



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2020

Pronounced on: 22 .12.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No. 22976 of 2016

and

Crl.M.P.(MD)No. 12067 and 12073 of 2016

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1. Hemalatha Devi
2. K.J.Rajeswari
3. P.R.Subashini
4. P.A.Rajasekara Raja
5. P.J.Ramkumar Raja : Petitioners/Respondents

Vs.

K.M.Ramesh : Respondent/Petitioner

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to quash all further proceedings in C.C.No. 436 of 2016 on the file of the learned Judicial Magistrate, Rajapalayam.

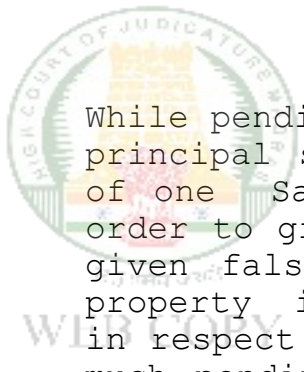
For Petitioners : Mr.S.Ramesh
For Respondent : Mr.Karunanidhi
for Mr.P.R.Thiraviam

ORDER

This petition has been filed to quash the proceedings in C.C.No. 436 of 2016 on the file of the learned Judicial Magistrate, Rajapalayam.

2. The respondent filed a private complaint after following the procedure as contemplated under Section 202 and 203 of Cr.P.C. The learned Magistrate had taken cognizance for the offence under Sections 418 of IPC as against the petitioners herein.

3. All the petitioners herein are arrayed as A1 to A5 in the complaint lodged by the respondent herein alleging that the respondent herein is a power of attorney of one Chandru Ramanan, who is working in United Kingdom. He has a share in the joint united family property situated at 146A(2), T.P.Mills Road at Rajapalayam Taluk. There was a dispute between the Principal and the other family members namely the petitioners herein. Thereafter partition suit filed in O.S.No. 136 of 2008 on the file of the Principal District Court, Virudhunagar at Srivilliputhur re-numbered as O.S.No.8 of 2020 on the file of the III Fast Track Court, Madurai between the principal of the respondent herein and accused persons.



While pending the suit, the accused persons without knowledge of the principal sold out the entire property of consideration in favour of one Sankar Ganesh by registered sale deed dated 25.06.2009 in order to grab the entire property. Further alleging that they have given false statement in the sale deed as if the said subject property is free from all encumbrance and no litigation is pending in respect of the subject property. When the partition suit is very much pending on the file of the Fast Track Court No.III, Madurai. Further alleging false statement in the sale deed attracts the offence punishable under Section 82 of the Registration Act.

4. The learned counsel for the petitioners would submit that initially the respondent lodged complaint and the same was registered in Crime No.146 of 2015 and after detailed enquiry the same was closed. While being so, the learned Magistrate ought not have taken cognizance as against the petitioners herein. Infact already civil Court has taken cognizance in respect of very same property on the file of the VI Additional District Court, Madurai in O.S.No. 7 and 8 of 2010 and entire allegations are civil in nature only and do not attract the offence under Section 418 of IPC. The respondent suppressed the fact that civil suits in O.S. No. 7 and 8 of 2010 are pending at the time of filing complaint. In fact the allegations averred in the sale deed is only statements and it would not attract the offence under Section 82 of Tamil Nadu Registration Act since it is only a recital in the document and also prepared by purchasers.

5. The learned counsel for the respondent filed counter and submitted that on the closure report in Crime No. 146 of 2014, the respondent filed protest petition before the learned Magistrate and without following the procedure as contemplated under Sections 202 and 203 of Cr.P.C The learned Magistrate simply and mechanically closed the protest petition filed by the respondent herein. Aggrieved by the same, the respondent filed a revision before this Court in Crl.R.C.(MD) No. 379 of 2019 and this Court by an order dated 09.09.2019 set aside the order passed by the learned Judicial Magistrate, Rajapalayam directing the learned Magistrate to conduct enquiry under Section 202 of Cr.P.C and decided the matter on merits. Accordingly the learned Magistrate conducted detailed enquiry by examining six witnesses in support of the case of the respondent herein and thereafter had taken cognizance for the offence under Section 418 of IPC as against all the accused persons and issued summons to them. Therefore there is material to take cognizance for the offence under Section 418 of IPC. The grounds raised by the petitioners cannot be considered under Section 482 of Cr.P.C since it is a disputed question of facts and it can be considered only by the trial court during trial and therefore he sought for dismissal of the quash petition.

6. Heard Mr. S.Ramesh, learned counsel for the petitioners
<https://hccservices4courts.kon.in/services> and Mr. S. Senthil, learned counsel for the respondent.



7. Admittedly the subject property is connected with the joint family property belonging to the petitioners as well as the respondent herein. The only allegation in the complaint is that when already a suit was filed and pending in O.S.No. 136 of 2008 and re numbered as O.S.No.8 of 2010 on the file of the Fast Track Court No.III, Madurai the petitioners executed sale deed by registered sale deed dated 25.06.2009 in favour of one Sankar Ganesh. On perusal of the sale deed they averred that no litigation is pending in respect of the property. Subsequently the said suit was transferred to the file of the VI Additional District Court, Madurai and re-numbered as O.S.No. 8 of 2010. The learned counsel for the petitioners mainly contended that the partition suit filed by the respondent was dismissed by a judgment and decree dated 23.10.2019. Ex.P.11 sale deed executed by all the accused persons and other is valid and the subject property are declared as sale accrued properties. Therefore the entire allegations made in the complaint are civil in nature and the civil issues also ended in favour of the petitioners herein. The suit by the respondent was dismissed and now under challenge in the appeal suit, the allegation in the complaint is that the petitioners suppressed the suit filed by the respondent herein for partition and executed sale deed and also made false averment in the sale deed. Therefore the offence under Section 418 of IPC is clearly made out as against the petitioners. That apart, the grounds raised by the petitioners are in respect of subject property and it can be decided in the civil suit and that the respondent by way of criminal complaint tried to give criminal colour. Admittedly it is a disputed question of facts and it cannot be considered by this Court.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned



order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during

trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M. Jayanthi Vs. K.R. Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted



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in entirety, would not constitute the offence alleged.

.....
13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.436 of 2016 on the file of the learned Judicial Magistrate, Rajapalayam. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the trial Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Order.

12. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (P & A)

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Sub Assistant Registrar(CS)

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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

The Judicial Magistrate, Rajapalayam.

+1cc to Mr.V.Raghavachari, Advocate Sr.No.26886

+2cc to M/s.P.T.Thiraviam, Advocate Sr.No.26779

Order made in
Crl.O.P.(MD)No. 22976 of 2016
and
Crl.M.P.(MD)No. 12067 and 12073 of 2016

Dated: 22 .12.2020

DKS (CO)

NR (06/01/2021) 6P : 4C

NR (09/02/2021)