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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 12485 OF 2017

AND

CRL.M.P.NOS.8131 AND 8132 OF 2017

1. K.Vaidyanathan  
2.C.Subramnian  
3.N.Pankajam  
4.P.Krihnamurthy  
5.P.Uma Devi  
6.P.Jagadesan

... Petitioners/  
Accused 1,2,4 to 7

Versus

R.Varadaraj

... Respondent/  
Complainant

PRAYER :

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the private complaint in C.C.No.1250 of 2016 pending on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners : Mr.R.Balachanderan

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.1250 of 2016, pending on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The facts in a nutshell are as follows:-

The respondent herein is a lawyer in Chennai. The allegation in the complaint indicate that he was originally a



tenant in the house of Miss Kalyani, for the past 39 years. She died on 10/8/2020. It is the case of the complainant/respondent that the accused Nos.2 to 7, claiming to be the representative of the said Kalyani have conspired together and sold the property to A.1, thereby, committed an offence punishable, under Sections 120 (b), 465, 464, 467, 468 r/w. 471, 419, 420 r/w. 34 of the Indian Penal Code.

3. Heard Mr.R.Balachanderan, learned counsel for the petitioners and there is no representation on behalf of the respondent.

4. The learned counsel appearing for the petitioners submitted that the respondent has already filed a suit for specific performance as against the petitioners before this Court in C.S.No.736 of 2011. In the above suit, he has specifically stated that the petitioners/accused are the distant relatives and the second class legal heirs of Kalyani, whereas in the present case, it is alleged that they are third parties and forged the documents and sold the property. The entire transaction is civil in nature. When the defacto complainant himself has filed a suit for specific performance, this complaint is nothing but an abuse of process of law.

5. I have gone through the entire complaint. It is to be noted that while exercising the power under Section 482 of the Code of Criminal Procedure, Courts are normally slow in quashing the complaint or First Information Report, if the allegation prima facie constitute any offence or make out the case against the accused. But at the same time, the Court finds that such allegations are pressed into service only with a malafide intention or the complaint has been filed maliciously instituted with an ulterior motive, such complaint can be quashed at the very inception to prevent an abuse of process of law.

6. In 1992 SUPP (1) SUPREME COURT CASES - 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS, the Hon'ble Apex Court has set out the following guidelines for quashing the complaint.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if



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any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

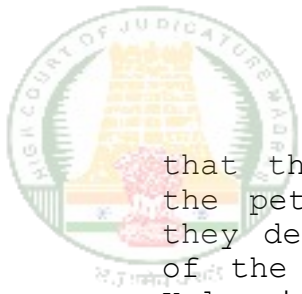
(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. With the above parameters when the complaint is analysed, though the allegations have been made as against conspiracy and various other charges, the first allegation is



that there is a deception against the respondent. Admittedly, the petitioners have not cheated the respondent and in fact, they dealt with the property of Kalyani. It is the entire case of the defacto complainant that the property of the deceased Kalyani was sold by the accused 2 to 7, by making forging documents, whereas, in C.S.No.736 of 2011, it is specifically pleaded by him that accused Nos.2 to 7 are the second class legal heirs. If such being the position, merely because the suit has been filed on the basis of some oral agreement said to have been executed in favour of the defacto complainant, and also merely because the petitioner dealt with the property as second class heir, cannot fall within the ambit of forgery.

8. In such a view of the matter, this Criminal Original Petition is allowed and accordingly, C.C.No.1250 of 2016 pending on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Since the complainant had also filed a Civil Suit against the same accused before the Civil Court, it is for the respondent to work out his remedy in the Civil Suit not by way of this frivolous complaint. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs

To

XVII Metropolitan Magistrate, Saidapet, Chennai.

Cr1. O.P. No. 12485 of 2017  
and  
Cr1.M.P.Nos.8131 and 8132 of 2017

KSM(CO)  
PM/01/12/2021