



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 25.03.2021

DATE ON WHICH PRONOUNCED : 23.04.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.16119 of 2017

and

Crl MP(MD)Nos.10662 & 10663 of 2017

Mr.David ... Petitioner/Accused No. 3/Accused No.3  
Vs.

1.The State of Tamil Nadu,  
Represented by the Sub Inspector of Police,  
Karungal Police Station,  
Kanyakumari District. ... 1<sup>st</sup> Respondent/Complainant/Complainant

2.Jegan ... 2<sup>nd</sup> Respondent/Informant/Informant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in C.C.No.245 of 2017 on the file of the learned Principal District Munsif / Judicial Magistrate, Eraniel and quash the same.

For Petitioner : Mr.N.Dilip Kumar

For R1 : Mr.M.Ganesan,

Government Advocate (Crl.Side)

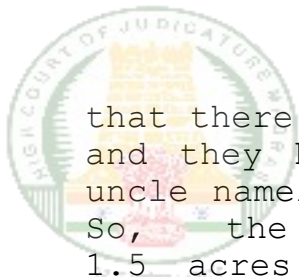
For R2 : Mr.M.R.Sreenivasan

**ORDER**

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.245 of 2017 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 Sabarimuthu Nadar, all four children have enjoyed the property jointly. After



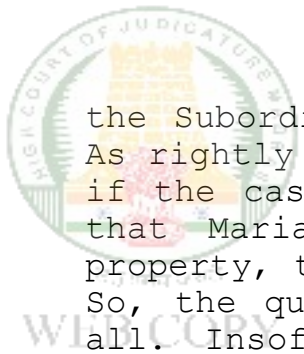
that there was a partition between them. So each child got  $\frac{1}{4}$  acres and they have enjoyed the same separately. The senior paternal uncle namely Meiyal expired on 08.05.2014 and he had no children. So, the property, which belongs to him, measuring 1.5 acres devolved upon his wife, namely, 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 had 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 the 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. The petitioner has filed this 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 of 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 do not arise and none of the averments mentioned in the final report attract any of the ingredients of the offences against this petitioner. Seeking for quashment of the final report, this petition is filed.

4. Heard both sides.

5. It is not in dispute that the property, under dispute, originally, belongs to one Savari Muthu Nadar. He got four children. As per oral partition, each got 1.5 acres. Meiyal expired without any child. His wife name is Mariammal. She is neither an accused nor a witness in the final report.

6. Now, according to the defacto complainant, the property which belongs to Meiyal will devolve upon his wife, namely, Mariammal and the brothers of Meiyal and sons of brothers of Meiyal equally. So, the sale deed, executed by Mariammal, in favour of these petitioners, is not valid under law and by false representation, this document has been created. The defacto complainant would rely upon the Section 33 B of Indian Succession Act. On that, there is no quarrel. But, the short point, which arises for consideration is whether the purchase made by this petitioner in Crl.OP(MD)No.16119 of 2017 is not valid under law and this issue is a subject matter in O.S.No.85 of 2015, on the file of



the Subordinate Judge, Padmanabapuram. It is a suit for partition. As rightly contended by the learned counsel for the petitioner, even if the case of the defacto complainant is accepted, to the effect that Mariammal can get only 75 cents in the plaint schedule property, the petitioner has purchased only 5.5 cents on 27.09.2004. So, the question of forgery, fraud and cheating will not arise at all. Insofar as all this petitioner is concerned, there is no allegation in the complaint itself. All materials have been collected by the Investigating Officer during the course of investigation. There is no material to show that the petitioner in Crl.OP(MD)No.16119 of 2017 induced Mariammal with an intention of cheating and intention to de-fraud, the defacto complainant, got the sale deed executed.

6. But, according to the learned counsel for the second respondent, Mariammal had executed more sale deeds. All the sale deeds, executed by her, in favour of all the accused, are fraudulent documents and so, *prima facie* materials are available to proceed against the petitioner. But, I am unable to agree on this line of argument. As rightly contended by the learned counsel for the petitioner, it is not the case of the defacto complainant that Mariammal did not have any saleable interest in the property left by her husband. So, this 5.5 cents, purchased by the petitioner, lies well within the 75 cents of land inherited by Mariammal, as per the Indian Succession Act. So, at no stretch of imagination, offence of forgery, cheating, fraudulent, creation of document will be attracted against this petitioner. So, I find absolutely no base or *prima facie* ground to proceed against this petitioner and it is a clear abuse of process of Court.

7. So, I am of the considered view that Crl.OP(MD)No.16119 of 2017 is liable to be allowed and accordingly, the same is allowed and the proceedings, pending on the file of the learned Judicial Magistrate, Eraniel in C.C.No.245 of 2017, stands quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /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.N.DILIPKUMAR, Advocate ( SR-17404[F] dated  
26/04/2021 )

+1 CC to M/s.M.R.SREENIVASAN, Advocate ( SR-17495[F] dated  
26/04/2021 )

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23.4.2021

KK(16.06.2021) 4P 6C