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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P. Nos.3394 and 5346 of 2016

1. Mr. Vaithilingam,
2. Mrs. Malliga

...Petitioners/Accused 1 & 2
(In Crl. O.P. No.3394 of 2016)

1. Mr. V. Radhakrishnan,
2. Mr. R. Muthukumaran,
3. Mr. Shrinivsann

...Petitioners/Accused 3 to 5
(In Crl. O.P. No.5346 of 2016)

Vs.

Mr. Imran Khan

...Respondent/Complainant
(In both Petitions)

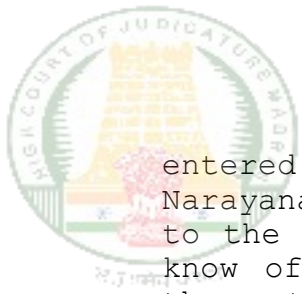
COMMON PRAYER: Criminal Original Petitions are filed under Section 482 Cr.P.C., to call for the records in C.C. No.134 of 2015 on the file of the Judicial Magistrate Court-I, Panruti, and quash the same.

For Petitioners : Mr. V. Krishnamoorthy
For Respondent : Mr. K. Moorthy
(In both petitions)

C O M M O N O R D E R

These Criminal Original petitions have been filed under Section 482 Cr.P.C. seeking for to call for the records in C.C. No.134 of 2015 on the file of the Judicial Magistrate Court-I, Panruti, and quash the same.

2. The case of the prosecution is that the ancestral property of the complainant is situated in Vadakailasan Village, Panruti Taluk, Cuddalore District, measuring about 1 acre and 15 cents in survey No.14/2. The complainant's mother and sister and the complainant have equal share in the said property. While being so, the aunts of the complainant who are sisters of the father of the complainant namely, Suraiya @ Kairunbee, and Jailboonbee plotted against the family of the Complainant with the mala-fide intention to cheat the complainant and hence they



entered into an agreement of sale with one Mr. Vaidilingam S/o. Narayanaswamy in respect of said property which actually belongs to the family of the complainant. When the complainant came to know of the said agreement of Sale, he sent a legal notice to the petitioners herein. Then the complainant filed a Civil Case against them in the year 2013 and the same is pending as the 1st accused and 2nd accused who are 1st petitioner and 2nd petitioner herein are politically influenced persons. They misused their political influence to create a scenario as if the said property belonged to aunts of the complainant/respondent herein and also created General Power of Attorney in favour of the 3rd accused and 4th accused who are the 1st petitioner and 2nd petitioner in Crl. O.P. No.5346 of 2016. Under such circumstances, the complainant approached the 5th accused/the Sub-Registrar, Panruti who is the 3rd petitioner in Crl. O.P. No.5346 of 2016 not to entertain the aforesaid General Power of Attorney and consequently, not to register any documents on the basis of it. However, the 5th accused/the Sub-Registrar, Panruti having conspiracy with the fourth accused registered the said property deliberately in favour of a third person, without considering the rules and norms of the Registration Act, even though the 5th Accused/Sub-Registrar, Panruti, was well aware of the fact that there is a case pending in respect of the said property. Hence all the accused joined together with the common mala-fide intention of cheating and causing monetary loss to the the complainant by creating forged documents relating to the said property which originally belonged to the complainant. In view of the above, the complainant has lodged complaint before the Police Station, Panruti against the petitioners in both petitions. Since no action has been taken on the said complaint against the petitioners, the complainant had filed petition under Section 200 Cr.P.C. before the Judicial Magistrate Court-I, Panruti against the petitioners and they have been booked in C.C. No.134 of 2015 for alleged offences punishable under Section 120(b), 463, 464, 468, 471 and 417 r/w. 420 IPC.

3.The learned Counsel appearing for the petitioners would submit that the dispute is related to Civil nature and no criminality is attached to it. The 1st accused entered into agreement of sale with one Suraya and Jailboonbee for the purchase of the said property in question, for valuable consideration. The complainant filed the suit in O.S. No.104 of 2014 on the file of the Principal District Judge, Cuddalore against the 1st accused and others to set aside the said agreement of sale. Therefore, the 1st accused is contesting the said suit as 3rd defendant and the same has been renumbered as O.S. No.59 of 2013 which is pending for disposal.

4. It has further been submitted that the 3rd accused herein has been given Power of Attorney by 1. Annarkali W/o. Khadar



Khan on 11.03.2010, 2.B. Sadiq Basha S/o. Balu Khan on 11.03.2010, 3. Kaironbee D/o. Usain Khan on 17.03.2010 and 4. Farozh Khan S/o. Nawab Khan on 15.03.2010. These four deeds have been executed between various persons with the 3rd and 4th accused. Nowhere in the complaint it is alleged that the petitioner have forged any document and it is the right of the Power of Agent to sell the property to any one. Therefore, the act of selling the properties to the third party does not attract any offence as alleged in the complaint. The petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the respondent filed a case in C.C. No.134 of 2015 on the file of the Judicial Magistrate Court-I, Panruti. Hence he prayed to quash the same.

5.The learned Government Advocate would submit that the trial has been commenced and some of the witnesses have been examined in this case.

6. Heard the learned counsel on both sides.

7.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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.

8.Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated



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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."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.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 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



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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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.134 of 2015 on the file of the Judicial Magistrate Court-I, Panruti, since the civil dispute has been arose between the family members in the share of the property inherited by them. Hence, 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 petitioner shall be present before the 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 six months from the date of receipt of copy of this Order.

11. Accordingly, the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed if any.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Lbm

To:

The Judicial Magistrate Court-I, Panruti

+2 Ccs to Mr.K.Moorthy, Advocate, Sr.No. 37327, 37329.

CrI.O.P. Nos.3394 and 5346 of 2016

NMI (CO)
LS(15/09/2021)