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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.OP.No.6777/2015 & MP.Nos.1&2/2015

1.G.Thilagavathy

2.G.Bharathi

3.V.Gopinathan

... Petitioners

Versus

1.State represented by

Inspector of Police

V4 Rajamangalam Police Station

Chennai 600 099.

2.Balaji

... Respondents

Prayer:- Criminal Original Petition filed u/s.482 of Cr.P.C., to call for the records in CC.No.2067/2014 on the file of the learned X Metropolitan Magistrate, Egmore, and quash the same.

For Petitioners : Mr.R.S.Akila for
Mrs.Sudha Ramalingam

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 : Mr.A.Ashwin Kumar for
Mr.A.Rajesh Kanna

ORDER

- (1) The present petition has been filed by A2, A3 and A4 in CC.No.2067/2014 now pending on the file of the learned X Metropolitan Magistrate, at Egmore, Chennai, seeking to quash the said Calendar Case.
- (2) It must be mentioned that petitioners 1 and 2 herein, A2 and A3 are sisters and the 3rd petitioner/A4 is the husband of the 2nd petitioner/A3. There is a first accused who is not before this Court. She is Mahadevi and she is the mother of petitioners 1 and 2/A2 and A3.



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- (3) It is claimed that the property which is under dispute, had been originally purchased by A1 from one Natarajan, by a document bearing No.1549/1979 dated 28.05.1979, registered in the office of the Sub Registrar, Sembium. The properties had related to that particular Sale Deed/Doc.No.1549/1979, were S.Nos.64, 65, 66 and Town Survey No.28 and 27, in Plot No.72 in Plot No.1, measuring about 1584 sq.ft.
- (4) In the Final Report, pursuant to which the Calendar Case has been taken cognizance, it had been stated that this particular document, viz., Doc.No.1549/1979, had actually been executed by one Natarajan in favour of one Balakrishnan. A1 had not purchased the properties at all.
- (5) The learned counsel for the petitioners herein when questioned as to why that particular document of the year 1979 had not been filed along with the petition herein, stated that the present petitioners were not parties to the said document and also stated that the said document is not at all available.
- (6) A simple reading of the said document would have brought to light whether A1/Mahadevi, had actually purchased the said property. She did not rest with that. Subsequently, it appears that she had divided the property into two halves and sold one half to one Muthuselvan on 06.07.1988. The other half was further sub-divided into two halves and settled in favour of A2 and A3/petitioners 1 and 2 herein on 16.07.2007. Thereafter, there was also an application filed for demolition of the house and re-construction of the house. It is claimed that permission had also been granted. However, even though all these Settlement Deed and the Sale Deed are available, the fundamental aspect which has to be established by A1 is, as to how she got the right or title over the property, which is under dispute.
- (7) In the Final Report, a separate line of title is given. It is stated that at Kolathur, in S.No.34 in Dayalu Nagar, there were Plot Nos.10, 11, 12, 13, 13A and 14, which originally belonged to one Koka Krishna Rao Naidu who purchased the same by a Sale Deed in the year 1918. He died in the year 1920. Thereafter, there had been various transactions over the said property. There was a separate line of title and no where did Natarajan or A1/Mahadevi come into the picture with respect to the said property. It must be mentioned that therefore, every other transaction entered into by Mahadevi, will always be shrouded with deep suspicion and it is for the accused including the present



accused/petitioners herein, who had directly benefited from such nefarious activity of A1, to explain as to how they can enjoy the property over which they could never claim title.

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- (8) Learned counsel for the petitioners placed reliance on a patta which is enclosed in the documents filed along with this petition. The patta cannot grant any title. She should have produced the document of the year 1979 and a mere statement that the same has been lost, cannot come to the rescue of any of these petitioners, who naturally will have to fall back to that particular document of the year 1979 even with respect to their title which flows from the Settlement Deed executed by A1 in favour of them. They had willingly benefited themselves by the Settlement Deed executed by A1, who had no right and who had no interest and who had no title over the property.
- (9) Even if the accused had some interest, right or title, it is always open to them to put forth the same during the course of trial and I am confident that the learned Magistrate would encourage any request made on behalf of the accused during the course of recording evidence, particularly, with respect to cross-examining the material witnesses on behalf of the prosecution.
- (10) I am afraid that in these circumstances, the Court cannot and should not, quash the proceedings, particularly when, the charge sheet has been taken on file for a series of offences under Sections 120-B, 465, 467, 468, 471 and 420 of IPC read with 34 of IPC.
- (11) The further contention put forth by the learned counsel for the petitioners is that the Power of Attorney Agent of the defacto complainant had originally instituted OS.No.3961/2008, which came to be dismissed. Thereafter, the defacto complainant himself instituted a suit in OS.No.6767/2012, which also came to be dismissed. But those orders will, again to repeat, not come to the rescue of the petitioners herein who have to, in the first place, clear the cloud which hangs over the document of the year 1979 and which had been purportedly executed by one Natarajan in favour of one Balakrishnan and A1 will have to state as to how she got the title. The fact that she was able to get patta or the fact that she was able to get permission for demolition and reconstruction of the house, will all pale into insignificance if A1 is not able to establish title or clear title over the property or that the said document of the year 1979 is a genuine document. If that cannot be established, then A1 and others who



follow her as beneficiaries, will necessarily have to face prosecution.

- (12) In Neeharika Infrastructure Private Limited Vs. State of Maharashtra, reported in 2021 SCC Online 315, the Hon'ble Supreme Court of India had very categorically held that the High Courts should be quite cautious while exercising the power under Section 482 of Cr.P.C., in quashing any complaint. It had been stated that extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction to act according to whims or caprice. It had been very specifically stated that the power for quashing should be exercised sparingly with circumspection. It should only be an exception rather than an ordinary rule.
- (13) In the present case, the accused are facing series of charges and I would rather advise the petitioners to focus on participating in the trial process and try to destabilise the case of the prosecution rather than scuttling the case of the prosecution by filing this petition.
- (14) I find no merits in the present petition. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP
To.

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Inspector of Police
V4 Rajamangalam Police Station
Chennai 600 099.
- 3.The Public Prosecutor
High Court, Madras.

+2cc to M/s.Sudha Ramalingam, Advocate Sr.48185

Cr1.OP.No.6777/2015

pa[co]
srg 05/10/2021