



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 19.02.2020

PRESENT

THE HON`BLE **MR.JUSTICE G.R.SWAMINATHAN**

Crl.O.P(MD).No.19278 of 2016

and

Crl.M.P(MD).Nos.9676 of 2016

and Crl.O.P(MD).No.7795 of 2018

1.Bojarajan
2.Varadharajan
3.Packiyam
4.Murugan

... Petitioners/Accused Nos.1 to 4

Vs

1.State rep., through its
The Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Police Station),
Theni, Theni District.
Crime No.27 of 2016 ...1st Respondent / Complainant

2.K.S.T.Sivaraja Pandiyan ...2ndRespondent / 2nd Defacto Complainant

PRAYER : Petition is filed under Section 482 of Cr.P.C to call for the records of the FIR in Crime No.27 of 2016 on the file of District Crime Branch (Anti Land Grabbing) Police Station, Theni, Theni District and quash the same by allowing the criminal original petition.

For Petitioners : Mr.D.Nallathambi
For Respondents : Mr.A.Robinson

Government Advocate (for R1)
Mr.R.Gandhi (for R2) for Mr.P.Mahendran

ORDER

Heard the learned counsel on either side.

2.The petitioners are figuring as accused in the impugned FIR in Crime No.27 of 2016 registered on the file of the first respondent for the offence under Sections 120(b), 148, 447, 406, 468, 471 and 506(ii) IPC.

3.The case of the defacto complainant is that his father K.S.Thangapandian has executed a power of attorney in favour of the



first petitioner viz., Bojarajan on 25.08.2009. The first petitioner had been authorised to alienate a landed property to an extent of 6709 sft. The specific allegation is that the first petitioner had sold in excess to the extent of 7308 sft. The first petitioner had unauthorizedly alienated 600sft of land belonging to K.S.Thangapandian. Petitioners 2 to 4 are purchasers. Based on the complaint given by the defacto complainant, the impugned FIR came to be registered. For quashing the same, this criminal original petition has been filed. I adjourned this case on more than one occasion to enable the parties to amicably resolve the issue between themselves.

4.Today when the matter was taken up for hearing the petitioners' counsel as well as the counsel for the defacto complainant submitted that a consensus could not be arrived at.

5.The petitioners' counsel would contend that the impugned FIR has to be quashed as it was registered at the instance of the second respondent herein. I find no merit in this contention.

6.According to the counsel appearing for the second respondent, during the relevant time, K.S.Thangapandian was very ill and he was not in a position to give a complaint. In any event, the second respondent who is none other than the son of the principal cannot be said to be an alien or a third party. Thangapandian is now said to be no more. Obviously, the defacto complainant being his legal heir will definitely has an interest in the subject matter. Therefore, the FIR cannot be quashed on the ground that an unconnected third party has given a complaint. The other contention urged by the petitioners' counsel is that the issue is purely civil in nature and that therefore, the initiation of the criminal prosecution is an abuse of legal process. Again I am unable to agree. A given issue may have a civil dimension but also a criminal profile. It is obvious from the record that the first petitioner was given authority to sell only 6709 sft of land but what was sold was to an extent of 7308. The petitioners 2 to 4 are close blood relatives. Therefore, the petitioners 2 to 4 cannot feign ignorance. In any event, the case is at the investigation stage. I am, therefore, not inclined to interfere. Accordingly, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

rmk

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To

1. The District Crime Branch (Anti Land Grabbing) Police Station,
Theni, Theni District.

2. The Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Police Station),
Theni, Theni District.

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

ORDER

IN

Crl.O.P(MD) .No.19278 of 2016

SMA/02/06/2020/3P/4C