



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.O.P. (MD) No.5550 of 2015 &
Cr1.O.P. (MD) No.12748 of 2016 and
M.P. (MD) Nos.1 to 3 of 2015 &
Cr1.M.P. (MD) Nos.6004 & 6005 of 2016

CRL.O.P. (MD) No.5550 of 2015

A.R.Malaichamy

... Petitioner/Accused No.1

Vs.

1. State rep. by,
Inspector of Police,
District Crime Branch,
Theni District,
Theni.
(Crime No.5 of 2008)

... 1st Respondent/Complainant

2. P.Jayabalakrishnan

... 2nd Respondent/
Defacto Complainant

Prayer : Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records relating to Charge Sheet in C.C.No.14 of 2015 on the file of the Judicial Magistrate, Theni and quash the same as illegal in so far as the petitioner is concerned.

CRL.O.P. (MD) No.12748 of 2016

Jeyaraj

... Petitioner/Accused No.4

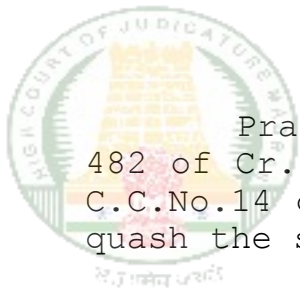
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(in both Crl.O.Ps.)

For Petitioners : Mr.R.Gandhi,
for Mr.A.Nagarajan.
For R-1 : Mr.A.Robinson,
Government Advocate(Crl.Side) both cases.
For R-2 : Mr.J.Sulthan Basha for
Ajmal Associates in Crl.OP(MD)No.5550/2015

Mr.P.Vijayakumar in Crl.OP(MD)No.12748/2016

* * *

COMMON ORDER

The petitioners herein are figuring as accused Nos.1 and 4 in C.C.No.14 of 2015 on the file of the Judicial Magistrate, Theni. The defacto complainant in this case is Jeyabalakrishnan.

2. The prosecution case is that the property in question located in Idukki District in Survey No.49/6, in Thekkadi Village, belongs to the defacto complainant's mother Suruliyammal. In order to grab the said property, a forged Special Power of Attorney was executed and registered on the file of the S.R.O, Kambam and registered as document No.313/988, dated 15.12.1988. The second allegation of the prosecution is that even though the Power of Attorney is said to have been executed by his mother Suruliyammal, actually she did not execute the same. There was commission of impersonation by accused No.2 Sumathi Kuttiammal. The said Power of Attorney authorized the first accused to present the sale deed. Accused No.4 had attested the said document. Even in the said Power of Attorney, the sale deed was executed in favour of Sumathi Kuttiammal and registered vide document No.1824/88 on the file of Peermedu Sub Registrar, dated 17.12.1988. Accused No.3 is said to have signed the said document as a licensed document writer. When executing the sale deed before Peermedu Sub Registrar, the survey number was altered from survey No.69/6 to 49/6. Based on the complaint of the second respondent, crime No.5 of 2008 was registered on the file of the District Crime Branch, Theni. The matter was taken up for investigation and final report was filed against the accused before the Judicial Magistrate, Theni and cognizance of the offences under Sections 471, 465, 467, 420 and 120 (B) of I.P.C. was taken. The case was taken up for trial in C.C.14 of 2015. To quash the same, this criminal original petition has been filed by accused Nos.1 and 4.

3. Heard the learned counsel on either side.

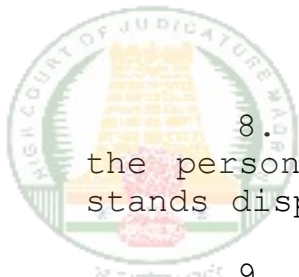


4. The foremost contention urged by the learned counsel appearing for the petitioner is that the brother of the second respondent herein had already initiated the criminal prosecution on the same cause of action before the Kumuli police station, Kerala State. Crime No.168 of 2008 was registered and the same culminated in final report and it was taken on file in C.C.No.329 of 2009 on the file of the Judicial First Class Magistrate No.II, Peermedu. The petitioners herein were listed as prosecution witnesses in the said case. The petitioners were summoned and they had also deposed in support of the prosecution case before the Kerala Court. The petitioners' counsel drew my attention to the decision of the Hon'ble Supreme Court in the decision reported in (2010) 12 SCC 254 (Babubhai Vs. State of Gujarat). He would take me to the said case law and point out that the second First Information Report on the same cause of action is not maintainable and that this Court will have to apply the status of sameness. He compared the contents of the First Information Report filed in C.C.No.329 of 2009 on the file of the Judicial First Class Magistrate No.II, Peermedu and the one filed in C.C No.14 of 2015 on the file of the Judicial Magistrate, Theni.

5. I am convinced that both the cases relate to the same transaction. But then, two aspects stand out. The first is that the petitioners herein are not being prosecuted in C.C.No.329 of 2009 on the file of the Judicial Magistrate, Peermedu. In "Babubhai" case, the Hon'ble Supreme Court had clearly and categorically held that the second First Information Report in respect of one incident cannot be sustained. Applying the principles laid down by the Hon'ble Supreme Court, it is to be seen that the First Information Report lodged at the instance of the second respondent that was registered on 07.02.2008 and on the other hand, the one lodged by his brother was registered on 09.05.2008. Therefore, if "Babubhai" case is applied, it is only the second First Information Report registered in Crime No.168 of 2008 on the file of the Kumuli police station that will have to go and not the impugned one.

6. The petitioners' counsel would plead that the petitioners are senior citizens and the occurrence had taken place some 31 years ago. It is quite possible that the petitioners had acted entirely innocent without being aware of the impersonation committed by Sumathy Kuttiyammal. But then, the factual aspects of the matter cannot be established while exercising the inherent powers of this Court under Section 482 of Cr.P.C. This is a matter that has to be necessarily gone into and established in a regular trial.

7. I have to necessarily observe that the impugned prosecution cannot be said to be not maintainable in view of the pendency of the prosecution before Kerala State. All the other contentions of the petitioners are left open.



8. The criminal original petitions stand dismissed. However, the personal appearance of the petitioners before the Court below stands dispensed with.

9. The learned trial Magistrate shall insist on the personal appearance of the petitioners only when it is absolutely necessary and imperative. The petitioners shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioners can be represented through their counsel. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To:

1. The Judicial Magistrate,
Theni.
2. The Inspector of Police,
District Crime Branch,
Theni District, Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2CCs to Mr.R.Gandhi, Advocate, SR.No.99414 & 99415/2019.

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Cr1.O.P.(MD)No.5550 of 2015 &
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