



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2021

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.678 of 2021
and
Crl.M.P. (MD)No.307 of 2021

1.D.Emmanuel

2.E.Sarala

... Petitioners/Accused 1 & 2

Vs.

1.The State of Tamilnadu
Rep. by the Inspector of Police,
Anti-Land Grabbing Special Cell,
(District Crime Branch),
Tirunelveli District at Tirunelveli.
(Crime No.1 of 2021)

2.K.Emmanuel Fedrick Pauk

... Respondents/Complainants/
Defacto Complainants

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the FIR in Crime No.1 of 2021 dated 03.01.2021 on the file of the Anti-Land Grabbing Special Cell (District Crime Branch), Tirunelveli District at Tirunelveli insofar as the petitioners are concerned.

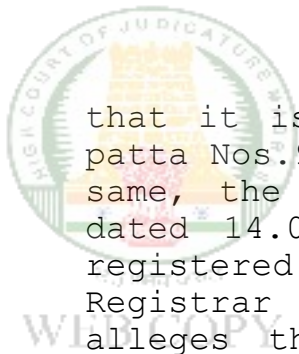
For Petitioners	:	Mr.S.Xavier Rajini
For Respondents	:	Mr.T.Senthil Kumar, Addl. Public Prosecutor for R1.

Mr.A.Arumugam for R2

O R D E R

This criminal original petition has been filed for quashing the FIR in Crime No.1 of 2021 registered on the file of the Inspector of Police, District Crime Branch, Tirunelveli, for the offences under Sections 420, 467, 468 and 471 of IPC.

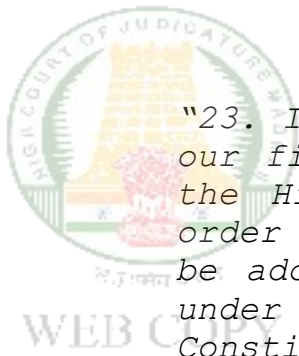
2.The petitioners are figuring as Accused Nos.1 and 2. The case was registered based on the information lodged by the second respondent herein. His case is that the property that is the subject matter of this case belongs to his family absolutely and



that it is in their possession and enjoyment. It is covered by patta Nos.911, 1011, 1041, 1424, 1501 and 968. In order to grab the same, the first petitioner herein had executed a settlement deed dated 14.05.2009 in favour of the second petitioner. It was registered as document No.716 of 2009 on the file of the Sub Registrar Office No.II, Cheranmahadevi. The defacto complainant alleges that knowing fully well that the property in question belongs to the defacto complainant's family, the first petitioner had knowingly executed the settlement deed. The other accused are also said to have attested the document with full knowledge of the facts.

3.According to the learned counsel for the petitioners, the very registration of the FIR is an abuse of legal process and contrary to the decision of the Hon'ble Supreme Court reported in **(2009) 8 SCC 751 (Md.Ibrahim and Others Vs. State of Bihar and Another)**. He reiterated the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned FIR.

4.Per contra, the learned Additional Public Prosecutor for the first respondent as well as the learned counsel for the second respondent submitted that the inherent powers of this Court are not meant to be invoked in a case of this nature. They would submit that it is not as if the first petitioner is having atleast an iota title over the property. The learned counsel for the defacto complainant submitted that he is in a position to demonstrate to the satisfaction of this Court that the offending document has been executed by a person, who is totally bereft of any title. According to him, the decision of the Hon'ble Supreme Court relied upon by the petitioners' counsel would not have any application because there is not even a bogey of title that can be claimed by the first petitioner. Only if there is a genuine or bonafide civil dispute, the said decision can be pressed into service. He would further state that if persons not having any title are allowed to execute documents thereby alienating the property belonging to third parties, then, no one will be safe. According to the learned counsel, law cannot be totally divorced from morality. It is true that the defacto complainant can move the civil Court for relief. But such a remedy is rather illusory in practice. The second petitioner will have to incur huge expenditure and also pursue the matter for years together before the civil Court. Therefore, the defacto complainant should not be totally debarred from invoking the process of criminal law. Only if such an approach is adopted by this Court, that would secure the ends of justice, which is the object behind the incorporation of Section 482 of CrPC. The decision reported in **AIR 2021 SC 1918 (M/s.Neeharika, Infrastructure Pvt. Ltd., vs The State Of Maharashtra and Another)** was relied upon. In the said case, the following directions have been issued:-



"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of



the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not



required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be



too vague and/or broad which can be misunderstood and/or misapplied."

According to the learned counsel for the respondents, the impugned prosecution ought not to be scuttled at the initial stage.

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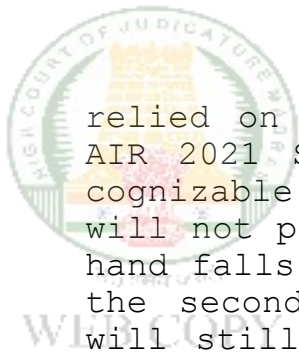
5.I carefully considered the rival contentions and went through the materials on record. I will assume for a moment that the first petitioner without even an iota of title had executed the settlement deed dated 14.05.2009 (Document No.716 of 2009) in favour of his wife, namely, the second petitioner herein. The question is whether such an act on the part of the first petitioner will amount to the offence of cheating and forgery. The Hon'ble Supreme Court in the decision reported in **(2009) 8 SCC 751 (Md.Ibrahim and Others Vs. State of Bihar and Another)** had extensively dealt with this issue. The Hon'ble Supreme Court had categorically held as follows:-

"17.When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

20.When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused."

6.In the case on hand, the first petitioner did not affix the signature of the defacto complainant. The first petitioner had not impersonated the defacto complainant. Therefore, the offence of forgery is not made out. The first petitioner did not hold out any assurance to the defacto complainant. The defacto complainant did not alter his possession on the strength of any representation made by the first petitioner. Therefore, the offence of cheating is also not made out. The case on hand is squarely covered by the aforesaid decision reported in (2009) 8 SCC 751.

7.It is true that the High Court should be slow to exercise its powers under Section 482 of CrPC to interfere with criminal proceedings at the initial stage. But in the very same decision



relied on by the learned Additional Public Prosecutor reported in AIR 2021 SC 1918, it has also been held that in cases where no cognizable offence of any kind is disclosed in the FIR, the Court will not prevent the investigation to proceed further. The case on hand falls within the aforesaid yardstick. The allegations made by the second respondent/defacto complainant even if taken as true, will still not constitute any cognizable let alone offence of any kind. Therefore, this Court ought to not permit the first respondent to go on with the investigation.

8.Of course, the submission of the learned counsel for the defacto complainant does appeal to my moral sense but as a Judge, my primary function is to uphold the law. I do concede that there is an apparent dissonance between law and morality in the approach adopted in this case. I have held that execution of the offending document will not amount to an offence even if the executant lacks title. But then, I cannot help it since I am squarely bound by the interpretation laid down by the Hon'ble Supreme Court in **Md.Ibrahim's** case. The law laid down by the Hon'ble Supreme Court is the law of land as per Article 141 of the Constitution of India. I therefore have no other option but to respectfully follow the said decision and quash the impugned FIR. The impugned FIR is accordingly quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Inspector of Police,
Anti-Land Grabbing Special Cell,
(District Crime Branch),
Tirunelveli District at Tirunelveli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to M/s.S. XAVIER RAJINI, Advocate (SR-35214[F] dated
19/11/2021)

Crl.O.P(MD)No.678 of 2021
19.11.2021

MGJ(01.12.2021) 8P 4C

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