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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.15787 of 2016

and

Crl.M.P.No.12690 of 2019

- 1.Arumugam
- 2.Minor Lavanya
- 3.Minor Malavika
- 4.Elumalai

..Petitioners/A1 to A4

Vs.

1. State rep.by
The Inspector of Police,
District Crime Branch,
Villupuram District,
Villupuram.
Crime No.24 of 2016

2. Kandipan

..Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.24 of 2016 on the file of the first respondent police, quash the same and proper in the circumstances of the case.

For Petitioner : Mr. N. Manokaran

For Respondent : Mr. R. Murthi, for R1
Government Advocate (Crl.Side)
Mr. K.T.S. Sivakumar, for R2

O R D E R

This petition is filed to call for the records pertaining to the FIR in Crime No.24 of 2016 on the file of the first respondent police and quash the same.

2. This FIR was registered on the basis of complaint given by defacto complainant-Kandipan on 24.06.2016. The allegations made in the complaint, in brief, are as follows:-



2(i). The defacto complainant/second respondent-Kandipan's father Suburayan purchased the properties in R.S.No.11/8 to an extent of 0.03.0 ares, R.S.No.11/6 to an extent of 0.06.0 ares, R.S.No.11/7 to an extent of 0.07.5 ares, R.S.No.11/13 to an extent of 0.07.5 ares, R.S.No.12/13 to an extent of 0.17.5 ares, R.S.No.11/10 to an extent of 0.05.5 ares, R.S.No.12/1 to an extent of 0.05.0 ares, to a total extent of 1 acre 28 cents on 29.05.1965 through a registered sale deed. These properties situated in Pachapalayam Village. His predecessor in title Murugan purchased these properties from Ayyammal on 18.03.1949, through a registered sale deed. Earlier one Pichaikkaran @ Pichaimuthu purchased the properties from Koothan and Kesavan through a registered sale deed on 29.07.1937. The said Kesavan is the father of first petitioner/first accused. From the date of purchase of the properties, defacto complainant's father was in possession and enjoyment of the properties. The patta and other revenue records had been entered in his name. His father died in 2005, thereafter, the defacto complainant is in possession and enjoyment of the properties. Meanwhile, the first accused who was former Village Assistant had created, fabricated documents and made changes in the revenue records in respect of the properties in his name. Using the change in the revenue records, the first petitioner-Arumugam had executed a settlement deed dated 04.07.2005 in respect of 43 cents in R.S.No.12/3 in favour of his Grand Sons, second and third petitioners and appointed fourth petitioner as their guardian. He had also received a sum of Rs.8,000/- from the Government as a compensation, during flood. Without properly verifying the records, prior title deeds, patta document had been issued in the name of first petitioner. Therefore, defacto complainant gave a complaint against the petitioners and the Sub Registrar, Ulundurpettai Sub Registrar's office. On the basis of this complaint, the FIR in Crime No.24/2016 was registered by the first respondent under Sections 465, 468, 471, 420, 166 and 167 of IPC.

3. Learned counsel appearing for the petitioners submitted that there are three previous title deeds in respect of the properties and other properties. The first one is the sale executed in favour of the Pachaimuthu @ Pichaikaran by Kesavan and his father Koothan on 29.07.1937. Subsequently, Pichaikaran @ Pachaimuthu legal heirs sold the property to one Murugan through a registered sale deed on 18.03.1949 followed by a sale deed in favour of the second respondent's father Subarayan on 29.05.1965. Kesavan concerned in the sale deed dated 29.07.1937, is the father of the first petitioner herein.

4. Learned counsel for the petitioners further submitted that the revenue records in respect of the property, settled



through the settlement deed dated 04.07.2005, stands in first petitioner's name. Therefore, believing that he is the owner of the property, he had executed settlement deed in favour of his Grand Sons. Though the alleged settlement deed had been executed on 04.07.2005, the complaint in this case was given only on 24.02.2016, after 11 years. That apart, at the time of execution of this settlement deed petitioners 2 and 3 are only minors and fourth petitioner was only shown as guardian of petitioners 2 and 3. Petitioners 2 to 4 had no role in execution of the settlement deed dated 04.07.2005. It is further submitted by the petitioners that petitioners are in possession and enjoyment of the suit properties and they have records like patta, adangal, chitta and kist receipt. There is absolutely no case made out, to further proceed with this case and therefore, he prays for quashing First Information Report.

5. Learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent opposed the quash petition on the ground that the first and fourth petitioners in collusion with each other had created a settlement deed dated 04.07.2005, after knowing very well that the property was sold by the first petitioner's father Kesavan and his grand father Koothan even in the year 1937. Therefore, the case need to be investigated further. As of now there is prima-facie material to proceed with further investigation and file a final report against the petitioners. Hence, prayed for dismissal of this petition.

6. Considered the rival submission and perused the records.

7. It is seen from the submissions made and records that even in 1937, the property in dispute that is an extent of 43 cents in R.S.No.12/3 was sold by first petitioner's father Kesavan and Grand father Koothan. There are subsequent alienations on 18.03.1949 and in favour of the second respondent's father Subarayan on 29.05.1965. However, it appears from the submission made by the learned counsel for the petitioners that the petitioners claim to be in possession and enjoyment of the suit property.

8. A reading of the complaint also shows that the revenue records stand in the name of the first petitioner and it is also claimed that the possession has to be restored from the petitioners to the second respondent, meaning thereby, the second respondent is not in possession of the property in dispute. These aspects have to be decided by the civil Court and not by this Court, while deciding matters under Section 482 of Cr.P.C. Be that as it may, the admitted fact is that the second and third petitioners were minors at the time of



execution of settlement deed on 11.04.2005. Fourth petitioner was shown only as guardian of minor petitioners 2 and 3. There is no specific allegation made against the fourth petitioner that he was in knowledge of execution of the settlement deed by the first petitioner. There is no specific allegation that first petitioner and fourth petitioner have colluded together in executing the settlement deed dated 04.07.2005.

9. Therefore, this Court is of the considered view that there are no materials to proceed further with the investigation in this case so far as the petitioners 2 to 4 are concerned. However, the first petitioner as son and legal heir of Kesavan ought to have known about the sale of a larger extent of property including the property in dispute that is 43 cents in R.S.No.12/3, in favour of Pachaimuthu @ Pichaikaran on 29.07.1937. Obviously cannot claim title to the property, which was sold, on the basis of revenue records. There are grounds to proceed further with the investigation in respect of the offences committed by the first petitioner in this case. May be there is a delay of 11 years in giving the complaint. In cases like this, delay will not be the ground to quash the First Information Report.

10. In fine, this Court finds that there is material to proceed further with investigation against the first petitioner and there are no materials against the petitioners 2 to 4. This petition is allowed insofar as petitioners 2 to 4 are concerned and dismissed as against the first petitioner. Consequently, connected miscellaneous petition is closed.

11. The first respondent is directed to expedite the investigation and file a final report as expeditiously as possible, preferably, within a period of three months from today.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Inspector of Police,
District Crime Branch,
Villupuram District,
Villupuram.



2. The Public Prosecutor,
High Court, Madras.

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+1cc to M/s.H.Rajesh, Advocate, S.R.No.10512

CrI.O.P.No.15787 of 2016 and
CrI.M.P.No.12690 of 2019

PMK (CO)
SU (07/03/2022)