



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)Nos.20009, 21355, 22663, 22769 of 2016 & 15724 of 2017

and

Crl MP(MD)Nos.10037, 10038, 10924,10943, 11863,11864, 11924, 11925
of 2016 & 10446 , 10447 of 2017

1. Ayyappan
2. O.Praba
3. R.Valarmathy ... Petitioners in CRL OP(MD)No. 20009/ 2016

1. P.Ramu ... Petitioner in CRL OP(MD)No . 21355/ 2016

1. T.Sureshkumar
2. K.Gowri ... Petitioners in CRL OP(MD)No . 22663/ 2016

1. Nirmala
2. Manokaran
3. G.Kandha Kumar ... Petitioners in CRL OP(MD)No . 22769/ 2016

1. R. Vijaya Rajan
2. S. Chellappa
3. P. Pavun ... Petitioners in CRL OP(MD)No . 15724/ 2017

- Vs. -

1. The Inspector of Police, District Crime Branch,
Theni, Theni District.
(Crime No.16/2012)
2. S.Dhatchanamoorthis ... Respondents in all Petitions

Common Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the final report as made in C.C No.188 of 2016 on the file of the learned Judicial Magistrate, Theni, Theni District by the first respondent in connection with Crime No.16 of 2012 on the file of the Inspector of Police, District Crime Branch, Theni, Theni District and quash the same as devoid of merits and illegal as against the petitioners.



WEB COPY

Crl OP(MD)Nos.20009 of 2016 and etc

Mr.R.Mathiyalagan
in CRL OP(MD)No . 22663/ 2016

Mr.K.Kaliraj
in CRL OP(MD)No . 15724/ 2016

Mr.C.Muthusaravanan
in CRL OP(MD)No . 22769/ 2016

Mr.K.Govindarajan
in CRL OP(MD)No . 21355/ 2017

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1
in all Petitions

Mr.P.Ganapathi Subramaniam for R2
(in CRL OP(MD)No. 20009/ 2016

in CRL OP(MD)No . 21355/ 2017)

Mr.P.Siva Chandran for R2
(in CRL OP(MD)No . 22663/ 2016,
in CRL OP(MD)No . 15724/ 2016,
in CRL OP(MD)No . 22769/ 2016)

COMMON ORDER

The petitioners are facing trial in C.C No.188 of 2016 on the file of the Judicial Magistrate, Theni, Theni District. The defacto complainant in this case is the second respondent herein, S.Thatchinamurthy. The specific case of the defacto complainant is that the three acres of land comprised in Survey No.254/1 in Koduvilarpatti Village, Periyakulam Taluk belongs to his father V.B.Subbusami. It was granted to his father vide a deed of assignment made on 30.04.1973. V.B.Subbusamy passed away on 08.02.2010. According to the defacto complainant, during his life time V.B.Subbusamy, the father of the defacto complainant did not sell or alienate or encumber the property in the manner known to law. While so, he specifically alleged that there was a collusion and conspiracy among the accused herein. It is his specific allegation that by committing misappropriation, fraudulent documents were executed thereby conveying the title from Thiru.V.B.Subbusamy in favour of Al/Tamil Selvi and through her to the other accused. Therefore, he lodged complaint before the District Crime Branch, Theni, leading to registration of Crime No.16 of 2012 for the offences under Sections 419, 465, 468, 471, 420 and 120(b) of IPC. The case was investigated and final report came to be filed as against 14 persons before the Judicial Magistrate, Theni, Theni District. Cognizance of the offences was taken and the case was taken up on file in C.C No.188 of 2016. To quash the same, some of the accused have filed these petitions for quashing the impugned criminal prosecution.



2. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the defacto complainant and the learned Government Advocate (crl.side) for the prosecution.

3. The basic facts are not in dispute. The property comprised in Survey No.254/1 measuring 3 acres in Koduvilarpatti Village, Periyakulam Taluk stood in the name of V.B.Subbusamy. It is seen from the relevant records that the assignee was Thiru.V.B.Subbusamy S/o.Bommaia Gounder. But then, the sale deed was executed in the name of Tamil Selvi/A1 on 17.01.2005 by one Subbusamy Servai S/o.Balu Servai. It is obvious that the vendor of A1 Tamil Selvi is not the assignee of the land in question. Be that as it may, on the strength of the aforesaid sale deed dated 17.01.2005, A1 executed a power of attorney in favour of her father, A2/Arunachalam on 16.04.2008. Arunachalam in turn executed the sale deed in favour of A3 to A6 on 26.09.2008. Thereafter, further transactions had taken place and that is how A7 to A14 came into picture.

4. I see considerable force in the contention of the learned counsel appearing for the defacto complainant that there has been impersonation committed in this case. But then, the question is whether A3 to A14 are to be fastened with penal liability and whether they need to undergo the agony of criminal trial. It is obvious and beyond dispute that A3 to A14 are only subsequent purchasers. The act of impersonation and forgery even according to the prosecution had happened as early as on 17.01.2005. The sale deed was registered in favour of A1 Tamil Selvi by one Subbusamy Servai S/o. Balu Servai. She had executed the sale in favour of her father on 16.04.2008. A3 to A6 were entered the fray only on 26.09.2008. Thus, there is obviously considerable time gap between the execution of sale deed in favour of A1 and the execution of document in favour of A3 to A6 on 26.09.2008. The other accused entered into the picture even much later. Since the petitioners herein did not have any role to play when the acts of impersonation and forgery were committed on 17.01.2005, I am of the view that by quashing the impugned prosecution as against the petitioners herein alone would serve the ends of justice.

5. In this view of the matter, the impugned prosecution is quashed as against the petitioners herein. These criminal original petitions stand allowed. Connected miscellaneous petitions are closed.

6. It is made clear that this Court has granted relief to the petitioners herein by taking note of the fact that the petitioners are only subsequent purchasers. The benefit of this order will not enure to the remaining accused. Their case will have to be dealt with independently. The act of impersonation appears to have been done in a rather blatant manner in this case. Therefore, the learned Judicial Magistrate, Theni is called upon to expedite the trial and endeavour to conclude the same within a period of six months from the date of receipt of a copy of this order.



7.The learned counsel for the petitioners herein on instructions state that they will not make further encumbrance or alienation of the land in question to third parties. They will await the outcome of O.S No.1 of 2013 on the file of the Subordinate Judge, Theni. The learned Sub Judge, Theni is directed to conclude the trial in O.S No.1 of 2013 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

1.The Inspector of Police,
District Crime Branch,
Theni District, Theni.

2.The Judicial Magistrate, Theni, Theni District.

3.The Sub Judge, Theni.

+1 CC to M/s.S. PALANI VELAYUTHAM, Advocate (SR-97944[F] dated 13/11/2019)

+1 CC to M/s.P. GANAPATHI SUBRAMANIAN, Advocate (SR-98040[F] dated 13/11/2019)

+1cc to Mr.S.Ravi, Advocate SR.No.97850

+1cc to Mr.R.Mathiyalagan, Advocate, Sr.No.97851

+1cc to Mr.C.muthusaravanan, Advocate Sr.No.98032

+1cc to Mr.P.Siva Chandran, Advocate Sr.No.98053

Crl OP(MD)Nos.20009, 21355,
22663, 22769 of 2016 &
15724 of 2017
12.11.2019

VB(18.12.2019) 4P 10C