



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2019

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

CRL.O.P. (MD) No. 446 of 2016

and CRL. M.P. [MD] Nos. 233 & 234 of 2016

WEB COPY

1. Vellaichamy
2. Manickam
3. Palanichamy
4. Nehru
5. Balasubramanian
6. Valliyammal
7. Vimala
8. Maheswari
9. Periyasamy

... Petitioners

Vs.

Arunachalam

... Respondent

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the complaint in C.C. No.189 of 2015, on the file of the learned Judicial Magistrate-I, Kulithalai, dated 21.11.2015 and quash the same.

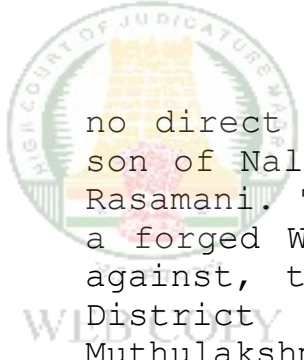
For Petitioners : Mr.V. Kannan
For sole Respondent : Mr.B. Saravanan

ORDER

This criminal original petition has been filed by the petitioners to quash the proceedings pending against them in C.C. No. 189 of 2015, on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District.

2. The said C.C. No.189 of 2015 was filed by way of private complaint by the respondent herein/complainant, under Section 200 of the Cr.P.C., as against the petitioners herein, for the offences punishable under sections 420, 469, 467, 120(B) & 109 I.P.C.

3. According to the complainant, his father's brothers Kulanthaivelu, Kulanthaisamy, Karuppanan and Manickam were died without any children. The complainant's father Nallusamy, is having two sons, namely, Kulanthaivelu and Arunachalam and his daughter Pappathi. Rasamani who is the wife of Manickam was also died intestate. There are 7 acres of land in the name of Rasamani at Kazhugur Village, Thogaimalai in Kulithalai Taluk. Rasamani has not executed any Will in respect of her property and there is

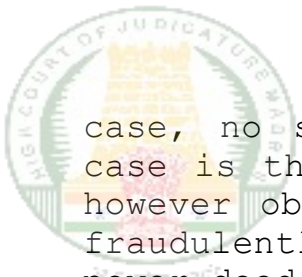


no direct issues for her and accordingly, the complainant who is son of Nallusamy is the only the legal heir for the properties of Rasamani. The complainant brother's wife one Sirumbayi had created a forged Will and obtained Patta with regard to the property. As against, the same complainant had filed a civil suit before the District Munsif Court, Kulithalai, against Pappathi @ Muthulakshmi, Sirumbayi and her minor daughters in O.S. No.164 of 2012, for the relief of declaration and permanent injunction. That being so, the petitioners-1 & 2 claiming to be the brother's sons of deceased Rasamani, with the help of the ninth petitioner/Village Administrative Officer has obtained a legal heir certificate, on 03.01.2014 and based on the same, had also obtained a Patta in their favour. In respect of that property, the petitioners-1 & 2 have also created a Power deed in favour of the petitioners-3, 4 & 5 in the Sub-Registrar Office, Manapparai, on 17.01.2014 in document Nos. 434/2014, 435/2014 and 436/2014. In strength of that power deeds, the petitioners 3 to 5 have executed a sale registered deed in favour of the petitioners-6, 7 & 8 on 19.02.2014 in document Nos.891/2014, 892/2014 and 893/2014 respectively. Thus, all the petitioners with an intention to grab the property of the Rasamani have created forged documents and thereby, they have committed offences punishable under Sections 420, 469, 467, 120(B), 109 of the I.P.C.

4. Heard the learned counsel for the petitioners as well as the learned counsel for the sole respondent.

5. The learned counsel for the petitioners submitted that on the very same allegations, the complainant had filed a complaint, before the learned Judicial Magistrate No.I, Kulithalai on 05.05.2014 and the same was referred under Section 156(3) of the Criminal Procedure Code, by the learned Magistrate in CrI.M.P. No.2404 of 2014, dated 05.05.2014 for investigation and the Inspector of Police, Anti Land Grabbing Special Cell, Karur had enquired into the complaint and closed the complaint as civil in nature. He further submitted that in the final report dated 11.07.2014, the Inspector of Police, Land Grabbing Special Cell had further stated that the complainant had appeared before the Superintendent of Police and gave a letter that he would workout his remedy before the appropriate civil Court and requested to drop further action and as against the final report, dated 11.07.2014, the complainant has not filed any protest petition, however, the present complaint, under Section 200 of the Criminal Procedure code has been filed on 21.11.2015.

6. He further submitted that to attract the offence under Section 420 of I.P.C., a person should have been deceived by fraudulent, dishonest inducement and by such inducement, the person deceived to deliver any property to any person, or to make, anything which is signed or sealed, and which is capable of being converted into a valuable security. However, in the present



case, no such allegation is made in the complaint and the only case is that the petitioners-1 & 2 are not the legal heirs, but, however obtained a legal heir certificate from the ninth accused fraudulently and in pursuant of that document they have created power deeds and sale deeds.

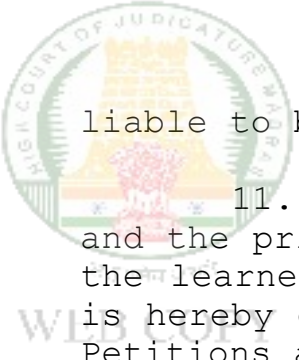
WEB COPY

7. In support of their contention, the learned counsel for the petitioners further referred the order passed by this Court, in W.P.(MD) No.13665 of 2015, dated 20.08.2014 and the order passed by this Court in M.P.(MD) No.1 of 2014 in W.P.(MD) No.15146 of 2014, dated 12.09.2014. On perusal of the records would disclose that the Patta issued in favour of the petitioners-1 & 2, was challenged before the Revenue Divisional Officer, Kulithalai by the complainant herein and the Revenue Divisional Officer granted an order of interim stay as against the petitioners-1 & 2. The said Writ Petition was disposed of, with direction to the Revenue Divisional Officer to dispose of the appeal pending on the file of the Revenue Divisional Officer. The Revenue Divisional Officer by obtaining the legal opinion cancelled the legal heir certificate which was issued in favour of the petitioners-1 & 2 and therefore, the order of the Revenue Divisional Officer was put into challenge in W.P(MD) No.15146 of 2014 and this Court by Order dated 12.09.2014 granted an order of interim stay to the order of the Revenue Divisional Officer.

8. According to the learned counsel for the petitioners, this Writ Petition is also still pending and that being so, when there is no specific stand available with regard to the legal heirship of the petitioners and the complainant of Rajamani, this complaint filed with an allegation that the petitioners have created forged documents and in the strength of forged documents have also created power deeds and executed the sale deeds cannot be sustained.

9. According to the complainant, the Tahsildar had issued the Patta which has been cancelled by the Revenue Divisional Officer and the order of cancellation is stayed by this Court. The power deeds executed in support of the Patta as a document by way of registered deeds and that was not challenged in so far. Without deciding the issue, between the parties and the legal heirs by the appropriate civil dispute it would not be appropriate to entertain the complaint as against the petitioners for the offences as alleged in the complaint. The civil suit filed by the complainant in O.S.No.164 of 2012 is also against one Sirumbayi and her daughters and the petitioners are not parties in that civil suit.

10. As discussed above, in the absence of details as to who are the legal heirs of the said Rasamani, it would not be appropriate for the learned Magistrate to take the complaint on file and to issue summons. Accordingly, the private complaint is



liable to be quashed.

11. Consequently, the Criminal Original Petition is allowed and the private complaint in C.C. No. 189 of 2015, on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District, is hereby quashed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate No.I,
Kulithalai, Karur District

+1 CC to M/s.V.KANNAN, Advocate (SR-49447[F] dated 25/02/2019)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-49562[F] dated
25/02/2019)

ksa

Cr1.O.P. (MD) No. 446 of 2016
22.02.2019

KM/(05.07.2019) 4P 4C