

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.Nos.12620 & 14698 of 2018
and
Crl.M.P.Nos.4768 of 2019, 6786
& 7438 of 2018

K.K.Sengodan ... Petitioner in Crl.O.P.No.12620/2018
C.Shanmughanathan ... Petitioner in Crl.O.P.No.14698 /2018

Vs.

1. The State
Represented by its Inspector of Police
Sathyamangalam Police Station
Erode
(FIR No.144 of 2018)

2.S.M.Subramaniam ... Respondents in Crl.O.P.No.12620/2018

1.State rep.by
The Inspector of Police
Sathyamangalam Police Station
Sathyamangalam
Erode District
(Cr.No.144 of 2018)

2.Sarojini
3.Jeyanthi
4.Sumathi

R2 to 4 are rep. By
5.S.R.Subramanian
6.S.M.Subramanian

... Respondents in Crl.O.P.No.14698/2018

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records of FIR 144 of 2018, dated 10.04.2018 on the file of the first respondent police and quash the same.

For Petitioner in
Crl.O.P.No.12620/2018: Mr.Sharath Chandran

For Petitioner in
Crl.O.P.No.14698/2018: Mr.T.Balaji

For Respondent in
both Crl.O.P.Nos. : Mr.M.Mohamed Riyaz for R1
Additional Public Prosecutor

For Respondent in
Crl.O.P.No.12620/2018 : Mr.B.Karthik Narayanan for R2

For Respondent in
Crl.O.P.No.14698/2018 : Mr.B.Karthik Narayanan for R6

C O M M O N O R D E R

Crl.O.P.No.12620 of 2018 has been filed by accused No.1 to quash the FIR in Crime No.144 of 2018 on the file of the first respondent.

2. Crl.O.P.No.14698 of 2018 has been filed by the accused No.2 to quash the FIR in Crime No.144 of 2018 on the file of the first respondent.

3. Heard, Mr.Sharath Chandran, learned counsel for the petitioner in Crl.O.P.No.12620 of 2018 and Mr.T.Balaji, the learned counsel for the petitioner in Crl.O.P.No.14698 of 2018, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the first respondent in both Crl.O.P.Nos. and Mr.B.Karthik Narayanan, learned counsel for the second respondent in Crl.O.P.No.12620 of 2018 and sixth respondent in Crl.O.P.No.14698 of 2018.

4. The learned counsel for the petitioner in Crl.O.P.No.12620 of 2018/accused No.1 has submitted that originally one Ranga Naicker was the owner of the properties situated in Old S.F.No.163 measuring 5.56 acres and Old S.F.No.164 measuring 6 acres total 11.56 acres out of which 4.86 acres and in S.No.155/2 measuring 4.75 acres and in S.No.155/3 measuring 22 cents out of which 11 cents in Malaiyadipudur Village, Sathyamangalam Taluk, Erode District. The said RangaNaicker entered into a sale agreement with the accused No.1 on 08.06.1997 and also handed over the possession of the aforesaid properties. He further submitted that subsequently, the said RangaNaicker started disturbing the possession of the accused No.1 and hence, the accused No.1 had filed a suit in O.S.No.28 of 2007 on the file of the Sub-Judge, Gobichettipalayam, against the said RangaNaicker for the relief of permanent injunction not to interfere with his peaceful possession and enjoyment of the aforesaid properties. He further submitted that before filing of the said suit, the

accused No.1 had issued a pre-suit notice on 05.01.2007 and after receipt of the said notice, the said RangaNaicker had sent a reply notice dated 13.02.2007 in which he had admitted the execution of the said agreement. He further submitted that in O.S.No.28 of 2007, the said RangaNaicker had filed a written statement wherein also he had admitted the execution of the said sale agreement.

5. He further submitted that the second respondent had filed a private complaint before the Judicial Magistrate, Sathyamangalam and the same has been forwarded to the first respondent under Section 156(3) of Cr.P.C and based on the same, the first respondent had registered an FIR in Crime No.144 of 2018 u/s.120B, 420, 468 and 471 IPC. He further submitted that in the said complaint the second respondent has stated that he has been appointed as power agent by one Sarojini, Jeganthi and Sumathi and the said persons had purchased 4.68 acres of land in S.F.No.155/2 under a registered sale deed dated 17.09.2007 from RangaNaicker. He also stated in the said complaint that the sale agreement dated 08.06.1997 is a forged document. He further submitted that since the said RangaNaicker himself has admitted in the written statement which was filed in O.S.No.28 of 2007 on the file of the Sub-Judge, Gobichettipalayam and also in the reply notice dated 13.02.2007, it is not open to the second respondent to challenge the said sale agreement as forged one and therefore, he prayed to quash the said FIR.

6. The learned counsel for the petitioner in CrI.O.P.No.14698 of 2018/accused No.2 has adopted the arguments advanced by the learned counsel for the petitioner in CrI.OP.No.12620 of 2018. He further submitted that the accused No.2 has purchased a plot from the first accused and the said property not belonged to the said RangaNaicker and the said property originally belonged to the accused No.1. He further submitted that the accused No.2 has purchased the property for valuable consideration without notice of any defect in the title. He further submitted that a perusal of FIR shows that along with the private complaint which was filed under Section 156(3), an affidavit has not been filed as directed by the Hon'ble Supreme Court in Priyanka Srivastava and another Vs. State of Uttar Pradesh and others reported in (2015) 6 SCC 287. Therefore, he prayed to quash the FIR.

7. Per contra, the learned counsel for the second respondent/defacto complainant has submitted that the suit which was filed by the accused No.1 against the said RangaNaicker was dismissed for default on 03.12.2012. He further submitted that the restoration petition which was filed by the accused No.1 was also dismissed. He further submitted that the accused persons have forged the Thumb impression of RangaNaicker and created the

sale agreement dated 08.06.1997 and based on the said sale agreement, the accused Nos 1 and 2 are trying to grab the property of the said RangaNaicker. He further submitted that the said RangaNaicker had executed a registered sale deed in favour of the principals of the second respondent namely, Sarojini, Jayanthi and Sumathi dated 17.09.2007 and hence, the aforesaid Sarojini, Jayanthi and Sumathi are the real owners of the aforesaid properties. He further submitted that the second respondent being a Power Agent, has already sent the Thumb impression of the said RangaNaicker with the sale agreement dated 08.06.1997 and got a report from a fingerprint expert and in the said report, the expert has stated that the said document is a forged one and only thereafter, the second respondent has filed a private complaint before the Judicial Magistrate, Sathiyamangalam and the same has been forwarded to the first respondent under Section 156(3) Cr.P.C and based on the same, the first respondent has registered an FIR against the petitioners in Cr.No.144 of 2018 under Sections 120B, 420, 468 and 471 IPC and therefore there is a prima facie case against the petitioners and hence, he prayed to dismiss the petition.

8. The learned Additional Public Prosecutor has adopted the arguments of the learned counsel for the second respondent and he also prayed to dismiss the petition.

9. As per the FIR, the second respondent's principals namely, Sarojini, Jayanthi and Sumathi purchased the property in S.No.155/2 measuring 4.68 acres from one RangaNaicker on 17.09.2007. According to the accused No.1, on 08.06.1997 itself, the said RangaNaicker had entered into a sale agreement with regard to the aforesaid property and also other properties with him and the possession was also handed over to him and subsequently, since the said RangaNaicker tried to trespass into the said properties, the accused No.1 had filed a suit in O.S.No.28 of 2007 on the file of the Sub-Judge, Gobichettipalayam for the relief of permanent injunction.

10. The typed set of papers filed by the petitioners shows that the accused No.1 had filed O.S.No.28 of 2007 on the file of the Sub-Judge, Gobichettipalayam on 09.03.2007 against the said RangaNaicker for the relief of permanent injunction based on the sale agreement dated 08.06.1997 and in that suit, the said RangaNaicker had entered appearance and filed a written statement on 12.06.2007 admitting the execution of the said sale agreement. Further, in the reply notice dated 13.02.2007 also, the said RangaNaicker has admitted the said sale agreement.

11. A perusal of a xerox copy of the Finger Print Expert's opinion dated 23.05.2017 submitted by the learned counsel for

the second respondent/ defacto complainant shows that the Finger Print Expert has not compared the thumb impression found in the sale agreement dated 08.06.1997. On the contrary he has compared some other documents and gave opinion. Further, the said opinion was not obtained through court. It appears that the second respondent himself approached a private Finger Print Expert and obtained an opinion. So, no reliance can be placed upon the said document.

12. Further, when RangaNaicker himself had admitted that he had executed the sale agreement dated 08.06.1997 in favour of the accused No.1, the principals of the second respondent, being the subsequent purchasers, cannot take a plea that the said sale agreement dated 08.06.1997 is forged one.

13. Further, a perusal of the FIR does not show that any affidavit was filed along with the complaint under Section 156 (3) Cr.P.C as directed by the Hon'ble Supreme Court in Priyanka Srivastava and another Vs. Uttar Pradesh and others reported in (2015) 6 SCC 287. Therefore, this Court is of the view that on that ground also, FIR has to be quashed.

14. It is also to be pointed out that in the FIR, it is stated that the accused No.2 had purchased a property in S.F.No.156 from the accused No.1. It is also admitted in the said FIR that the said property belonged to accused No.1. Further, as per the FIR the principals of the second respondent/ defacto complainant had purchased the property only in S.F.No.155/2. Therefore they are not concerned with S.F.No.156.

15. For the aforesaid reasons, this Court is of the view that Registering the First Information Report itself is abuse of process of the Court. Hence, the First Information Report is liable to be quashed.

16. Accordingly, these Criminal Original Petitions are allowed. The First Information Report in Crime No.144 of 2018 on the file of the first respondent is quashed. Consequently, connected Miscellaneous Petitions are closed.

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s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

dna

To

1. The Inspector of Police
Sathyamangalam Police Station
Erode
(FIR No.144 of 2018)

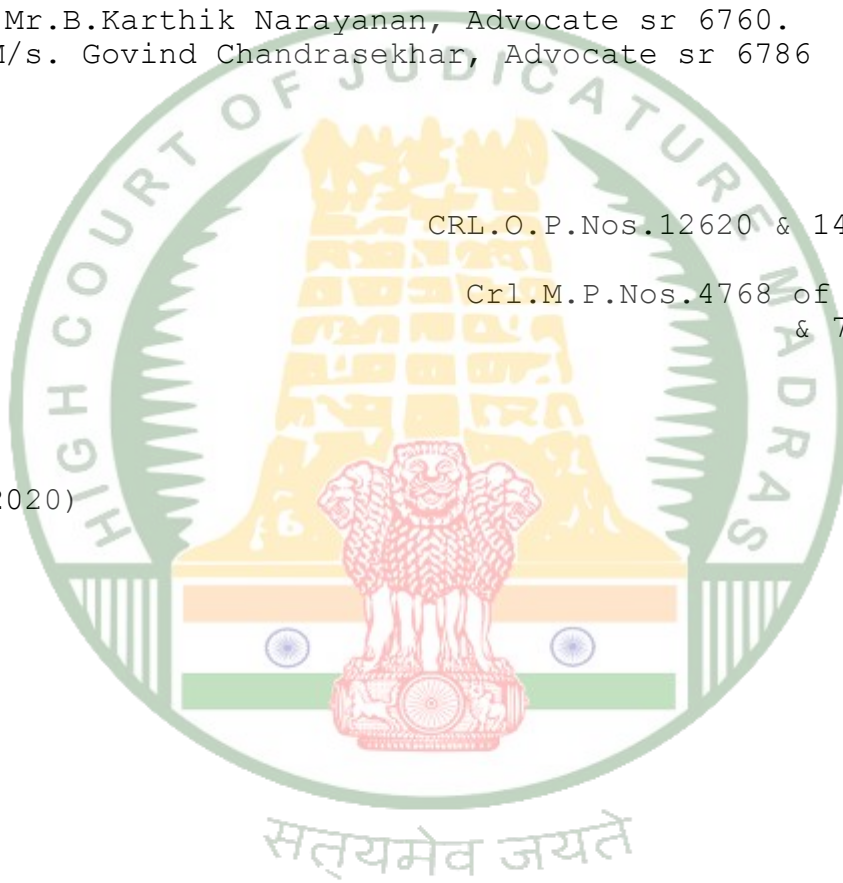
2. The Public Prosecutor,
High Court, Madras.

+2 CCS to Mr.B.Karthik Narayanan, Advocate sr 6760.

+1 CC to M/s. Govind Chandrasekhar, Advocate sr 6786

CRL.O.P.Nos.12620 & 14698 of 2018
and
CrI.M.P.Nos.4768 of 2019, 6786
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SPD(CO)
SP(04/02/2020)



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