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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2021

PRONOUNCED ON : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.6572 & 6633 OF 2021

AND

CRL.M.P.NOS4362 & 4363 OF 2021 & 4431 & 4432 OF 2021

K.Udayakumar ... Petitioner in Crl.O.P.
No.6572 of 2021/Accused-2

D.Muthusamy ... Petitioner in Crl.O.P.
No.6633 of 2021/Accused-1

Vs.

1. The State by Inspector of Police,
District Crime Branch/
Anti Land Grabbing Special Wing,
Coimbatore, Crime No.63/2014,
Coimbatore District.

2. K.Thirumurthy ... Respondents/
Complainants in both
the Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the criminal case in C.C.No.215 of 2020 on the file of the Judicial Magistrate, Mettupalayam and to quash the same by allowing these criminal original petitions.

For Petitioner in : Mr.N.Manoharan
Crl.O.P.No.6572/2021

For Petitioner in : Mr.R.Ezhilarasan
Crl.O.P.No.6633/2021 for Mr.A.M.Esakkiappan

For Respondent No.1 : Mr.A.Damodaran
in both Crl.O.Ps. Govt.Advocate (Crl.side)

For Respondent No.2 : Mr.R.Sasikumar
in both Crl.O.Ps.



COMMON ORDER

The petitioners, who are the first and second accused in C.C.No.215 of 2020, which is pending for trial before the Judicial Magistrate, Mettupalayam and the case in Crime No.63 of 2014 for offences under Sections 120 B, 465, 467, 471, 506(i) and 109 IPC, have filed this criminal original petitions.

2.Since both the criminal original petitions arise out of, common criminal case in C.C.No.215 of 2020 and crime number No.63 of 2014, these matters are dealt with, together by a common order.

3.The gist of the complaint is that one Nanjappa Gounder was owning 40 acres of land including 8.18 acres in Survey No.460 in Annur Village. He had three sons viz., Kaliappa Gounder, Palanisamy Gounder and Devanna Gounder. By way of the family partition among themselves vide document No.1469 of 1957, dated 09.09.1957 "A" property measuring an extent of 13.97 acres was allotted to Kaliappa Gounder, "B" property measuring an extent of 20.04 acres was allotted to Palanisamy Gounder and "C" property measuring an extent of 14.23 acres was allotted to Devanna Gounder. With regard to survey No.460, an extent of 5.09 acres was allotted to Kaliappa Gounder and the balance an extent of 3.09 acres was allotted to Devanna Gounder.

4.Kaliappa Gounder had two sons and two daughters viz., Mayilsamy, Shanmugan, Saraswathi and Thulasiammal. Out of 5.09 acres in survey No.460, the said Mayilsamy and Shanmugan partitioned amongst themselves an extent of 3.72 acres on 26.04.1987 under document No.614/1987 and leaving 1.37 acres of land to the other legal heirs of Kaliappa Gounder. On 20.07.1961, in Survey No.460, Kaliappa Gounder and his four legal heirs had executed a sale deed under Document No.1877/1961, in favour of Devanna Gounder with regard to the enjoyment of 50% of common Well and Cart Track of 16 links. On 27.07.2014, the daughters of Kaliyappa Gounder and the defacto complainant Tirumurthy S/o late Saraswathi, at about 4.00pm. had gone to the field, at that time, the accused 1 & 2 restrained, threatened and abused the defacto complainant and warned him not to enter the field and claimed he has no right over the property.

5.The legal heirs of Devana Gounder along with A2, who is an Advocate, A3 and A7, who are their family friends, have created a forged document in Document No.10046 / 2011 dated 08.09.2011



in respect of 1.37 acres of land in survey No.460, which was allotted to Kaliappa Gounder's family. The right over the property is claimed based on the document No.1877/1961, which pertains only to cart track of 16 links and enjoyment of 50% of well and nothing more. Thus, in conspiracy with each other, they have created a forged document and committed offences under Sections 120 (b), 465, 467, 471, 506(i) r/w 109 IPC. The respondent police, on completion of the investigation, filed charge sheet listing LW1 to LW10 and documents. On receipt of the summons, the petitioners approached this Court and filed these quash petitions.

6.The contention of the learned counsel for the petitioner/A1 in CrI.O.P.No.6633 of 2021 is that by document No.1877/1961 dated 20.07.1961, Kaliappa Gounder, who is the Maternal grandfather of the defacto complainant, along with his two sons, sold a portion of the land to his brother Devanna Gounder, who is the father of the petitioner. Till the life time of Kaliappa Gounder and Devanna Gounder, there was no dispute. Further, from the year 1961 onwards, the petitioner's father and the petitioner have been in continuous possession and enjoyment of 16 links of Cart Track and 50% of Well measuring an extent of 1.37 acres in survey No.460, without any interruption or objection.

7.The said Kaliappa Gounder died on 28.08.1991. Thereafter, his two sons viz., Mayilsamy and shanmugam entered into a partition vide Document No.614 of 1987 dated 26.04.1987 in respect of 3.72 acres, consciously knowing that 1.37 acres of land in survey No.460 was already sold to the petitioner's father. They have not mentioned the same in their partition deed.

8.In the year 2004, the defacto complainant and two others viz., Roobavathy and Thulasiammal filed a suit for partition before the District Munsif Court, Avinashi, against the legal heirs of Kaliappa Goudner in respect of 3.72 acres and not in respect of 1.37 acres. Later, the suit was withdrawn as settled out of Court in O.S.No.253 of 2004. The said Devanna Gounder died in the year 1992 leaving behind him his three sons and one daughter viz., Muthusamy, the petitioner, Chandrasekaran, Eswaramurthy and Dhanamani. On 08.09.2011, a partition deed was entered between the family members and the same was registered as document No.10046/2011 in the Sub Registrar Office, Annur. After a lapse of three years beyond the period of limitation, the second respondent gave a false complaint on 20.11.2014 and thereafter, the present charge sheet was filed in the year 2020. The petitioner also filed a civil suit in O.S.No.1002 of 2014 before the IV Additional District Munsif Court, Coimbatore.



After gaining the knowledge about the suit, the present complaint has been lodged by the defacto complainant, the second respondent.

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9. Thereafter, the second respondent created certain partition deed and attempted to trespass into the petitioner's property and take over the possession on 28.04.2015. The petitioner gave a criminal complaint to the Inspector of Police, Annur and also filed a suit in O.S.No.985 of 2015 before the IV Additional District Munsif Court, Coimbatore, for declaration and permanent Injunction against the second respondent, Roobavathy and Thulasiammal. On 29.04.2015, Interim injunction was granted in I.A.No.1266 of 2015 in O.S.No.985 of 2015. Later, a vacate stay petition was filed by the second respondent in I.A.No.1410 of 2015 and the interim injunction was vacated on 07.10.2015, against which, CMA.Nos.26 & 27 of 2015, filed before the I Additional Subordinate Court, Coimbatore and the I Additional Subordinate Judge, Coimbatore, by an order dated 12.04.2018, had remitted back the case to the trial Court to hold enquiry in accordance with law. As on date, the suits in O.S.No.985 of 2015 and O.S.No.1002 of 2014 are pending before the IV Additional District Munsif Court, Coimbatore.

10. This Court, in the case in Crl.O.P.(MD).No.6423 of 2016 and Crl.O.P.(MD).No.3184 of 2017, had held that when the civil cases are pending and the cause of action is one and the same, the criminal case cannot proceed on the same facts. Further, the learned counsel produced a detailed typed set annexing the partition deed, order passed by the civil Court and the case status report etc.,

11. The petitioner/ A2 in Crl.O.P.No.6572 of 2021 submitted that he is a practising advocate in the Courts at Coimbatore, he got enrolled on 21.11.2001 and his enrollment Number is (MS 1840/2001). Right from the date of enrollment, he had been carrying on his profession to the best of his ability and earned good name from one and all. He admits that he drafted the family partition deed dated 08.09.2011 registered as Document 10046 of 2011, which is the subject matter of the criminal case.

12. After a lapse of 3 ½ years, the second respondent has adopted a novel method of giving a criminal colour to the said document and case in crime No.63 of 2014 came to be registered. The Investigating Officer, without considering the materials, the role of the petitioner as an advocate in drafting the partition deed and the materials produced by his clients with an



ulterior motive, had arrayed the petitioner as an accused, as if he conspired with the other accused. The petitioner maintains advocate client relationship with the other accused and nothing more.

13. The legal heirs of Late Devanna Gounder approached the petitioner for preparing a partition deed to divide their joint family properties measuring an extent of 15 acres comprised in survey No.460/2. Before drafting the partition deed, he verified the copies of the following documents:

i. Partition deed dated 09.09.1957
(Doc.No.1469/1957)

ii. Sale deed dated 20.07.1961
(Doct.No.1877/1961)

iii. Partition deed dated 22.08.1980
(Doct.No.1153/1980)

iv. Partition deed dated 26.04.1987
(Doct.No.614/1987)

v. Patta Nos.1667, 3343, Chitta, adangal etc.,

vi. Death Certificate of late Devanna Gounder.

vii. Legal heirship certificate of late Devanna Gounder.

viii. Rough plan prepared by the sharers for division.

ix. Encumbrance certificate.

After thoroughly verifying the above documents, I have prepared the partition deed dated 08.09.2011 (Doct.No.10046/2011), by and which, the legal heirs of late Devanna Gounder divided the properties among themselves. Thereafter, the parties themselves presented the partition deed for registration, and I did not accompany with them.

14. It is pertinent to note that Kaliappa Gounder and his two brothers entered into a family partition on 09.09.1957, in which, 5.09 acres in survey 460 was allotted to Kaliappa Gounder and 3.09 acres in survey No.460 was allotted to Devana Gounder. Consciously, Kaliappa Gounder's two sons viz., Mayilsamy and Shanmugan partitioned among themselves only 3.72 acres on 26.04.1987 under document No.614 of 1987 leaving 1.37 acres, knowing the fact Devanna Gounder had purchased a portion of the property in survey No.460 by way of a Document No.1877 of 1961



on 20.07.1961. After the partition deed dated 08.09.2011, the second respondent created a partition deed dated 07.06.2012 vide Document No.5082 of 2012 along with his mother and sister in respect of the very same subject property, which was earlier partitioned among the legal heirs of Devanna Gounder. There are three civil suits pending between them in O.S.1002 of 2014, 985 of 2015 and 1438 of 2015 before the IV Additional District Munsif Court, Coimbatore. The respondent police ought not to have filed the charge sheet in this case, after finding that the issue is civil in nature and the parties have inter se dispute over the inheritance of the family property, which has to be necessarily decided only in a civil Forum. The petitioner had only drafted the disputed partition deed and drafting of the partition deed will not come within the purview of false document as defined under Section 464 IPC and he relied upon the following decisions:

- i.Mohammed Ibrahim Vs.State of Bihar (2009 (8) SCC 751)
- ii.Mir Nagvi Askari Vs. CBI 2009 (15) SCC 463.
- iii.Sheela Sebastian Vs.R.Jawaharaj 2018 (7) SCC 581
- iv.Muthammal Vs.S.Thangam 2019 (2) MWN Cr1.458.
- v.T.Muthuramalingam Vs.DCP, Theni 2018 (3) MWN Cr1.487.

15.Further, for the proposition that threat seems to be empty and not followed by action and mere uttering of the words will never attract section 506 (i) IPC, he relied on the following decisions:

- i.Manik Taneja Vs.State of Karnataka - 2015 (7) SCC 523
- ii.Vikaram Johar Vs.State of UP - 2019 (2) MWN Cr1.504 (SC)
- iii.Noble Mohandass Vs.State 1998 (1) MLJ Cr1.54
- iv.Rajan Vs.State - 2008 (3) MLJ Cr1.776
- v.R.Ramesh Vs.State - 2010 (2) MLJ Cr1.12
- vi.P.B.Chinna Venkattaraja Vs.State - 2020 (1) MWN Cr1.474
- vii.S.Ramesh Vs.State - 2019 (1) TNLR 517.

16.Further, the petitioner, exercising his legal care, performed the task entrusted to him and that cannot be found fault with. In this regard, he relied upon the decision of the Apex Court in CBI, Hyderabad Vs. K.Narayana Rao reported in 2012 9 SCC 572, wherein, it was clearly held that an advocate discharging legal duty cannot be charged with a criminal case. Hence, prayed to quash the proceedings.



17.The defacto complainant had filed his counter and also typed set in both the cases. As regards the counter, in respect of Muthusamy/ A1, it is submitted that the said Kaliappa Gounder and his two sons executed a sale deed dated 20.07.1961 under document 1877/1961 in favour of Devana Gounder. It is seen that the right in the Well along with the 5 HP Motor Pump and the land around the common well and the common cart track of 16 links southern side upto the portion of Devanna Gounder was given and not 1.37 acres as claimed by the petitioner. Further, submitted that the claim of the legal heirs of Kaliappa Gounder, i.e. 1.37 acres is false. The said 1.37 acres was already allotted to the daughters of Kalippa Gounder. Further, the second respondent already filed an interim application to amend the extent of property as 5.09 acres instead of 3.72 acres and the case ended in compromise between them, thereby, 5.09 acres allotted to Kaliappa Gounder was confirmed. The second respondent/defacto complainant is one of the legal heirs of Kaliappa Gounder. It is not in dispute that Devanna Gounder, father of the petitioner is the owner of only 3.09 acres in survey No.460. Without any authority and right, he had created a document including 1.37 acres and partitioned the properties among themselves. The Thasildar, in this case, clearly given the details and particulars and the same was confirmed by SRO. LW1 and LW2 have given statements in conformity with the case of the prosecution along with the documents.

18.The lower Court, on a perusal of the materials produced along with the final report, satisfied and took cognizance and issued summons. The points raised by the petitioners are civil in nature. They are close relatives and the dispute is with regard to the ancestral property.

19.The petitioners herein along with the other accused have conspired and created a forged document knowing very well that the petitioner/A1 father was only allotted 3.72 acres by the partition deed vide document No.10046 of 2011 will clearly prove that the petitioner/A2 had included the property of 1.37 acres and the petitioner attempted to usurp the property from the legal heirs of Kaliappa Gounder by creating forged document and thereafter, using the same, had also mutated the revenue records. Thereafter, the respondent filed a civil suit and also made a representation to the Thasildar, Annur to set right the civil records and the Thasildar, Annur in Na.Ka.No.3182/2018/C1 dated 06.05.2019 sent a communication to the Revenue Divisional Officer to make the necessary amendments. He strongly objected for the quash petitions submitting that the points raised by the petitioners are factual in nature and they have to be decided in trial and not in these quash petitions and droving enquiry



cannot be conducted by way of quash petition.

20. The second respondent filed a counter with regard to the petition in CrI.O.P.No.6572 of 2021 and submitted that there are witnesses, who have clearly spoken about the role played by the petitioner. When the defacto complainant had gone to the field, the petitioner, who was present there along with A1 abused and threatened him not to enter the field. Further, the petitioner was seen in close quarters with the other accused and he was aware about the real facts. Knowing the same, he had created a partition deed with false particulars, which amounts to forgery. Using this forged partition deed, the revenue records were mutated. The petitioner and the legal heirs of Devana Gounder had usurped the property of the defacto complainant and the legal heirs of Kaliappa Gounder. In this regard, paragraph Nos. 16 & 17 in the counter affidavit are extracted hereunder:

"16. It is humbly submitted that the specific case of the petitioner is that he is an advocate who drafted the said partition deed and hence, he is innocent person. The quash petition has suppressed the fact that he is the close relative of the 1st accused. The petitioner is the cousin of the wife of the 1st accused and hence he has main role in the illegal forgery and cheating activities. The petitioner misuse his capacity and knowing fully well that the legal heirs of the said Devanna Gounder had only 3.09 Acres in S.No.460 arranged execution of partition deed as though they have 4.35 acres in S.No.460 (460/2). There is a specific allegation that he has threatened the defacto complainant and Thulasiammal since they have taken legal steps against them. Therefore the petitioner has committed criminal activities of cheating, forgery and criminal intimidation and hence, the petition for quash is liable to be quashed.

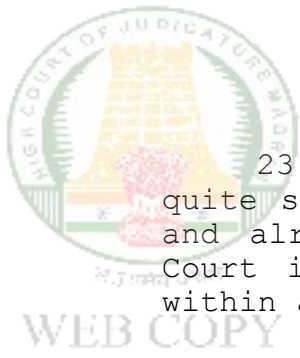
17. It is humbly submitted that as stated by the quash petitioner the issue is not under Civil dispute but clear case of forgery and cheating. The case laws cited by the Petitioner do not support the claim of the petitioner. More over the petitioner cannot escape saying that he is mere a document writer/Advocate whereas he



is the main and interested party in the criminal conspiracy and who threatened the defacto complainant and his mother."

21. Considering the rival submissions and on perusal of the materials, it is seen that the offence is based on a document executed in the year 1957 by way of the family partition among the legal heirs of Nanjappa Gounder viz., Kaliappa Gounder, Palanisamy Gounder and Devanna Gounder and the property, to an extent of 40 acres. There is no dispute with regard to the other properties except survey No.460. Survey No.460 consist of totally 8.18 acres, in which, 5.09 acres were allotted to Kaliappa Gounder and 3.09 acres were allotted to Devanna Gounder. This being the case, in the family partition of Mayilsamy and Shanmugam, the sons of Kaliappa Gounder, they had partitioned on 26.04.1987 under Document 614 of 1987 and 1.92 acres was allotted to Mayilsamy and 1.80 acres was allotted to Shanmugam, in total 3.72 acres, leaving 1.37 acres to the other legal heirs of Kaliappa Gounder i.e. except for purchase of 16 links of land in 1961 by Devana Gounder from Kaliappa Gounder, which is the land in and around the usage of Well and cart Track leading towards the land of Devanna Gounder, there is nothing more. The points raised by the petitioner that the civil suits are pending and the issue is civil in nature and cannot be decided in a quash petition. The points raised by the petitioner A1 are factual in nature, which has to be necessarily decided only during trial. In view of the same, this Court is not inclined to entertain the criminal original petition in CrI.O.P.No.6633 of 2021 and accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are closed.

22. As regards the petitioner in CrI.O.P.No.6572 of 2021, it is an admitted fact that he is only an advocate, who drafted the partition deed dated 08.09.2011 under document No.10046/2011. It is seen that based on the documents and materials furnished to the petitioner, he had prepared the family partition deed and he had also admitted that to the best of his ability and knowledge, he prepared the partition deed. Other than being an advocate, there is no material to corroborate that the petitioner had conspired and played an active role and abetted the other accused in commission of the above offence. The Apex Court in the case CBI Vs. K.Narayana Rao reported in 2012 9 SCC 572 had clearly held that the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. Further the defacto complainant has no serious objection as regards quashing of the proceedings against the petitioner/A2 advocate. In view of the same, this Court is inclined to quash the proceedings, as regards the petitioner/A2 alone. Accordingly, the CrI.O.P.No.6572 of 2021 is allowed. Consequently, connected miscellaneous petitions are closed.



23.Considering that C.C. No.215 of 2020 is kept pending for quite some time and in the charge sheet, there are 10 witnesses and already all the documents have been collected, the trial Court is to give priority and conclude the trial preferably within a period of six months.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The State by Inspector of Police,
District Crime Branch/
Anti Land Grabbing Special Wing,
Coimbatore, Crime No.63/2014,
Coimbatore District.
2. The Judicial Magistrate, Mettupalayam.
3. The IV Additional District Munsif Court, Coimbatore.
4. The I Additional Sub Court, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manoharan,Advocate SR.No.46112
+2ccs to Mr.A.Essakkiappan,Advocate SR.No.46241
+1cc to Mr.V.R.Appaswamee,Advocate SR.No.46344
+1cc to Mr.V.R.Appaswamee,Advocate SR.No.46345

Cr1.O.P.Nos.6572 & 6633 of 2021
and
Cr1.M.P.Nos4362 & 4363 of 2021
& 4431 & 4432 of 2021

BS (CO)
PM/27/09/2021