

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.08.2020

PRONOUNCED ON : 14 .08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.23080 of 2015

M.P.No.1 of 2015

1.G.Suseela

2.G.Ambika

3.G.Jayasakthi

4.G.Sakthikanth

5.S.Lakshmi

... petitioners/Accused

Vs.

1.State of Tamil Nadu

Rep.by Inspector of Police,

Korattur, Chennai-600 080. ...1st Respondent/Complainant

2.M.Jaishankar.

...2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Cr.No.765 of 2015 on the file of the 1st respondent Police and consequently, quash the same as illegal and improper.

For Petitioners: Mr.D.Stephen

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

for R1

Mr.G.Vinoth Kumar

for Mr.S.Suresh for R2

O R D E R

The petitioners, who are accused in Crime No.765 of 2015 for offence under Section 465, 468, 471 r/w 120(b) IPC, which is pending on the file of the first respondent, has filed this quash petition.

2. The brief facts of the case are that on 17.10.1936, one Desu Reddy son of Krishna Reddy settled his property to the extent of 7825 Sq.ft of land, situated at Railway Station Road, Korattur, Chennai in favour of Vimalanandha Swamigal @ Brahmin community Mutthiya Pattar son of Narayana Pattar by way of settlement deed and the same was registered as Document No.1691/1936. The conditions of the deed is that the said property is to be used for constructing Madam and performing Poojas. The Mutt property is not to be encumbered or alienated in any manner and the Mutt was created for religious purpose. After the demise of Vimalanandha Swamigal, his body was buried in the said place and the devotees of the locality appointed one Gopinathan Achari to perform pooja as per the procedure and practice of Mutt. After the demise of Gopinathan, one Mr.Soundarrajan son of Duraisamy was maintaining the mutt and performing Pooja and other devotional activities. From 1936 to till date, the Mutt is carrying on with its activities in its land . This being the case, all of a sudden, some strangers posing them as real estate brokers entered into the Mutt property and shown the property to some persons as though available for sale . The complainant objected to the same, questioned the real estate brokers for the false claim made by them. At that time, brokers had shown the deed of release dated 29.11.2004 registered in SRO., Villivakkam as Doc.No.4004 of 2004 and claimed that as per the document, this property was available for sale. On perusal of the documents, it is seen that accused/A1 is the wife of late K.Gopinathan and A2 and A3 are the daughters and A4 is the son of late Gopinathan, claimed that the property belongs to them, devolved to them by inheritance. A1 to A3 relinquished their right in the property in favour of A4, who is the son of Gopinathan. A4 settled the property in favour of his wife/A5 by settlement deed dated 05.02.2010 vide document No.350 of 2010. The claim of the accused are false. It is seen from the settlement deed, Vimalanandha Swamigal is shown as grand father of K.Gopinathan/husband of A1 and father of A2 to A4 and Gopinathan was only son of Vimalanandha Swamigal. Thus, the property of Srimath Sundramurthy Swamigal Mutt was attempted to be usurped by creating forged documents. Further, the present trustees and devotees of the temple proposed to construct Annadhanam Hall, Library and other amenities. The Trust is unable to fulfill its religious activities, as per wish of the founder of the trust, who gave the property to the trust. Hence the complaint.

3. The learned counsel for the petitioners submitted that the petitioners belong to one and the same family. The petitioners through their forefathers are in absolute possession and enjoyment of Grama Natham Land measuring to an extent of 7825 Sq.ft, in which, a house and temple is built. Out of the said land, an area of 2262 Sq.ft has been carved out for a

private temple namely 'Srimath Sundaramurthy Swamigal Trust', in which, Daily Poojas and other festivals are conducted regularly by the petitioners through Poojari. The defacto complainant with malafide intention along with some other persons namely D.Radha Krishnan as Honorary President, M.Vishnupathy as President/Managing Trustee, M.Kandappan-Assistant President, M.Jaishankar-Secretary, G.Jaiyakumar-Deputy Secretary, J.Sivaprakasam-Treasurer, formed a Trust in the name of 'Srimath Sundaramurthy Swamigal Trust' on 26.12.2014 vide document No.239/2014 and claim right over the property. They earlier filed a petition for a direction before this Court in CrI.O.P.No.13963 of 2015 to register the complaint dated 13.05.2015 and the same was dismissed on 10.06.2014, with the observations that" it is seen that prior to the complaint dated 13.05.2015, the petitioner appears to have sent an earlier complaint dated 09.10.2014 which was received on 25.12.2014 in respect of the same allegations and and enquiry was conducted and closed on 13.02.2015. Thereafter, the complainant has given a fresh complaint on 13.05.2015 for the same cause of action. The copy of the earlier closure report is furnished to the learned counsel for the petitioner. Recording the same, this petition is closed".

4. The learned counsel for the petitioners further submitted that the defacto complainant claiming to be a Managing Trustee of the said Trust, filed a writ of Mandamus in W.P.No.18968 of 2015 dated 22.06.2015, which is yet to be admitted. Suppressing all these facts, the second respondent filed a private complaint before the Judicial Magistrate, Ambattur, Chennai on 14.07.2015 and the same was forwarded to the 1st respondent under Section 156(3) Cr.P.C., the first respondent filed the above case. It is further submitted that the petitioners left to their home town, Trivandrum for Ayurvedic treatment for 5th petitioner. At that time, the second respondent and his henchmen with the help of antisocial elements demolished a portion of the petitioners' house and attempted to take possession of the same by unlawful means. The petitioners had given a complaint to the 1st respondent on 29.04.2015 and the same was assigned as C.S.R.No.192/2015 stating that it is a land dispute. Again, another complaint was lodged on 10.05.2015 and the first respondent assigned C.S.R.No.2014 of 2015 stating that it is a civil dispute. The petitioners submitted that the registration of the case by the respondent police would amount to misuse of process of law. The defacto complainant along with others formed a Trust recently during December 2014 in the name of Srimath Sundra Murthy Swamigal Trust. Thus, the defacto complainant and others have nothing to do with the Original Srimath Sundra Murthy Swamigal Trust. They are not involved in any manner with regard to the management of the Trust, conducting Poojas and rituals. The petitioners' family member namely Gopinathan dealt

with Poojas and maintenance of the trust right from the initial days. But the defacto complainant formed a Trust in the said name, attempting to take over the property. By all means, the petitioners restrained the defacto complainant/second respondent. Hence the complaint has been lodged against the petitioners. The defacto complainant and others are regularly giving false complaint against the petitioners. The respondent police, on enquiry, found that the complainant has no right over the trust and the complaint was closed as civil in nature. Suppressing all these facts, the defacto complainant had filed a petition before the Judicial Magistrate, Ambattur, Chennai and without verifying the facts and veracity of the complaint, the concerned Court forwarded the same to the respondent police and the respondent police registered a case since they have no other option. The petitioners further submitted that the Judicial Magistrate, Ambattur ought to have rejected the complaint against the petitioners. On verifying that, earlier this Court dismissed Crl.O.P.No.13963 of 2013, for the reason that in the same cause of action, earlier complaint was dropped. The petitioners submitted that the defacto complainant with malafide intention suppressing all these vital facts, in violation of the orders of the Hon'ble Supreme Court of India in the case of PRIYANKA SRIVATSAVA AND ANOTHER VERSUS STATE OF UTTAR PRADESH AND OTHERS reported in 2015 6SCC 287, had filed the complaint. The learned Magistrate ought to have rejected the complaint. Further, he relied upon the decision of Apex Court in the case of BABUBHAI vs.STATE OF GUJARAT AND OTHERS reported in 2011 1SCC (CRI) 336 and submitted that fair investigation is a right and protection given under the Constitution. Investigation must be fair, transparent and judicious, a requirement of rule of law. In this case, investigation is tainted and biased, which cannot be permitted to be continued. In this case, admittedly, no affidavit was filed along with complaint before the Magistrate. Hence, the Magistrate had no opportunity to verify the truth and veracity of the allegations made by the respondent. Therefore, he prayed for quashing of the complaint.

5. The learned counsel for the second respondent/defacto complainant submitted that he had not filed affidavit before the learned Judicial Magistrate, but disclosed all the earlier complaints and status of the same to the Investigating Officer, which forms part of the records. The second respondent had not suppressed any fact, apart from non-filing of the affidavit. As per the Criminal Procedure Code, any person can give a complaint for cognizable offences. Even the police, on getting their own information, can register a case for cognizable offences. In this case, the crime is of grave in nature. Further, he submitted that the Mutt property was given by Desu Reddy to the trustee/Vimalanandha Swamigal. After the demise of Vimalanandha Swamigal, taking advantage of late Gopinathan, the

petitioners/A1 to A4 conducted poojas and rituals, and created forged document No.4004 of 2004 and document No.350/2010, to usurp the trust property, for which, a complaint was given by the second respondent. It is admitted that for the earlier complaints, no F.I.R was registered and investigation conducted. In view of the same, there is no bar or restriction in registering F.I.R in the above crime number, the investigation is at the initial stage. Hence, the investigation should be continued to find the truth and punish the offenders. Hence, he prayed for dismissal of this petition.

6. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that earlier there were two complaints for similar set of facts which have been recorded in the order of this Court dated 10.06.2015 in Crl.O.P.No.13963 of 2015. He further submitted that he is not aware of non filing of affidavit along with complaint before the learned Judicial Magistrate, Ambattur. It is not in dispute that there were two complaints, prior to registration of FIR in Crime No.765 of 2015 by the 1st respondent, no FIR was registered and investigation was conducted. This case is still under investigation. Once the case is ordered and forwarded under Section 156(3) Cr.P.C., by the learned Magistrate, the respondent police is duty bound to register an FIR and conduct investigation. Only during the investigation, the veracity and the claim of the petitioners to be ascertained, investigation cannot be aborted at the initial stage . Hence opposed the quash petition.

7.Considering the submissions and on perusal of the materials, it is seen that the petitioners herein admitted that out of 7825 Sq.ft, temple has been constructed on only in 2262 sq.ft and the remaining 5527 Sq.ft had been settled by A1 to A3 in favour of A4 in the year 2004. How these properties devolved by inheritance are to be verified and ascertained with the original settlement document No.1691 of 1936. Likewise, this property was further settled by A4 in favour of A5. The genuineness of document No.4004 of 2004 and document No.350 of 2010, has become questionable. The valuable trust property is attempted to be usurped and alienated to third person, which is against the aim and purpose, for which, the settlement was made by the original settlor in the year 1936. The claim and right of the petitioner, over the trust and its property, will no way hinder the investigation of the case. The claim of the defacto complainant and creation of the Trust is an independent aspect which is to be decided by the appropriate forum. In any event, the property settled in favour of Desu Reddy in the year 1936 cannot have transfusion as projected by the subsequent documents. Non-filing of affidavit along with private complaint seeking to be forwarded under Section 156(3) Cr.P.C., would not make the entire complaint otiose. There is substance in the

averments made in the complaint. As per the directions of the Apex Court, the affidavit could be used only if the veracity of the allegations found to be false. In this case, the allegations cannot be termed as false. Further, the Apex Court held that "in appropriate cases, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations", which is an advisory. Thus, non-filing of the affidavit will alone not throw away the complaint. Further, it is seen that on the earlier complaints, no F.I.R was registered, investigated and no judicial order passed. In view of the same, complaint given by the second respondent to the Judicial Magistrate, forwarding of complaint by the Judicial Magistrate to the first respondent under Section 156(3) and registration of F.I.R by the first respondent in Crime No.765 of 2015 for offence under Section 465, 468, 471 r/w 120(b) IPC are not in violation and abuse of process of law.

8. It would be appropriate that the Judicial Magistrate to insist affidavit of the complainant along with the complaint presented to them, before forwarding the complaint under Section 156(3) Cr.P.C as per Priyanka Srivatsava Case, to be followed without any violation.

9. In view of the same, this Criminal Original Petition is dismissed. The Investigating Officer/first respondent is directed to continue with the investigation and to file a final report as expeditiously as possible, considering the investigation is stalled from the year 2015 without any progress. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Inspector of Police,
Korattur, Chennai-600 080.

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.23080 of 2015

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srg 01/10/2020