

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2020

Pronounced on : 03.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.23397 of 2019
and Crl.M.P.Nos.14144 & 12294 of 2019

1. K.Rangasamy
2. K.Ramathal
3. R.Balamurugan
4. S.Manivannan
5. M.Koperundevi
6. S.Ravichandran
7. R.Thamilarasi

... Petitioners

Versus

1. State rep. By
The Inspector of Police,
Central Crime Branch,
Coimbatore City, Coimbatore.

2. Tmt.P.Kannammal ... Respondents

Prayer: Petition filed under Section 482 Cr.P.C., to call for the records pertaining to Crime No.41 of 2019 on the file of the 1st respondent herein and quash the same as far as the petitioners are concerned.

For Petitioners : Mr.B.Kumarasamy
for Mr.T.Senthil Kumar

For Respondents : Mr.S.Karthikeyan (for R1)
Additional Public Prosecutor.
Mr.T.N.Rajagopalan (for R2)
for Mr.Arumuga Raja

ORDER

This Criminal Original Petition has been filed praying to quash the FIR registered in Cr.No.41 of 2019 on the file of the 1st respondent police, as illegal, as far as these petitioners are concerned.

2. Heard Mr.B.Kumarasamy, learned counsel appearing for the petitioner as well as Mr.S.Karthikeyan, learned Additional

Public Prosecutor appearing for the 1st respondent police and Mr.T.N.Rajagopalan, learned counsel appearing for the 2nd respondent and perused the materials available on record.

3. The allegation in the First Information Report is that the father of the 2nd respondent one Palanimooppan and the father of the 1st petitioner, who is the husband to the 2nd petitioner viz., one Kumarasamy, jointly purchased the property in SF No.644 and S.F.No.646 to the extent of 1.98 cents and 1.43 cents, respectively, with well and electrical pumpset motor in Kuniyamuthur Village, Coimbatore District on 03.05.1967. After the purchase, both of them orally partitioned and enjoyed the same without any hindrance from anybody.

4. In earlier, the father of the 2nd respondent Palanimooppan married one Karuppayee and when the 2nd respondent was at the age of 3, her mother Karuppayee was died and thereafter, her father married one Pongiammal. Out of the second marriage, Palanimooppan and Pongiammal had no issues. In the said circumstances, in respect to the share having by the 2nd respondent's father, the father of the 1st petitioner compelled the 2nd respondent's father to execute a settlement deed in his favour and accordingly, on 21.09.1978, the said Palanimooppan executed a settlement deed in Doc. No.1688 of 1978 in favour of the 1st petitioner's father Kumarasamy, with a condition that the settlement deed will come into effect only after the death of Palanimooppan and his wife Pongiammal.

5. Though the said Palanimooppan, executed a settlement deed as above, during his life time, he alone enjoyed the property and he never handed over the physical possession of the property to the 1st petitioner herein. On 07.06.1988, the said Palanimooppan died and thereafter, his wife Pongiammal also died leaving behind the 2nd respondent as her legal heir. On 26.02.2000, the 1st petitioner's father viz., Kumarasamy died leaving behind 1st and 2nd petitioners as his legal heirs. Thereafter due to the intervention of the elders, there was a family settlement executed between the 1st petitioner and the 2nd respondent herein on 19.08.2013.

6. In the said family arrangements, both the parties have agreed to enjoy their portion of the above said property. It was further alleged that the parent documents of the above said property was in the custody of the 2nd respondent and the said fact is very well known to the 1st and 2nd petitioners herein. In respect to the same, the 1st and 2nd petitioners herein gave a complaint before the Inspector of Police, Kuniyamuthur Police Station alleging that the original document has been misplaced and obtained a 'Non Traceable Certificate' and by virtue of the 'Non Traceable Certificate', issued by the police officials, the

1st petitioner and 2nd petitioner executed a settlement deed in favour of the 3rd petitioner herein on 14.09.2018 and 13.11.2018, in respect to the petition mentioned property which have been purchased by the Palanimooppan and Kumarasamy. In the settlement deed the petitioners 4 to 7 are witnesses and therefore, the accused committed an offence under Section 120-B, 420, 468, 471 and 109 of IPC.

7. The learned counsel appearing for the petitioners would submit that in respect to the above referred offences, before registering the case, it is necessary to see whether the ingredients which are necessary to attract the said offence are found available in the complaint or not. But without verifying the same, the learned Judicial Magistrate No.VII, Coimbatore, mechanically forwarded the complaint to the police, which have been given by the 2nd respondent and thereupon a case has been registered against these petitioners, which is against the law reiterated by our Hon'ble Apex Court.

8. Learned counsel for the petitioners would further submit that before registering this FIR, on 12.06.2019, the 2nd petitioner filed a private complaint in CMP No.3462 of 2019 on the file of the Judicial Magistrate No.VII, Coimbatore, against one Sivakumar and the 2nd respondent herein. The said private complaint has been taken on file in STC No.6930 of 2019, and pending for trial on the file of Judicial Magistrate No.VII, Coimbatore. Only thereafter, for taking vengeance, the 2nd respondent herein, instituted a complaint before the very same Court and ultimately, the present FIR has been registered against the petitioners.

9. Further, before registering the case, the 2nd respondent filed a suit in O.S.No.1687 of 2018 on the file of the District Munsif Court, Coimbatore, for the larger relief of declaration, declaring the settlement deed executed by the 1st and 2nd petitioners in favour of the 3rd petitioners herein dated 14.09.2018 and 13.11.2018 vide Document Nos.5241 and 6307 of 2018 on the file of the Sub Registrar, Coimbatore, as null and void. In such circumstances, learned counsel appearing for the petitioners would contend that the present complaint is nothing but to settle a civil dispute by way of criminal action which is not permissible under law and therefore, the case registered against the petitioners, is liable to be quashed.

10. Per contra, the learned counsel appearing for the 2nd respondent contended that though the petitioners and others knew the existence of family arrangement and also after knowing the custody of parent documents, got a false 'Non Traceable Certificate' from the police and in turn got a certified copy of the settlement deeds and thereafter registered two settlement

deeds with an intent to defeat the right having by the 2nd respondent. Therefore, the case registered against the petitioners needs elaborate investigation.

11. On considering the rival submissions made by the learned counsel appearing on either side, it is not in dispute that in respect to his share purchased on 03.05.1967 along with one Kumarasamy, the father of the 2nd respondent, on 21.09.1978 executed a settlement deed in favour of 1st petitioner's father i.e. Kumarasamy. Now the said Kumarasamy died on 26.02.2000 and in turn on 14.09.2018 and 13.11.2018, the 1st and 2nd petitioners, being the legal heirs of the deceased Kumarasamy, executed a settlement deeds in favour of the 3rd petitioner. Further in the month of December 2018, the 2nd respondent instituted a suit against the petitioners 1 to 3 for the relief of declaration, declaring that the settlement deeds dated 14.09.2018 and 13.11.2018, are null and void. Thereafter, the 3rd petitioner R.Balamurugan, filed a suit in O.S.No.1682 of 2018 against the 2nd respondent and others and prayed the relief of direction, directing to hand over the Document No.1218 of 1971 dated 07.06.1971 and Document No.1688 of 19718 dated 21.09.1978.

12. Therefore, on culling out the entire circumstances reveals the fact that in respect to the property now narrated in the FIR, already two cases are pending before the competent forum. More than that, the petitioners 1 and 2 obtained a 'Non Traceable Certificate', only in respect to the property inherited by them from their ancestors.

13. In the said circumstances the validity of the said documents, has to be decided only by the competent civil Court, on the other hand, it cannot be said that the petitioners are having the intention to create a forged document. In fact the question of forgery does not arise as per the averments found in the First Information Report.

14. More than that, the averments found in the First Information Report, is very clear that the petitioners 1 and 2 obtained a 'Non Traceable Certificate' saying that the original Settlement Deed, which stands in the name of 1st petitioner's father, is misplaced. Hence being the beneficiary, 1st and 2nd petitioners are always got a right for getting the certified copy of those document. In these regard, the question of dishonest intention to deceive the 2nd respondent, by the petitioners does not arise. Apart from that, getting certified copy is not an offence under Indian Penal Code. Though, it was submitted on the side of the 2nd respondent that there was a family arrangement, in order to prove the same, nothing was placed before this Court.

15. At this juncture, in respect to scope and ambit of section 482 of Cr.P.C., it is necessary to see the judgment of our Hon'ble Apex Court, in the State of Haryana and others versus Bhajan Lal and others, reported in 1992 suppl. (1) SCC 335, wherein our Hon'ble Apex Court has held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. Further, in the case of State of Karnataka Vs. L.Muniswamy, reported in 1977 (2) SCC 699, our Hon'ble apex Court has held as follows:

"7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a Salutory public purpose which is that a Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very

nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible. to appreciate the width and contours of that salient jurisdiction."

17. In a three-Judges Bench in State of Karnataka Vs. M.Devendrappa, reported in 2002 (3) SCC 89, our Hon'ble Apex Court has held as follows:

"6...All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quande lex aliquid aliqui concedit, concedere videtur in sine que ipsa, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is

made out even if the allegations are accepted in toto."

18. Applying the ratio laid down in the above referred judgment it is made clear, if the case has been registered maliciously with intention to take vengeance, the same need not be permitted to continue.

19. Though it was stated by our Hon'ble Apex Court in the case of Dr.Lakshman Vs. The State of Karnataka and Others etc., in Crl.A.Nos.1573 to 1575 of 2019 dated 17.10.2019, that in a petition under Section 482, Cr.P.C., it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes, herein it is a case, from the sections of offence, as noticed above, it is clear that the dispute having by the petitioners with the 2nd respondent, is only with respect to the property which have been acquired by the forefathers of the 1st and 2nd petitioners and the 2nd respondent. Further, in respect to the same, both of them have filed a suit vice versa and the same are pending before the competent Court.

20. Therefore, applying the category 7 of the Bhajan Lal's case [cited supra] herein also the registration of the case, against the petitioners is nothing but, for wreaking vengeance against the petitioners. Permitting such criminal proceedings to go on, is nothing but abuse of process of Court, which needs to be interfered with.

21. Accordingly, the Criminal Original Petition is allowed and the FIR in Cr.No.41 of 2019 on the file of the 1st respondent police, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

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Assistant Registrar (CS)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
Central Crime Branch,
Coimbatore City, Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

Copy to

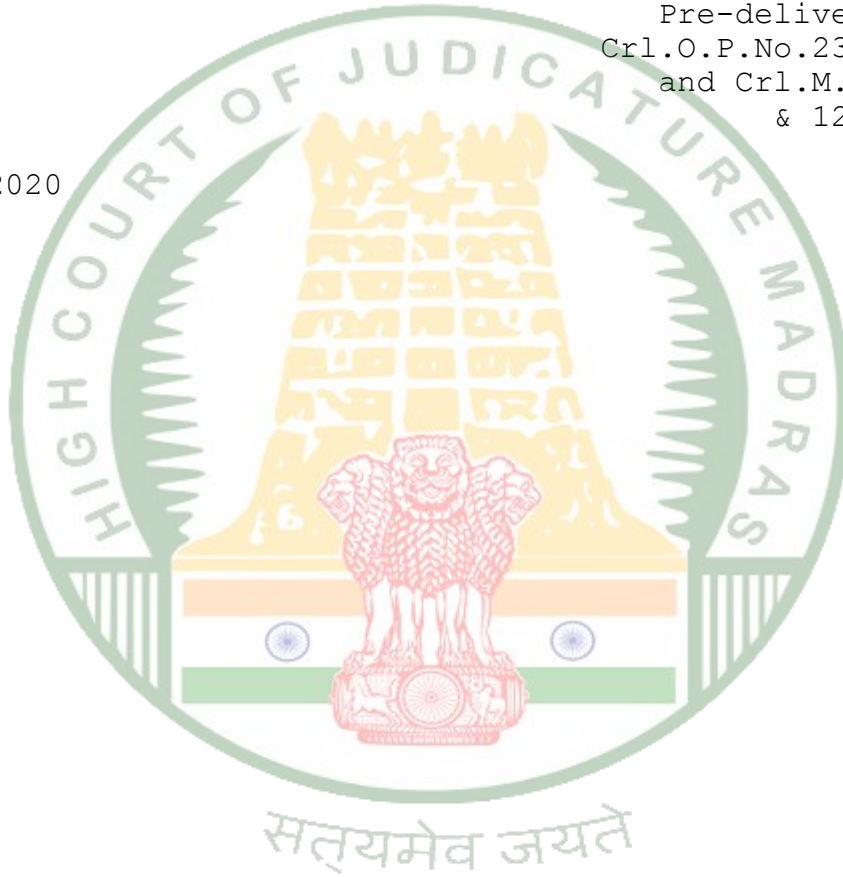
The Judicial Magistrate No VII,
Coimbatore.

+1 C.C. to Mr.T.Senthil Kumar Advocate SR.NO. 39373

+1 C.C. to Mr.G.Arumuga Raja Advocate SR.NO. 39362

Pre-delivery order in
Crl.O.P.No.23397 of 2019
and Crl.M.P.Nos.14144
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