



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.OP(MD)Nos.14601, 14798, 14810 & 18089 of 2021

and

CRL.MP(MD)Nos.7713, 7866, 7871 & 9915 of 2021

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In Crl.O.P. (MD)No.14601 of 2021

1. T.R.Dhinakaran
2. T.R.D.Nirmala
3. T.R.D.Kothai

... Petitioners / Accused 1 to 3
Vs.

1. The State rep.by
The Sub Inspector of Police,
District Crime Branch,
Virudhunagar.
(Crime No.14 of 2021)

... 1st Respondent /Complainant

2. T.R.S.Vijayaram

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.14 of 2021 pending on the file of the Sub Inspector of Police, District Crime Branch, Virudhunagar and quash the same.

In Crl.O.P. (MD)No.14798 of 2021

1. T.R.Dhinakaran
2. T.R.D.Nirmala
3. T.R.D.Kothai

... Petitioners / Accused 1 to 3

Vs.

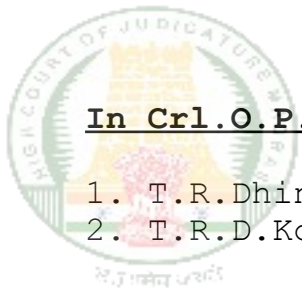
1. The State rep. By,
The Sub Inspector of Police,
District Crime Branch,
Virudhunagar.
(Crime No.12 of 2021)

... 1st Respondent / Complainant

2. T.R.V.Ramkumar

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.12 of 2021 pending on the file of the Sub Inspector of Police, District Crime Branch, Virudhunagar and quash the same.



In Crl.O.P. (MD)No.14810 of 2021

1. T.R.Dhinakaran
2. T.R.D.Kothai

... Petitioners / Accused 1 & 2

Vs.

1. The State rep. By,
The Sub Inspector of Police,
District Crime Branch,
Virudhunagar.
(Crime No.13 of 2021)

... 1st Respondent / Complainant

2. T.R.V.Ramkumar

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.13 of 2021 pending on the file of the Sub Inspector of Police, District Crime Branch, Virudhunagar and quash the same.

In Crl.O.P. (MD)No.18089 of 2021

1. T.R.Dhinakaran

2. T.R.D.Kothai

... Petitioners / Accused 1 & 2

Vs.

1. The State rep. By,
The Sub Inspector of Police,
District Crime Branch,
Virudhunagar.
(Crime No.17 of 2021)

... 1st Respondent / Prosecutor

2. R.Ravikumar

... 2nd Respondent /Informant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.17 of 2021 pending on the file of the first respondent herein and quash the same.

(in Crl.O.Ps.Nos.14601, 14798 and 14810 of 2021))

For Petitioners : Mr.Sricharan Rangarajan,
for Mr.P.Santhoshkumar.
and for Mr.M.Deivanandam
in Crl.OP(MD)No.18089 of 2021

For R-1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

For R-2 : Mr.K.Govindarajan,
for Mr.G.Radhakrishnan.

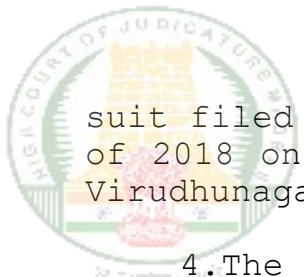


COMMON ORDER

These criminal original petitions have been filed to quash the FIRs registered in Crime Nos.12 of 2021, 13 of 2021, 14 of 2021 and 17 of 2021 on the file of the Inspector of Police, District Crime Branch, Virudhunagar. The first accused in all these four cases is Shri.T.R.Dhinakaran. His father late Shri.T.Ramasamy Naicker founded the well known Jayavilas group of Aruppukottai. He had five sons, namely, Jeyaraman, Subburaj, Dhinakaran, Varadharajan and Kannan. The businesses and properties belonging to Jayavilas group were partitioned under a deed dated 02.09.1958 into six schedules, namely, "A" to "F". "A" schedule properties were allotted to Shri.T.Ramasamy Naicker himself. Bequest regarding "A" schedule was made by him vide Will dated 18.02.1973. As per the terms of the Will, "A" schedule properties were to be enjoyed by his wife Avudaiammal for life and thereafter, they were to devolve on the five sons in equal shares. Shri.Ramasamy Naicker passed away on 15.08.1973. Avudaiammal died on 01.03.1986. Disputes arose among the five sons and the matter was referred to arbitration. The Hon'ble Mr.Justice G.Ramanujam (Retd.) was the arbitrator and he passed an award dated 23.02.1996. The award came to be eventually confirmed by the High Court on 29.07.2010.

2.Crime No.12 of 2021 and Crime No.14 of 2021 overlap each other. Shri.T.R.V.Ramkumar is the defacto complainant in Crime No.12 of 2021. Shri.T.R.S.Vijayaram S/o.T.R.Subbaraj is the defacto complainant in Crime No.14 of 2021. Crime No.12 of 2021 contains two allegations. The first allegation pertains to execution of document in respect of Survey No.219/2B measuring 6.5 cents. This has become infructuous since it has been undone by Shri.T.R.Dhinakaran himself. The prosecution case as set out in these two FIRs is that the property measuring 2.75 acres comprised in Survey No.305/30 known as Keeraithottam was one of the items of "A" Schedule annexed to the partition deed dated 02.09.1958. Since Shri.Ramasamy Naicker had willed that this property should devolve on his five sons in equal shares after the demise of his wife, each of the sons had 1/5th share in this Keeraithottam property. While so, Shri.T.R.Dhinakaran with a dishonest intention settled the entire Keeraithottam property in favour of his wife Mrs.Nirmala vide settlement deed dated 06.03.2013. He had done so in conspiracy with his wife Mrs.Nirmala and daughter Ms.D.Kothai.

3.The learned counsel appearing for the accused contended that Thiru.T.R.Dhinakaran is the sole and absolute owner of the entire 2.75 acres of the land as he has been in exclusive possession and enjoyment thereof for over forty years. This is duly evidenced by payment of kist in his name. He was therefore competent to execute the settlement deed dated 06.03.2013 in favour of his wife. In any event, the issue is pending adjudication in WP(MD)No.8413 of 2021. An order of interim injunction was also granted in WMP(MD)No.6341 of 2021 on 23.04.2021. This is also a subject matter of the partition



suit filed by the daughters of Shri.T.Ramasamy Naicker in O.S No.22 of 2018 on the file of the Additional District and Sessions Judge, Virudhunagar.

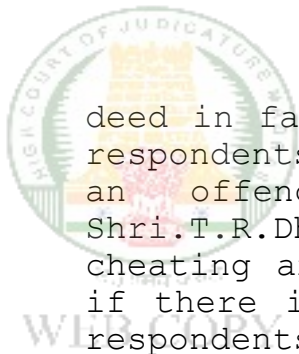
4.The claim of the learned counsel appearing for the accused that Shri.T.R.Dhinakaran had absolute title over Keeraithottam property and that is why he settled the same in favour of his wife does not impress me. Thiru.T.R.Dhinakaran cannot deny that the property originally belonged to his father T.Ramasamy Naicker. It was allotted to him in the partition held in the year 1958. Thiru.Ramasamy Naicker in his Will dated 18.02.1973 had categorically stated that the property will eventually devolve on all his five sons in equal shares. Therefore, Shri.T.R.Dhinakaran can claim only 1/5th share in Keeraithottam property. He could not have settled the entire 2.75 acres in favour of his wife Mrs.Nirmala by executing a gift deed dated 06.03.2013.

5.The learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the defacto complainants emphasized primarily two aspects :- (a) lack of title on the part of Shri.T.R.Dhinakaran over the entire 2.75 acres in S.No.305/30 (b) limitations on the exercise of jurisdiction to quash the criminal prosecution. In this regard, they referred to the recent decisions of the Hon'ble Supreme Court reported in **AIR 2021 SC 1918 (Neeharika Infrastructure Private Limited vs. State of Maharashtra)** and AIR 2021 SC 1531 (**Priti Saraf and ors v. State of NCT of Delhi and ors.**

6.I would with alacrity nullify the gift settlement deed dated 06.03.2013 and sustain it only to the extent of the settlor's 20% share therein if I were exercising civil jurisdiction. Since I am exercising jurisdiction under Section 482 of Cr.Pc, the scope is confined to determining if the act committed by Shri.T.R.Dhinakaran is an offence or not. If I conclude that what was done by Shri.T.R.Dhinakaran is not an offence, then, I have to grant relief by quashing the impugned FIR and moral considerations cannot come in the way.

7.It is true that the Hon'ble Supreme Court has reminded the High Courts time and again that the power of quashing should be sparingly exercised and only in extraordinary circumstances and that investigation should not be scuttled in the early stage. There can be no quarrel with the propositions advanced by the learned counsel appearing for the respondents. But, if after taking the entire prosecution case at its face value, no offence is made out, it is the duty of the court to invoke its inherent powers and terminate the prosecution.

8.The only allegation made in Crime Nos.12 & 14 of 2021 is that Shri.T.R.Dhinakaran though having only 1/5th share in Keeraithottam property had included the entire property while executing settlement



deed in favor of his wife. I have also endorsed this stand of the respondents. But the moot question is whether this will constitute an offence. According to the complainant, the act of Shri.T.R.Dhinakaran will constitute an offence of breach of trust, cheating and forgery. Section 406 of IPC will be attracted only if there is criminal breach of trust. It is not the case of the respondents that Shri.T.R.Dhinakaran was entrusted with Keeraithottam property. When the element of trust is absent, Section 406 of IPC cannot be invoked. Shri.T.R.Dhinakaran was only a co-owner/co-sharer of the property. He was never a co-trustee/trustee. Therefore, the basic ingredients of Section 406 of IPC are absent. Section 420 of IPC can be invoked only if it can be shown that the accused deceived the defacto complainant and fraudulently or dishonestly induced him to deliver any property. In other words, the element of deception must be present and the victim must have done or omitted to do something which he would or would not have done but for the act of deception. Admittedly, Shri.T.R.Dhinakaran did not hold out any promise or assurance or representation to the defacto complainants. They did not alter their position on account of such representation. Therefore, the fundamental ingredients of cheating are absent and therefore, Section 420 of IPC could not have been invoked.

9.The offence of forgery is also not made out. Shri.T.R.Dhinakaran did not put the signature of the defacto complainants. He put his own signature in the offending document. He did not impersonate anybody. Therefore, the elementary ingredients of forgery are also absent. The issue is no longer res integra. The Hon'ble Supreme Court in **Mohd.Ibrahim vs. State of Bihar (2009) 8 SCC 751** held as follows :

"16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming



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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.

Section 420 IPC

18.Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19.To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

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.

21.It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first



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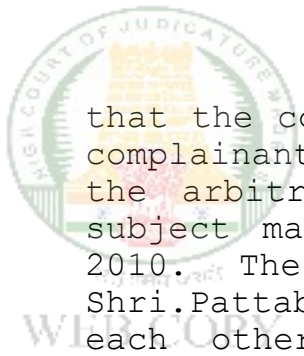
appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code."

When the ingredients of the primary offences have been held to be non-existent, the offence of conspiracy cannot stand independently. Hence, Section 120B of IPC is also not made out. I, therefore, hold that the registration of Crime Nos.12 of 2021 and 14 of 2021 on the file of the District Crime Branch, Virudhunagar District is not maintainable. They stand quashed. Crl OP(MD)Nos.14798 & 14601 of 2021 are allowed.

10.Shri.T.R.V.Ramkumar S/o.T.R.Varadarajan is the defacto complainant in Crime No.13 of 2021 registered on the file of the District Crime Branch for the offences under Sections 420, 465, 468, 471 and 120B of IPC. His allegation is that under arbitration award passed by Justice G.Ramanujam (retired), the business and properties of Shri.Pattabhi Textiles was allotted to T.R.Varadharajan. Thiru.T.R.Varadharajan had settled the said property in his favor. When the defacto complainant inspected the properties, he noted that on the said lands, T.R.Dhinakaran and his daughter Ms.Kothai have put up constructions and are also collecting rents from the tenants. When he enquired further, he came to know that Shri.T.R.Dhinakaran had obtained building plan approval fraudulently.

11.The stand of the accused is that while Pattabhi Textiles was allotted to T.R.Varadharajan, S.R.M.Press Factory was allotted to T.R.Dhinakaran. The buildings in question were put up only on the land belonging to SRM Press Factory during the period between 2011-15. While so, on 19.08.2021, the defacto complainant Thiru.T.R.V.Ramkumar entered SRM Factory Premises with his men and assaulted the staff and also Ms.D.Kothai. A complaint was lodged before the Inspector of Police, Aruppukkottai and also the Superintendent of Police, Virudhunagar District on 30.08.2021.

12.While I could notice that Shri.T.R.Dhinakaran had only 1/5th share in Keeraithottam property, I cannot give any such finding in this case. On the face of it, it appears that the constructions were put up by Shri.T.R.Dhinakaran only on the land allotted to him under the arbitral award. In any event, the allegations set out in Crime No.13 of 2021 do not make out any offence at all. It is seen

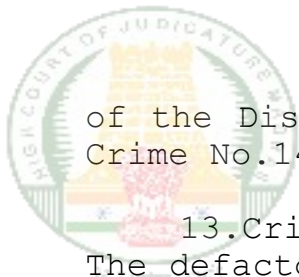


that the constructions were put up some ten years ago. The defacto complainant T.R.V.Ramkumar is also based in Aruppukottai. Though the arbitral award was passed in the year 1996, it became the subject matter of litigation and got concluded only in the year 2010. The constructions in question were put up in the year 2011. Shri.Pattabhi textiles and SRM Press Factory are located adjacent to each other. Therefore, it is inherently improbable that when Shri.T.R.Dhinakaran put up constructions after getting building plan approval in the year 2011, Thiru.T.R.Varadarajan, the father of the defacto complainant would have kept quiet. There is absolutely no material to show that any false document was created by Shri.T.R.Dhinakaran. A pure civil dispute has been given a criminal colour. The Hon'ble Supreme Court in the decision reported in **(2006) 6 SCC 736 (Indian Oil Corporation v. NEPC India Ltd., and ors)** held as follows :

"13.....it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which, do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of UP : 2000CriLJ824 , this Court observed:

It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

The case on hand is one such. It is evident from the fact that without any justification whatsoever, Thiru.T.R.Dhinakaran's daughter Ms.Kothai is also made an accused. Ms.D.Kothai had no role whatsoever at all. Therefore, the lodging of the complaint in Crime No.13 of 2021 is not only groundless and without any legal basis but also is attended by malice. Hence, Crime No.13 of 2021 on the file



of the District Crime Branch, Virudhunagar District stands quashed. Crime No.14810 of 2021 stands allowed.

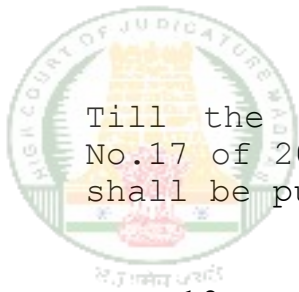
13.Crime No.17 of 2021 however stands on a different footing. The defacto complainant is Shri.R.Ravikumar, Director of Govindaraja Mills Pvt Limited. As per the arbitral award, Govindaraja Mills Pvt Ltd., was allotted to Shri.T.R.Varadarajan. The allegation in this case is that Shri.T.R.Dhinakaran had dealt with the properties belonging to Shri.Govindaraja Mills Private Limited without any title or authority. In particular, the complainant refers to the lease agreement dated 13.12.2005 entered into between Shri.Ramalinga Mills and Shri.Govindaraja Mills Pvt Limited. The said lease agreement was also registered as Document No.5088 of 2005 on the file of the SRO, Aruppukkottai. Shri.T.R.Dhinakaran has signed in the said document both as a lessor and as a lessee.

14.The learned counsel appearing for the accused would submit that the complainant suppressed several subsequent developments. For instance, in the year 2014, a memorandum of agreement was entered into between the family of T.R.Varadarajan and T.R.Dhinakaran. According to him, when the lease deed was executed on 13.12.2005, the first petitioner was in possession of the property. Since Shri.Ramalinga Mills Pvt Ltd was in need of a land to install the LPG Gas Bullet Tank for the mill-related works, the said lease deed was executed.

15.I am not however persuaded by the said contention. The counsel for the defacto complainant had demonstrated that Shri.T.R.Dhinakaran in the offending lease deed dated 13.12.2005 had dealt with properties over which he did not have any right, title or interest. There are prima facie materials in support of the prosecution case. This is a case in which the prosecution must be permitted to proceed. Investigation cannot be scuttled at this stage.

16.However, there is no material to implicate Ms.D.Kothai. She entered the scene only in the year 2020. She was nowhere in the picture when the offending lease deed was executed. Shri.T.R.Dhinakaran represented the lessor entity as well as the lessee company. The implication of Ms.D.Kothai appears to be an act of malice. Crime No.17 of 2021 stands quashed as far as she is concerned. The investigation will go on against the first accused. Crl OP(MD)No.18089 of 2021 is partly allowed.

17.At this stage, the learned counsel on either side submitted that apart from the issues on hand there are few other issues to be resolved between the two families. They are willing to go before the Hon'ble Mr.Justice K.Kannan (retired) for mediation. Thiru.T.R.Dhinakaran and Shri.T.R.V.Ramkumar are directed to pay a sum of Rs.1.00 lakh each to the Hon'ble Mediator as initial fee. I



Till the mediation process is concluded, investigation in Crime No.17 of 2021 on the file of the District Crime Branch, Virudhunagar shall be put on hold.

18. In the result, Crl OP(MD)Nos.14798, 14810 & 14601 of 2021 are allowed. Crl OP(MD)No.18089 of 2021 stands partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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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 Sub Inspector of Police,
District Crime Branch, Virudhunagar.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

1. Mr. Justice. K. Kannan (Retired)
No.3/11 Lakshmi Colony,
North Crescent Road,
T. Nagar,
Chennai - 17.
2. The Officer Incharge,
Virudhunagar Mediation and Conciliation Centre,
District Court,
Virudhunagar District.

Crl.O.P. (MD)Nos.14601, 14798,
14810 & 18089 of 2021
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