



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.09.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P.(MD)No.9932 of 2020

and

Crl.M.P.(MD)Nos.4608 and 4609 of 2020

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1.A.Kennady
2.Jesudoss

... Petitioners

Vs.

1.State through
The Inspector of Police,
District Crime Branch,
Dindigul District,
Dindigul.
(Crime No.11 of 2019)

2.A.Edwin Altrin

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records and quash the proceedings in C.C.No.142 of 2020, on the file of the Judicial Magistrate Court No.II, Dindigul.

For Petitioners	: Mr.G.Prabhu Rajadurai
For R1	: Mr.S.Chandrasekar
	Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.142 of 2020, pending on the file of the Judicial Magistrate Court No.II, Dindigul, insofar as the petitioners are concerned.

2.The case of the petitioners is that they are arrayed as A1 and A2 in C.C.No.142 of 2020, on the file of the Judicial Magistrate Court No.II, Dindigul. The second petitioner herein is the brother-in-law of the first petitioner. The first petitioner's mother A.Matharesmary [Late], out of her own income, purchased a property in Survey No.67/1A, measuring an extent of 60 cents in Veeralipatti Village, Trichy District. The first petitioner has three brothers and five sisters, out of whom, two brothers have died and all of them were married and residing with their families in various parts of Tamil Nadu. The first petitioner and his younger brother viz., Baskar [Late] alone took care of their aged mother till her last days. On 09.06.2002, the said Matharesmary, the mother of the first petitioner, executed a Will in respect of the above said property in favour of the first petitioner as well as his brother, Baskar. After execution of the said Will, the said Matharesmary died on



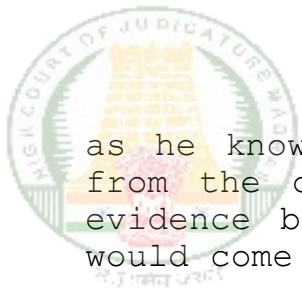
28.08.2004. Thereafter, the said Baskar gave a Photostat copy of the Legal Heirship Certificate to the first petitioner. All the sisters of the first petitioner were also aware of the same. Unfortunately, the first petitioner's younger brother Baskar expired on 25.08.2016. Thereafter, in the month of March 2019, by utilizing the photocopy of the Certificate given by his younger brother Baskar, the first petitioner applied for Patta transfer, at that time, the first petitioner genuinely believed that the said Certificate was a True Copy and that by virtue of the Will, his mother bequeathed the property only to him and his younger brother Baskar.

3.Subsequently, only after registration of the present case, the first petitioner came to know that it was not a genuine Certificate and immediately, he took steps to cancel the Patta. In the meanwhile, the first respondent has filed a Charge Sheet and the same was taken on file by the learned Judicial Magistrate No.II, Dindigul, in C.C.No.142 of 2020 and therefore, it is necessary to quash the Charge Sheet, which is filed against the petitioners.

4.The learned counsel appearing for the petitioners would submit that without any *mens rea* only by believing his younger brother, the first petitioner herein received the fabricated Legal Heirship Certificate and by using the said Certificate, he included his name in the Patta, which pertains to the land now under dispute and therefore, the petitioners are not having any intention for committing the offence of cheating. Since the intention of the petitioners goes away, the other alleged offences are also not made out against the petitioners and accordingly, he prayed to allow this Criminal Original Petition.

5.Now, on going through the impugned final report filed by the first respondent in Crime No.11 of 2019, it is seen that during the time of occurrence, both the petitioners herein with an intention to grab the entire family property, fabricated the Legal Heirship Certificate, alleging that the first petitioner and his younger brother Baskar alone are the legal heirs for their mother viz., A.Matharesmary, but, in fact, the parents of the first petitioner are having five daughters and three sons. In the said circumstances, the main issue to be resolved in the petition mentioned case is, whether the petitioners had intention to create the forged document or not.

6.In this regard, now, the first petitioner put his burden on the dead person. Though the forged document alleged to have been given by the said Baskar by mentioning the same as genuine one, the first petitioner himself admits in this Petition as in the said Certificate, only his name and the name of his younger brother Baskar found place as legal heirs to their deceased mother. So, it is the duty of the first petitioner to correct the said Certificate



as he knows that he is having five sisters and one brother apart from the deceased brother Baskar. Therefore, only after letting evidence before the Trial Court, the intention of the petitioners would come to light.

7. At this juncture, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others [Criminal Appeal No.255 of 2019, dated 12.02.2019]**, wherein it has been held as follows:-

'9. A perusal of the complaint discloses that prima facie offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.'

8. Further, in **Ajay Kumar Das Vs. State of Jharkand and others** reported in **2011 (12) SCC 319**, our Hon'ble Apex Court has held that genuineness of the allegations/charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings.

9. Furthermore, in **State of Punjab and others vs. Inder Mohan Chopra and others** reported in **2009 (2) SCC (CrI.) 150**, our Hon'ble Apex Court has held as follows:-

'7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.'

10. Therefore, applying the ratio laid down by our Hon'ble Apex Court in the above referred judgments to the case on hand, here it is a case, whether the petitioners had intention to cheat their sisters and brother and also whether the alleged fabricated document was prepared by the petitioners or not are all the factual issues. Therefore, the Trial Court has to decide those aspects and in the said circumstances, praying to quash the entire proceedings in C.C.No.142 of 2020 is not at all to be entertained. Accordingly, this Criminal Original Petition is dismissed. Consequently,



connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.II,
Dindigul.

2.The Inspector of Police,
District Crime Branch,
Dindigul District,
Dindigul.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-17804[F] dated 23/09/2020)

Crl.O.P.[MD]No.9932 of 2020
22.09.2020

SS (CO)

KB(30.09.2020) 4P 5C