



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.O.P. (MD)No.2084 of 2016

and

CrI.M.P. (MD)Nos.1057 of 2016 & 6058 of 2018

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1.Joseph Rajan

2.Devadasan

... Petitioners

Vs.

1.State rep. by

The Inspector of Police,
City Crime Branch,
Tirunelveli City.
Crime No.41 of 2014

2.D.Murugan

... Respondents

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the First Information Report in Crime No.41 of 2014 on the file of the Inspector of Police, City Crime Branch, Tirunelveli City and quash the same.

For Petitioners : Mr.R.Anand

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor
for R.1
Mr.S.Selvakumar for R.2

ORDER

The petitioners have filed this petition to quash the First Information Report pending against them in Crime No.41 of 2014 on the file of the first respondent police, which was registered for the offence punishable under Sections 420, 465, 467, 468, 471, 120 (B) & 506(i) IPC, based on the order passed by the learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Tirunelveli.

2. The learned Counsel for the petitioners would submit that the case in Crime No.41 of 2014 was registered pursuant to the directions of the learned Magistrate under Section 156(3) Cr.P.C, in the year 2014 for the alleged occurrence said to have been taken place in the year 1992. The complaint itself has been lodged belatedly and moreover, the requirement of an affidavit in support of the application under Section 156(3) Cr.P.C. has not been followed and therefore, the impugned proceedings is liable to be quashed.



3. In support of this contention, the learned Counsel relied upon the decision of the Hon'ble Supreme Court reported in (2015) 6 SCC 287, in the case of Priyanka Srivastava and another v. State of Uttar Pradesh and others, wherein, the Hon'ble Supreme Court has held as follows:

"30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

4. The learned Counsel for the petitioners, relying upon the unregistered sale agreement dated 26.08.1991 and letters dated 23.03.1992 & 28.03.1992, further submitted that the transaction has been acknowledged by the husband of Mariammal, whose land was said to be grabbed illegally by the petitioners. Therefore, the learned Counsel for the petitioners prays for quashing the complaint which was maliciously registered at the instance of the defacto complainant after a lapse of about twenty three years.

5. Per contra, the learned Counsel for the second respondent would submit that admittedly the land belongs to Mariammal. The alleged power deed has been executed on 22.04.1992 when the said Mariammal was in her death bed. Moreover, Mariammal died on 29.04.1992, ie., within seven days from the date of execution of the alleged power deed and the very signature found in the power deed would show that the same is a forged one. The learned Counsel further submitted that the entire documents pertaining to the title are lying with the legal heirs of Mariammal, while so, after the death of Mariammal, the sale deed has been executed by the accused, that too in Kerala, with the help of the forged document, that was created on 22.04.1992. Therefore, he prays for dismissal.

6. The learned Additional Public Prosecutor appearing for the first respondent, on instructions, would submit that they have examined almost all the witnesses and they are yet to send the power deed for handwriting expert to obtain their opinion as regards its genuineness. In view of the interim order of stay that was granted by this Court, they are not in a position to proceed further. Since



the investigation is in the crucial stage, the learned Additional Public Prosecutor prays for dismissal.

7. Heard the learned Counsel appearing on either side and perused the documents placed on record.

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8. The decision relied upon by the learned Counsel for the petitioners is of the year 2015, whereas, in the present case on hand, the learned Judicial Magistrate has entertained the application and directed the registration of FIR in the year 2014 itself, for an incident which took place in the year 1994. Therefore, this Court is not inclined to delve into the same at this juncture.

9. It appears that Mariammal was in death bed at the time of executing the power deed and died on 29.04.1992, within a period of seven days from the date of execution of the deed. Admittedly, the original documents pertaining to the land are still lying with the legal heirs of Mariammal and the learned Counsel for the second respondent, by projecting the original signatures of Mariammal, canvassed that the very signature found in the power deed is forged.

10. This is a matter for investigation and therefore, this Court, by exercising its jurisdiction under Section 482 Cr.P.C., is not inclined to interfere at the threshold stage. Hence, this Criminal Original Petition is dismissed with a direction to the first respondent police to proceed with the investigation and conclude the same within a period of three months from the date of receipt of a copy of this order. The first respondent police, at the time of investigation, shall consider all the grounds that are raised in this petition and they shall not harass the petitioners under the guise of enquiry. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1.The Inspector of Police,
City Crime Branch,
Tirunelveli City.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.2084 of 2016

CS: 15/05/2019/3P/3C