

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.26581 of 2018
and Crl.M.P.No.15311 of 2018

1.S.Rangasamy
2.N.Seenivasan
3.M.Sreepathy
4.A.Balasubramaniam ...Petitioners / Accused No.1 to 4

Versus

M.Ravendran ...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the criminal complaint in C.C.No.333 of 2017 on the file of the Judicial Magistrate VI, Coimbatore.

For Petitioners : Mr.K.Myilsamy

For Respondent : Mr.Saravanakumar

O R D E R

This petition has been filed to call for the records in C.C.No.333 of 2017, on the file of the Judicial Magistrate VI, Coimbatore and quash the same.

2. The case of the prosecution is that the respondent complainant has filed a private complaint alleging that his mother Vasantha had purchased a school site admeasuring an extent of 48 cents of Gudalore Town Panchayat from the absolute owner one N.Govindhasamy. She had developed the said land and formed layout house sites after getting approval from the concerned town and country planning authorities and sold the said house sites to different persons and also in favour of the respondent by virtue of registered Settlement Deed dated 19.11.1991. The buyers of the house sites had also got approval for construction of houses. While so, the President of Gudalore town panchayat with the help of other accused had fabricated the documents relating to the said land and sent various representations to the government officials for construction of

elementary school in the said land and the government officials had passed resolution to that effect. Based on the representations, a school was constructed by the Government Official in the said land, which is alleged to absolutely belong to the Government. The respondent, claiming that accused has committed the offence of cheating and forgery jointly has lodged a complaint against the petitioners.

3. The learned counsel appearing for the petitioners submitted that the land admeasuring an extent of seven acres and thirty cents comprised in S.F.Nos.38/1, 38/2, situated at Gudalore village, Coimbatore, originally belonged to one Govindasamy. The said person through his power agent Mr.P.A.Mahaveer, who is the father of the respondent, had formed layout sites and the same were approved by the town and country planning authorities through proceedings dated 16.12.1978. In that approved layout, about 48 cents of land was earmarked for construction of nursery school. However, Gift Deed was not executed by the promoters of land in favour of local bodies. Subsequently, on behalf of his principal, the said power agent with an intention to grab the school site for his personal gains, had executed Sale Deed in favour of his wife Vasantha, who is the mother of respondent.

4. It is further submitted by the learned counsel for the petitioners that the said Vasantha in association with his husband and government officials had developed the school site into house sites and got approval from the concerned authorities on 01.12.1991 and sold the same to different persons by executing Sale Deeds before the Periyanaickenpalayam registration office. The act of said Vasantha clearly makes out cognizable offences and she is liable to be punished under the law and therefore, these facts were brought to the knowledge of the government officials and the officials had also taken appropriate steps in that regard. The respondent has also invoked the jurisdiction of this Court and filed series of litigations against the government officials. While so, the Government of Tamil Nadu had passed G.O.No.198, dated 21.07.2010 and approved the construction of nursery school in the earmarked area. The said Government Order was also put to challenge by the purchasers of school site in W.P.Nos.4316/2011, etc., batch before this Court and the same is still pending wherein an order of interim injunction and Status Quo has been granted. However, the elementary school was constructed in the earmarked portion of land in the year 2012 itself and it is functioning and students are also studying.

5. The learned counsel appearing for the petitioners further submitted that the respondent who derives title through his mother cannot claim a new right over the land and that

apart, several round of litigations are pending till date. Therefore, the private complaint filed by the respondent, pertaining to a civil transaction, against the petitioners, giving a criminal colour, is liable to be quashed.

6. The learned counsel appearing for the respondent submitted that the accused persons are highly politically influential. When the complainant has given the police complaint against the petitioners for their illegal encroachment of the 48 ½ cents, the police have not taken any steps, due to the political influence of the petitioners. He further submitted that due to the above said illegal act of the accused, the complainant lost his property as the Government has illegally encroached upon his land in an unauthorized manner and constructed a school building. Therefore the above accused committed the act of cheating and jointly involved in fabrication of documents, which is punishable under Section 420 and 423 of IPC and 120(b) of IPC and further the grounds raised by the counsel for the petitioners are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A perusal of the materials reveal that the layout sites were approved by the town and country planning authorities through proceedings dated 16.12.1978, subject to leaving land for construction of school and play area. It is a settled position of law that once the property earmarked for a public purpose, it cannot be changed for any other purposes and therefore, the respondent cannot derive title over the land which is earmarked as school site. However, when these facts had come to the knowledge of the government officials, through the petitioners and other like minded persons, they had rightly cancelled the layout approval plan, which was obtained by the mother of respondent. However regarding the said issue, series of litigations were adjudicated before this Court and some of the litigations are also pending till date. It is seen from the records that the elementary school is functioning in the earmarked place and students are also studying.

9. Though several grounds have been raised by the learned counsel for the respondent in the complaint, this Court is of the opinion that once the Government earmarked the place for any public purpose, no persons can claim right over the same. Hence, this Court is inclined to quash the complaint against the petitioners.

10. Accordingly, this Criminal Original Petition is allowed and the complaint in C.C.No.333 of 2017 on the file of the Judicial Magistrate VI, Coimbatore, is quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.(do through) The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.K.Myilsamy, Advocate SR.No.52278

CRL.O.P.No.26581 of 2018

SRA(CO)
RVM(10/01/2022)