



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.15220 of 2016

and

Crl.M.P.(MD).Nos.7142 and 7143 of 2016

WEB COPY

1.J.Josephin Kamala

2.T.Xavier Raja

3.S.Paulraj

4.C.Pushpharaj

... Petitioners/Accused 3,4,6&7

Vs

1.The State Rep by

The Inspector of Police,

Anti-Land Grabbing Special Cell,

Dindigul.

(Crime No.147 of 2014)

... Respondent/Complainant

2.A.Devarajan

... Respondent/Defacto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying to quash the C.C.No.9 of 2016 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai.

For Petitioners : Mr.C.M.Arumugam

For 1<sup>st</sup> Respondent : Mr.R.Erottuchamy

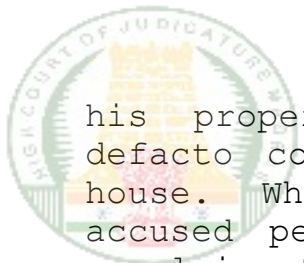
Government Advocate (Crl. Side)

For 2<sup>nd</sup> Respondent : Mr.R.Anand

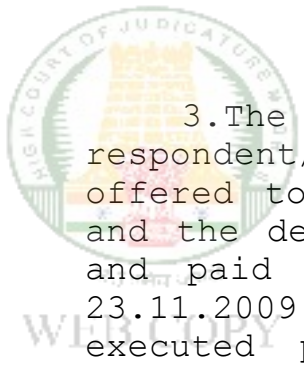
### ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.9 of 2016 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, as against the petitioners.

2.The learned counsel appearing for the petitioners submitted that totally there are nine accused in this case, in which, the petitioners have been arrayed as A3, A4, A6 and A7. He further submitted that even according to the case of the prosecution the first accused has entered into an oral agreement with the defacto complainant to sell the property to an extent of 16 cents bearing T.S.No.30 for old Survey No.508/3 comprised in Survey No.508/3 situated at Seenivasapuram in Kodaikanal, Dindigul District and also executed power of attorney in favour of the defacto complainant on 23.11.2009 vide Doc.No.367/2009 with the office of Sub Registrar, Kodaikanal. On the date of execution of power of attorney, the defacto complainant has also paid a sum of Rs.3 lakhs to the first accused and constructed a house and also fenced



his property after obtaining electricity connection and the defacto complainant is in possession and enjoyment of the said house. While being so, on 30.01.2014 at about 11.00 a.m, all the accused persons have trespassed into the house of the defacto complainant and threatened him to hand over the vacant portion of the said property and also threatened him with dire consequences. Thereafter, the first accused has also cancelled the power of attorney by the cancellation deed dated 20.02.2014 vide Doc. No.297/2014. He further submitted that insofar as the petitioners are concerned, there are absolutely no allegations against the petitioners to attract the offence under Sections 120(b), 406, 420 and 506(i) of IPC. He further submitted that the alleged occurrence was taken place on 30.01.2014 and the second respondent lodged a complaint only on 04.03.2014. He further submitted that though he has stated in the FIR as if he lodged a complaint before the Kodaikanal Inspector of Police, Kodaikanal, the said police is not a jurisdictional police, the defacto complainant ought to have lodged a complaint before the respondent Police. Therefore, there is no explanation for the delay in lodgment of the complaint by the second respondent herein. He further submitted that the petitioners are also having share over the subject property. He further submitted that in fact the sixth accused viz., the third petitioner has filed a suit for permanent injunction as against the first accused and the defacto complainant in O.S.No.119 of 2012 on the file of the learned District Munsif Court, Kodaikanal and the same is pending for adjudication. In fact, the fifth accused has also filed a suit in O.S.No.18 of 2014 and sought for the relief of partition, on the file of the learned District Munsif Court, Kodaikanal, as against the defacto complainant and the other legal heirs and it is also pending for adjudication. He further submitted that the petitioners did not execute any power of attorney or sale agreement in favour of the defacto complainant and they did not receive single paisa from the defacto complainant. He further submitted that they never agreed to sell the property to the defacto complainant. Even according to the defacto complainant, the first accused alone has entered into oral agreement and executed power of attorney in his favour. Even till today the defacto complainant did not prefer any suit for specific performance on the petitioners' oral agreement as well as the power of attorney executed in his favour. In respect of the charges for the offence under Section 506(i) is concerned, there was a threatening only by words. As pointed by the learned counsel appearing for the petitioners, the threat should be a real one and not just a mere word when the petitioners uttering does not exactly mean what they say and also when the person to whom threat is launched does not feel threatened actually. Therefore, there is absolutely no evidence to attract the said offence and the entire allegations are bald allegations as against the petitioners herein and hence, he prayed to quash the proceedings.



3.The learned counsel appearing for the second respondent/defacto complainant submitted that the first accused offered to sell the subject property to the defacto complainant and the defacto complainant had also agreed to purchase the same and paid a sum of Rs.3 lakhs for sale consideration and on 23.11.2009 the first accused entered into oral agreement and also executed power of attorney in his favour. Thereafter, he constructed house and obtained electricity service connection and fenced his property and he is now in possession and enjoyment of the subject property. While being so, all the accused persons have trespassed into the property and threatened him to hand over the vacant portion of the subject property and also threatened him with dire consequences. Immediately on 13.12.2013, the defacto complainant lodged a complaint before the Inspector of Police, Kodaikanal. Thereafter, again on 30.01.2014 all the accused person have trespassed into the house of the defacto complainant and threatened him to hand over the vacant portion of the subject property and also threatened him with dire consequences. He further submitted that the first accused cancelled the power of attorney executed in favour of the third accused by cancellation deed dated 23.11.2009 vide Doc. No.366/2009 and entered into oral agreement and executed power of attorney in favour of the defacto complainant. Therefore, all the accused persons have conspired together and cancelled the power of attorney executed in favour of the third accused/first petitioner, and after receipt of sale consideration of Rs.3 lakhs, executed power of attorney in favour of the defacto complainant. Therefore, the charges for the offence under Sections 120(b), 406 and 420 are clearly made out as against the petitioners. He further submitted that all the grounds raised by the petitioners cannot be considered under Section 482 of Cr.P.C., and it can be considered only before the trial Court and prayed for dismissal of this quash petition.

4.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. Side) appearing for the first respondent Police and the learned counsel appearing for the second respondent.

5.On perusal of the records, it is seen that totally there are nine accused in this case, in which, the petitioners have been arrayed as A3, A4, A6 and A7. The petitioners are charged for the offence under Sections 120(b), 406, 420 and 506(i) of IPC. Admittedly, the subject property is an ancestral property and all the accused persons are having equal share over the property. While being so, the first accused alone entered into oral sale agreement with the defacto complainant on receipt of a sum of Rs.3 lakhs and also executed power of attorney on 23.11.2009 vide Doc. No.367/2009. Thereafter, the defacto complainant has constructed a house and also obtained electricity connection and fenced his



property. According to the prosecution, the petitioners along with other accused persons trespassed into the house of the defacto complainant and threatened him with dire consequence and also threatened him to hand over the vacant portion of the subject property. It is also seen that the sixth accused viz., the third petitioner has filed a suit for permanent injunction as against the first accused and the defacto complainant in O.S.No.119 of 2012 on the file of the learned District Munsif Court, Kodaikanal and the same is pending for adjudication, that is prior to the complaint, which was lodged by the second respondent herein. Further, the first accused had entered into agreement for sale consideration of Rs.3 lakhs and received the same. Insofar as the petitioners are concerned, they did not receive money from the defacto complainant and they did not enter into any oral agreement with the defacto complainant. It is also seen that the fifth accused has also filed a suit in O.S.No.18 of 2014 on the file of the learned District Munsif Court, Kodaikanal, for the relief of partition as against the sisters and brothers and also as against the defacto complainant herein and it is pending for adjudication. Therefore, all the legal heirs are having equal share in the subject property and the first accused alone entered into oral agreement with the defacto complainant. The alleged date of occurrence is 30.01.2014 and the FIR was registered only on 07.11.2014. On 30.01.2014, all the accused persons came to the place of the defacto complainant and threatened him with dire consequences. The entire allegations are bald allegations as against the petitioners and there is no specific allegations as against the each of the petitioners. The charges for the offence under Sections 120(b), 406 and 420 are not clearly made out as against the petitioners, since there is absolutely no evidence to attract those offences as against the petitioners. There is no ingredients to attract the offence as against the petitioners herein. Therefore, the entire proceedings as against the petitioners is clearly abuse of process of law and it cannot be sustained as against the petitioner.

6. Accordingly, this criminal original petition stands allowed and the proceedings in C.C.No.9 of 2016 on the file of the Special Court for Exclusive Trial of Land Grabbing cases, Madurai is hereby quashed. Consequently, the connection criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsg

**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 Special Court for Exclusive Trial  
of Land Grabbing Cases,  
Madurai.
- 2.The Inspector of Police,  
Anti-Land Grabbing Special Cell,  
Dindigul.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

CrI.O.P. (MD) .No.15220 of 2016  
and

CrI.M.P. (MD) .Nos.7142 and 7143 of 2016  
09.12.2020

KM(CO)

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