



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 25.03.2021

DATE ON WHICH PRONOUNCED : 23.04.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.12470 of 2017

and

Crl MP(MD)Nos.8598 & 8599 of 2017

WEB COPY

1.Leela
2.Robert Gladson
3.Lilly Bai
4.Freeda Gnana Let
5.Analet Jancy ... Petitioners/Accused Nos.1, 2, 5, 6 & 8
Vs.

1.The State rep by
The Inspector of Police,
Karungal Police Station,
Kanyakumari District. ... Respondent/Complainant

2.Jegan ... Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in in connection with charge sheet in C.C.No.245 of 2017 pending before the Principal District Munsif Cum Judicial Magistrate, Eraniel, Kanyakumari District, and quash the same.

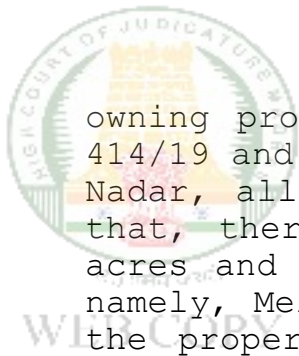
For Petitioners : Mr.R.Russelraj
For R1 : Mr.M.Ganesan,
Government Advocate (Crl.Side)
For R2 : Mr.M.R.Sreenivasan

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.245 of 2017 pending before the Principal District Munsif Cum Judicial Magistrate, Eraniel, Kanyakumari District.

2.The second respondent is the defacto complainant before the first respondent police. He lodged a complaint against the accused persons with the following averments:-

The defacto complainant is the son of one Sabarimuthu Nadar and he expired on 17.01.1970. He had four sons namely, Meiyal, Varuvel, Gnanaprakasam and Mariyanesam. Among the four children, Meiyal, Varuvel and Mariyanesam expired. The defacto complainant is the son of the aforesaid Gnanaprakasam. The senior paternal anut Annammal died without any marriage. The said Sabarimuthu Nadar was



owning properties in Survey Nos.414/4, 416/4, 415/1 414/10, 414/2, 414/19 and 414/7 measuring six acres. After the death of Sabarimuth Nadar, all four children have enjoyed the property jointly. After that, there was a partition between them. So each child got $\frac{1}{4}$ acres and they were enjoyed separately. The senior paternal uncle namely, Meiyal expired on 08.05.2014 and he had no children. So, the property, which belongs to him, measuring 1.5 acres devolved upon his wife, namely, Mariyammal and the brothers of her husband equally. While that being so, the Mariyammal, wife of Meiyal, colluded with the first and second petitioners and fraudulently executed a sale deed in favour of the first petitioner on 10.07.2006, to an extent of 1 acre 34.300 cents and also another sale deed was executed in favour of the third petitioner on 27.09.2004, measuring an extent of 5.500 cents and other petitioners were subsequent purchasers. Based upon the complaint given by the second respondent, first respondent took up the investigation and collected the materials and recorded the statement of the witness and filed a final report alleging that all the accused persons have committed the offences punishable under Sections 417, 468, 464, 471 and 474 of IPC.

3. Seeking quashment of the complaint accused Nos.1, 2, 5, 6 and 8 are before this Court by way of filing this quash petition mainly on the ground that with a *mala fide* intention the second respondent implicated the innocent persons. The petitioner purchased the property belongs to Sabarimuthu Nadar during 2004 and he become owner and he was in possession and enjoyment. The subject matter of the land in dispute is involved in O.S.No.85 of 2015, on the file of Subordinate Judge, Padmanabhapuram, which was filed by the second respondent herein and the same is pending and it is a suit for partition. None of the allegation mentioned in the final report attract any of the ingredients of the offences against the petitioners. It is a civil dispute, which has been given a criminal colour.

4. The accused No.3 in the aforesaid final report has filed a separate petition seeking quashment of the final report on the ground that the earlier complaint filed by the second respondent namely, the defacto complainant was closed and subsequently, a second complaint has been given. It is also suppressed. Suits in O.S.Nos.85 of 2015 and 267 of 2007 which were filed by the second respondent on the very same grounds. The petitioner purchased the property to an extent 5.5 cents in Survey No.414/4 from Tmt.Mariyammal under a registered sale deed, dated 27.09.2004. The question of forgery and cheating does not arise and none of the averments mentioned in the final report attract any of the ingredients of the offence as against this petitioner and seeking for quashment of the final report. It is also disposed to-day with this petition.



5. So, it is not in dispute that Savari Muthu Nadar was the owner of the property and he had four male child namely, Meiyal, Varuvel, Gyanaprakasam, Marianesan. Among them, Meiyal died on 08.04.2014 living behind her wife Mariammal. Similarly, the second son namely, Varuvel, also died on 06.05.2004. He got a son, who is the defacto complainant herein and Gyanaprakasam is available and Marianesan died on 21.12.2003. So, these facts are not disputed. Savari Muthu Nadar also died on 17.01.1970. So, the plaint schedule property i.e., six acres, which belongs to Savari Muthu Nadar are equally devolved upon the four sons each got 1.50 acres.

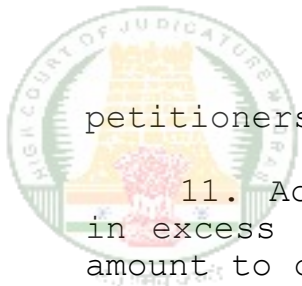
6. Now, according to the defacto complainant, since Meiyal died without any issues, as per the Section 33 (B) of Indian Succession Act, 1925, his wife namely, Mariammal is entitled to get only 75 cents and the remaining 75 cents must be devolved upon the three sons namely, Varuvel, Gyanaprakasam and Maryanesan. Since Varuvel and Maryanesan died, their sons will get the share, which belongs to their fathers.

7. Now, the problem arose when Mariammal executed a sale deed on 10.07.2006 for an extent of 1.34 cents in favour of the first accused, who is the first petitioner herein, namely, Leela.

8. Now, according to the defacto complainant, accused Nos.1 & 2 and other accused persons are closely related to each other and they have known that Mariammal had 75 cents and they created forged sale deeds and so, they have committed the offence as alleged.

9. Now, the point arises for consideration is whether the ingredients of offences under Sections 417, 468, 464, 471 and 474 IPC are attracted against these petitioners.

10. The accused numbers 5, 6 and 8 are the subsequent purchasers. Earlier, the second petitioner herein had filed a petition in Crl.OP(MD)No.12686 of 2016 for quashing the First Information Report in Crime No.327 of 2016. The matter was referred to mediation. But, the same, could not be settled. Moreover, a suit in O.S.No.85 of 2015 was also filed for partition by the second respondent herein, which is also pending. The outcome of the suit is still awaited. Moreover, the said Mariammal is neither shown as an accused nor as witness in the final report. She is the only competent person to speak about the transactions. Whether she bona fide believed that the property belongs to her husband will devolve on her or not in full, is a question of fact. That can be decided during the trial. Mere vague allegations have been made in the complaint as well as the final report, that these petitioners have known that said Mariammal had only 75 cents. Even though, they purchased the properties, absolutely, no materials have been collected by the Investigating Officer to show that these



petitioners indulged in creating the false document.

11. According to the second respondent, execution of sale deed in excess of any right or without any right over the property will amount to cheating, forgery etc.,

12. His further contention is that when *prima facie* materials are available, the charge sheet should not be quashed on the ground that it is a civil dispute. To sustain this contention, he would rely upon the judgment of the Hon'ble Supreme Court reported in **Vijayander Kumar and Others Vs, State of Rajasthan and Another (2014) 84 Acrc 987.**

13. Per contra, the petitioner would rely upon the judgment reported in **Mohammed Ibrahim and Others Vs. State of Bihar and Another (2009) 8 SCC 751.** The Hon'ble Supreme Court has elaborately discussed the ingredients of Sections 420, 464, 467 and 471 CPC and then, finally observed the following clarification note,

"A clarification:

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is to making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

14. So, according to the learned counsel for the petitioners if at all only the petitioners can say that Mariammal has cheated them and the second respondent, who is not a purchaser, is not entitled to make such an allegation. But, that is not the correct position because he claim right in the property and so, he is competent to make any complaint. So, that defence is not available to the petitioners. But, para 16 of the above said judgment is relevant for our discussion.

"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 bona fide 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 is 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."

15. So, in the absence of Mariammal either as a witness or as an accused these ingredients of the offence cannot be decided. As mentioned earlier whether Mariammal has entertained a *bona fide* belief that she was entitled for entire property left by her husband or not, can be decided only in her presence. So, a reading of the entire judgment would show that none of the allegations made in the First Information Report and the final report are attracted against these petitioners. When we test the final report in the touch stone of ingredients under Sections 471, 417, 468, 464, 471 and 476 IPC.

16. So, I am of the considered view that it is a clear abuse of process of the Court. Apart from that, it is purely a civil dispute which got to be decided in the pending suit. The question of mixing of civil and criminal liability is not at all available in this case. So, the proceedings against these petitioners is liable to be quashed.

17. In the result, Charge Sheet in C.C.No.245 of 2017, pending on file of the Principal District Munsif Cum Judicial Magistrate, Eraniel, Kanyakumari District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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.

<https://hcservices.ecourts.gov.in/hcservices/>



1. The Principal District Munsif Cum Judicial Magistrate,
Eraniel, Kanyakumari District.

2. The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

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

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-17494[F] dated
26/04/2021)

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KK(16.06.2021) 6P 5C