

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2020

PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12467 of 2017 and Crl.M.P.Nos.8120 & 8121 of 2017

and

Crl.O.P.No.14761 of 2017 and Crl.M.P.No.9334 & 9335 of 2017

1.Natarajan

2.Gangammal

3.Paramasivan

4.Balasundaram

5.Krishnakumar

... Petitioners in Crl.O.P.No.12467 of 2017

... Petitioner in Crl.O.P.No.14761 of 2017

Vs.

1.The State rep by,

The Inspector of Police,

District Crime Branch (ALGSC),

Kancheepuram District.

Cr.No.48/2013.

... 1st Respondent in both cases

2.Raji (Died).

... 2nd Respondent in both cases

3.Jagadeesan

... 3rd Respondent in Crl.O.P.No.12467 of 2017

[3rd respondent is impleaded as per the order of this Court in Crl.M.P.No.18705 of 2019 in Crl.O.P.No.12467 of 2017, dated 17.12.2019.]

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the calender case in C.C.No.350 of 2016 on the file of the learned Judicial Magistrate II, Chengalpattu and quash the same in so far as the petitioners

concerned.

In both cases:

For Petitioners : Mr.P.Magesh Kumar

For 1st Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor.

For 3rd Respondent : Mr.K.Gandhi Kumar

COMMON ORDER

Crl.O.P.No.12467 of 2017 has been filed by A1, A2, A4 & A5 and Crl.O.P.No.14761 of 2017 has been filed by A3, who are facing trial in C.C.No.350 of 2016 before the learned Judicial Magistrate No.II, Chengalpet, for offence under Sections 120(b), 420, 465, 468 and 471 IPC.

2.Since both the cases are arising out of common case in C.C.No.350 of 2016, this Court decides to dispose the above petitions by way of common order. For the sake of convenience and clarity, the petitioners are referred as accused as per their rank in the charge sheet.

3.Since the 2nd respondent/defacto complainant died, the learned counsel for the petitioner has filed a petition to implead his son as 3rd

respondent and the same was ordered by order, dated 17.12.2019 in Crl.M.P.No.18705 of 2019 in Crl.O.P.No.12467 of 2017.

4.A1 and A2 are husband and wife; A3, A4, A5 are the brothers of A1; A6 is the Manager of M/s.Om Sakthi Agencies, Kancheepuram and A7 is the Managing Director of M/s.Mahendra World City Developers Limited, Chennai. The 2nd respondent is the defacto complainant and the 3rd respondent is his son.

5.The gist of the case is that the father of the 2nd respondent Kanthappar @ Kandasamy had inherited the property of his share at Veerapuram Madura Village, Malayambakkam, Chengalpet District. The said Kanthappar @ Kandasamy along with his siblings had a family partition on 22.07.1939 by way of koorchit which is a family arrangement and recognized. The 2nd respondent and his brother Munusamy had inherited several properties from their father Kanthappar @ Kandasamy and obtained patta No.161. The land in survey No.118/6B of 6 cents belongs to their family. A1 and his wife/A2 and the brothers of A1 (A3 to A5) had sold said lands without their knowledge by way of power of attorney to A7 through A6. Since this six cents of land is

the access to the main road and vital link coordination to the land which is promoted to A7. Earlier, A1 and the other accused approached the 2nd respondent to part with the said property which was refused by him since he was in need of the said land for developing his other properties. On coming to know about the forgery and cheating committed by the accused, the 2nd respondent lodged a complaint to the Superintendent of Police, Chengalpet on 05.03.2012 which was forwarded to Chengalpet Taluk Police Station and the same was taken on file as C.S.R.No.487 of 2012 and thereafter, no action was taken. Hence, the 2nd respondent filed a direction before this Court in Crl.O.P.No.21164 of 2012 and as per the direction of this Court, the FIR came to be filed on 17.06.2013. On completion of investigation, the 1st respondent Police has filed the charge sheet against the accused, in which the petitioners are arrayed as A1 to A5.

6.The learned counsel for the petitioners/A1 to A5 submitted that A2 and A4 are neither signatory nor principle in the power of attorney dated 16.06.1999 in document No.283 of 1999. These two petitioners have been arrayed as accused since they belong to one family. The learned counsel further submitted that the disputed property along with other properties belong

to the petitioners' ancestor and the forefathers are common to the petitioners as well as the 2nd respondent. The 2nd respondent claims right over the property in dispute on the basis of alleged koorchit prepared in the year 1939. There is some title dispute between the petitioners and the 2nd respondent, suppressing the same the 2nd respondent lodged a complaint to the 1st respondent Police. Earlier during the month of May 2011, the 2nd respondent caused a legal notice to the petitioners to cancel the sale deed, for which A1 sent a reply on 20.05.2011. From the legal notice of the 2nd respondent, it is stated that the 2nd respondent had come to know about the execution of the sale deed in favour of A7 from the encumbrance certificate, dated 13.09.2010.

7.The learned counsel for the petitioner further submitted that in the year 2012, the 2nd respondent lodged a complaint before the Superintendent of Police, Kancheepuram, which was forwarded to the Sub Inspector of Police, DCB, Kancheepuram in K2/11605/393/12 and the same was enquired in proceedings No.578/DSP/DSP/12. Pursuant to the enquiry, it was found that the dispute between the petitioner and the 2nd respondent are civil in nature and the complaint was closed with an undertaking that the 2nd respondent has to approach the civil Court. Suppressing these facts, the present complaint

has been lodged.

8.The petitioners sold vast stretch of land to A7 through A6. The first phase of Mahendra city was developed by converting the lands of petitioners. The second phase is in progress. The disputed land is connecting first and second phase in survey No.118/6B of 6 cents and survey No.118/4C of 5 cents, totally 11 cents. For six cents, a case in Crime No.48 of 2013 was registered and thereafter, charge sheet was filed and the same was taken on file as C.C.No.350 of 2016, which is under challenge.

9.The learned counsel for the petitioners further submitted that the 2nd respondent is the resident of village Malayambakkam, Chengalpet District within a kilometre where the property in dispute is situated. The 2nd respondent is well aware that A7 had taken the properties and developed the same for the past 17 years, but he failed to take any action through the civil Court. The 2nd respondent knowing that he has no title over the disputed property and fearing that the civil case would get dismissed, he did not approach the civil forum, instead with false allegations had lodged the criminal complaint. The 1st respondent Police without considering these facts

and also the relationship between the petitioners and the 2nd respondent had registered a case, concluded investigation and filed charge sheet. Hence, he prayed to quash the proceedings against the petitioners.

10. In order to substantiate his arguments, the learned counsel for the petitioners relied on the case of “***Mohammed Ibrahim and others Versus State of Bihar and another reported in (2009) 8 Supreme Court Cases 751.***”

11. The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, on the complaint of the 2nd respondent a case in Crime No.48 of 2013 was registered and thereafter, on completion of investigation, charge sheet was filed for offence under Sections 120(b), 465, 468 and 471 IPC. The petitioners and the 2nd respondent are relatives and they had inherited vast track of lands from their ancestors. A6 was in the process of purchasing properties in that area for A7, who was developing a gated community industrial estate in the name of Mahendra City. The petitioners who belong to one family approached A6 and sold the disputed lands in favour of A7. The disputed land in survey No.118/6B of 6 cents in patta No.161 belongs to the 2nd respondent. Prior to it, the 2nd

respondent was approached by the petitioners to sell disputed lands, for which 2nd respondent refused. Since these lands are very much needed for the accused, to develop the other properties, otherwise the project Mahendra City would be a failure. On refusal of the 2nd respondent, the petitioners had created a forged document in favour of A6, for which the power was granted and lands in survey No.118/6B of 6 cents in patta No.161 to be dealt by him and it is described that the lands have been inherited and some of them were purchased. A6 and A7 very well aware that the petitioners are not the original owner of the property and the property stands in the name of the 2nd respondent. In fact A6 & A7 had also approached the 2nd respondent to sell the disputed land. Thus all the accused conspired together, created forged document and cheated the 2nd respondent. Since the six cents of land and another 5 cents of lands are vital link giving access to the main road and also connecting the other vast stretch of lands, which were developed by A7, the petitioners without the knowledge of the 2nd respondent had sold the properties to A7 through A6. Thus with the clear knowledge and intention, forged documents were created and using the same, the properties of the 2nd respondent had been taken away, encumbrance created and now, is in enjoyment of A7. The 1st respondent Police conducted the investigation,

recorded the statement of LW1 to LW9, collected documents and filed charge sheet before the learned Judicial Magistrate No.II, Chengalpet. The trial Court on perusal of the charge sheet, satisfied that a prima facie case is made out against the petitioners and taken the case on file and issued summons to them. On receipt of summons, the petitioner had approached this Court and the case is kept pending from the year 2016 without any progress.

13.In the case in C.C.No.350 of 2016, some of the accused wantonly avoided summons and evaded appearance before the trial Court and both the case in C.C.No.350 of 2016 and the charge sheet filed in Crime No.83 of 2013 are kept pending at the stage of issuance of fresh summon to the accused. The petitioners, citing the pendency of the above petitions, dragged the cases before the trial Court. Further, in this case, A6 and A7 are very well aware about the pendency of the two cases against them, despite the same they failed to appear before the trial Court. He further submitted that the witnesses in this case would be produced without any further delay and the trial in this case can be completed within a stipulated time. Hence, he prays for appropriate direction for completion of the trial.

14.The learned counsel for the 2nd respondent submitted that the father of the 2nd respondent is one Kanthappar @ Kanthasamy and his elder brother is one Munusamy, who is the father of A1, A3 to A5. The said Kanthappar @ Kanthasamy had three siblings namely Varathappa Naicker, Murugappanar and Chinna Kuzhandhai. They had vast tract of lands in Veerapuram Mathura Village, Malayambakkam, Chengalpet Taluk. There was a family partition between them effected on 22.07.1939 by way of koorchit, in which schedule-A of property allotted to Varathappa Naicker, Schedule-B allotted to Murugappanar and schedule-C allotted to the father of the 2nd respondent Kanthappar @ Kanthasamy and schedule-D allotted to Chinna Kulandhai. All the properties were clearly demarcated and the respective persons were enjoying the properties exclusively.

15.The learned counsel further submitted that the father of the 2nd respondent was allotted with schedule-C property in several survey numbers. Thereafter, the names of the 2nd respondent and his brother Munusamy were mutated in the revenue records in patta No.161, thereafter from they were enjoying the properties. Thereafter, 70 cents of lands was sold to A2, who is the wife of A1 by way of registered sale deed in document No.183/1996 on

25.01.1996, in which the 2nd respondent, his son (3rd respondent), 2nd respondent's brother Munusamy and his son A1 have signed. In the said document No.183/1996, the family partition through koorchit and inheritance of the property are clearly mentioned. In the said document, A1 had signed as one of the witness. Thus, the accused acknowledged koorchit and accepted the family partition which took place in the year 1939. The properties are dealt and enjoyed after family partition based on koorchit.

16.It is further submitted that A6 was purchasing several lands in said village for A7, who was conceptualizing 'Mahindra City'. At that time, A1 to A5 had sold their properties in the year 1998 to A7 through A6 and also given a power in document No.138/1999 to A6 for Survey No.118/6B of 6 cents and thereafter, on the objection of the 2nd respondent, the said document No.138/1999 was cancelled. Thereafter, the 2nd respondent was approached and forced to sell the property in survey No.118/6B of 6 cents and 118/4C of 5 by all the accused. The properties situated near the main road and was in need of the 2nd respondent and hence, he refused to sell the same. Due to which, A1 to A5 could not sell their properties and the project of A7 'Mahindra City' could not be brought out as planned. Hence, all the accused conspired

together created a forged power of attorney in document No.283/1999, dated 16.06.1999 and also the document No.340/1999, dated 09.10.1999. Thereafter, A6 included the other properties of the 2nd respondent along with the disputed properties and sold the same to A7 on 28.08.2000 in document No.2523 of 2000. Now, the claim of the accused that it is their ancestral property and disputing the family partition of the year 1939 and their further contention that the dispute is in civil nature cannot be countenanced. The criminal intention of the petitioner/accused are clearly exposed when they approached the 2nd respondent to sell his lands to A6, which was refused.

17.Initially, a forged power of attorney was created in document No.138/199 and thereafter, cancelled. Subsequently, another forged power of attorney was created and the properties of the 2nd respondent was encumbered. Thus, the petitioner and other accused have conspired together and committed a well orchestrated crime by creating forged document. In this case, the investigation completed and charge sheet is also filed before the trial Court. In yet another case which is a subject matter in Crime No.83 of 2013, the investigation also completed and charge sheet filed before the trial Court. The petitioner and other accused by adopting dilatory tactics are keeping the cases

pending from the year 2016 to till date at the stage of issuance of summons. Further, the 2nd respondent approached A7 to resolve the issues, A7 informed that already sufficient payments have been made to the petitioners. Therefore, the learned counsel for the 2nd respondent prays this Court to pass appropriate orders, so that the trial of both the cases can be completed within a stipulated time.

18.The learned counsel for the 3rd respondent submitted that the petitioner's counsel Mr.P.Magesh Kumar has been advising the parties to the dispute right from the initial days and even before registration of the case, issued legal notice to the 2nd respondent, wherein the particulars of the disputed land and defending A6 and A7 were made. He further submitted that the 2nd respondent died and now, the petitioners' intention is only to drag on the proceedings by all means. The learned counsel for the petitioners is advising the petitioners right from the initial stage, even when the project was conceptualized and being purchased by A6 and A7, there have been exchange of several legal notices wherein sale of land in survey No.118/6B and survey No.118/4B have been mentioned. After registration of the case, the legal notice was addressed to the Investigating Officer in name to deter him from

proceedings and investigating the case. In the legal notice, the petitioners have admitted that they have executed power of attorney and using the same, A6 had executed a sale deed in favour of A7. Therefore, the execution of sale deed in survey No.118/6B of 6 cents is not in dispute in this case. Likewise the sale deed had been executed in survey No.118/4C for 5 cents, totally 11 cents of land had been usurped by the accused by creating and using the forged document. As regards the survey No.118/4C of 5 cents, a case in Crime No.83 of 2013 was registered, investigated and charge sheet filed, which is also pending before the learned Judicial Magistrate No.II, Chengalpet. The petitioners are the accused in that case also.

19.This Court considered the rival submissions and perused the materials available on record.

20.It is not in dispute that the petitioner and the 2nd respondent are relatives and inherited the ancestral properties. The 2nd respondent's father Kanthappar @ Kanthasamy had three brothers Varathappa Naicker, Murugappanar and Chinna Kuzhandhai and they had partitioned the inherited properties among themselves by way of koorchit, a family partition on

22.07.1939. Each of them were allotted specific property in schedule A, B, C, D. As far as the 2nd respondent's father is concerned, he was allotted schedule-C, the properties in survey No.118/6B of 6 cents and 118/4C of 5 cents forms part of schedule-C. This fact is known to the petitioners, who are close relatives to the 2nd respondent. In fact, A2 had purchased the property in document No.183/1996 dated 25.01.1996 from the 2nd respondent, in which the 2nd respondent, his son Jagatheesan (3rd respondent), the brother of the 2nd respondent Munusamy and his son have signed the same as executants. A1 signed as witness. In document No.183/1996 dated 25.01.1996, the inheritance of properties, on the strength of the koorchit executed on 22.07.1939 is recorded, which is acknowledged and accepted by A1 and A2. In schedule-C, both survey Nos.118/6B of 6 cents and 118/4C of 5 cents are clearly mentioned and the revenue records have been muted and the patta stands in the name of the 2nd respondent and his brother Munusamy. Now the petitioners cannot dispute family partition koorchit and claim it is a civil dispute.

21.It is seen that the power of attorney in document No.138/1999 for the land in survey No.18/6B of 6 cents was initially created and thereafter, on

objection, the same was cancelled. Thereafter, the 2nd respondent was approached by the petitioners/accused and A6 and A7 to sell 11 cents of land in both the survey numbers, since these two lands are the vital links and adjoining the main road giving access to the gated project 'Mahindra City', otherwise the entire project would bit a road block. The Mahindra City was developed over hundreds of acres. But for these two lands, the value of the property would not get appreciated and the project of A7 would become a failure. Somehow to succeed in the project and to make huge profit, A7 through A6 and the other accused had created forged power of attorney in respect of the property of the 2nd respondent. Subsequently, through document Nos.283 & 340 of 1999, got executed, agreement including the disputed property and other properties to A7 on 28.08.2000 by document No.2532 of 2000. Now the gated community industrial project has been put in place and A7 made huge profits. A7 now is in the process of launching second phase. It is seen from the power of attorney executed by A1 and A2, the property in survey No.118/6B of 6 cents are clearly mentioned. The 2nd respondent sent a legal notice during May 2011 to all the petitioners and other two accused, informing about the creation of forged documents and using the same execution of sale deed with regard to the disputed property, asking to cancel

the sale deed. Though all the accused received the notice, A1 alone sent a reply informing that the disputed property was purchased vide document No.3409/1998 from Adhikesavan and others and also stated that the property has been sold to A7 through A6 in document No.540/2000 and it is for the 2nd respondent to approach A7 and not the petitioners. Further, from the notice addressed to the Sub Inspector of Police, District Crime Branch, Kancheepuram by A1. On perusal, it is seen that the notice is to deter the Police from further continuing the investigation. Though A1 claims of lodging a counter complaint, no such counter complaint was produced and no case was registered on the complaint of the 1st petitioner/A1. The contention of the petitioners are factual in nature, which can be decided only during trial.

22.In view of the above, this Court finds that the contention raised by the learned counsel for the petitioners/accused to quash the proceedings against the petitioners/accused are not sustainable. Further, there are enough materials to proceed against the petitioners and the other two accused. Hence, this Court is not inclined to quash the proceedings against the petitioners/accused.

23.In the result, both the criminal Original Petitions are dismissed. Considering the case is pending for quite sometime and some accused are evading receipt of summons, this Court directs the trial Court to take effective steps in securing the other accused, if needed shall take coercive action by cancelling the bail and complete the trial in C.C.No.380 of 2016 and the charge sheet filed in Crime No.83 of 2013 which is also on identical facts, within a period of six months from the date of lifting of lock down and normal functioning of Courts. Consequently, the connected Criminal Miscellaneous Petitions are closed.

08.06.2021

Index : Yes/No
Internet : Yes/No

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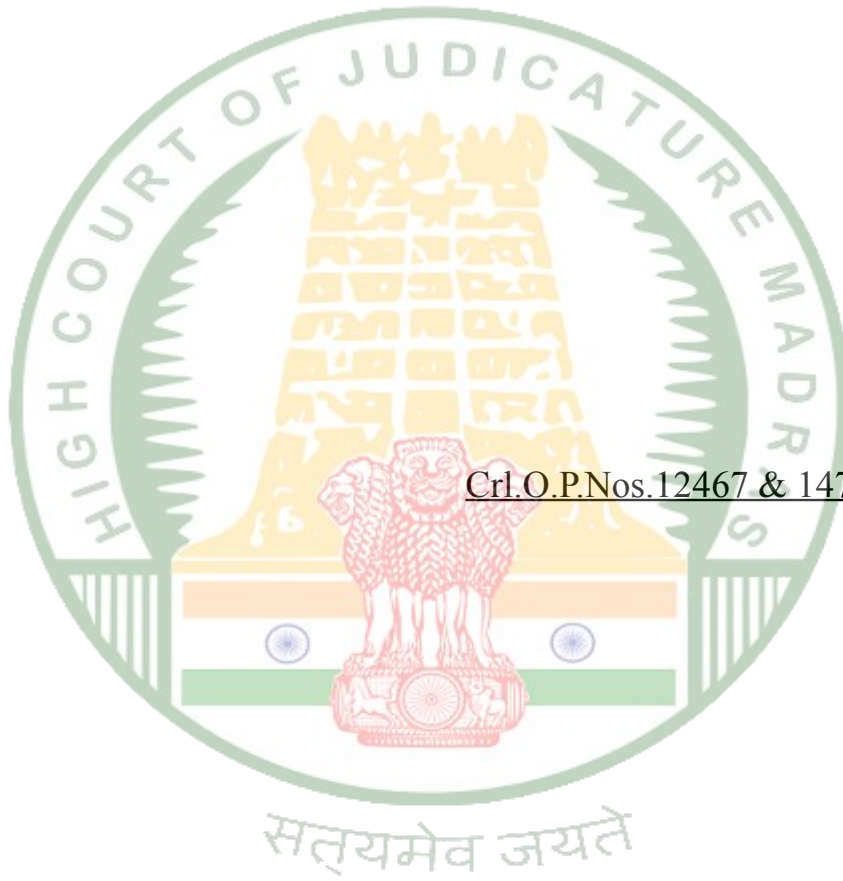
1.The Judicial Magistrate Court No.II,
Chengalpet.

2.The Inspector of Police,
District Crime Branch (ALGSC),
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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Crl.O.P.Nos.12467 & 14761 of 2017

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