such circumstances, the police closed the case on the ground that they are not able to come to the conclusion that the accused had committed the alleged offence in the year 2005.

9. The fact remains that the petitioner could have easily approached the police in the year 2005 itself. On account of efflux of time, the records available in the Collectorate have been destroyed according to the Destruction Rules and therefore, they are not available. That apart, the High Court is seized of the matter relating to the genuineness of the Will in T.O.S.No.39 of 2003, wherein, Vinod Kumar is the contesting respondent. Further, on reading the sale deed dated 09.03.2005 (Document No.1067 of 2005), it is seen that nine persons have executed the sale deed including Vinod Kumar. Strangely, except Vinod Kumar, the others have not been implicated by the petitioner.

10. Hence, this Court does not find any serious infirmity in the opinion arrived at by the Investigating Officer and also in the order impugned herein, warranting interference.



In the result, this criminal revision petition is dismissed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
Central Crime Branch Team-XVI,
Veperi, Chennai.
2. The CCB & CBCID Metropolitan Magistrate,
Egmore.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.G.Vasudevan, Advocate sr.55804

+1cc to M/s.Sarvabhauman Associates, Advocate sr.56641

Cr1.R.C.No.614 of 2019

rji(co)
nr 21/08/2019