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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10141 of 2018

and

Crl.M.P.Nos.5180 & 5181 of 2018

1. A.Christopher
2. Therasammal
3. Anthonysamy
4. Franco

...Petitioners/Accused

Versus

- 1.K.Elumalai

...1st Respondent/Petitioner

- 2.The Inspector of Police,
Anti-Land Grabbing Cell,
District Police Head Quarter,
Thiruvannamalai District.

...2nd Respondent/Respondent

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.24 of 2017 on the file of the Honourable Judicial Magistrate-I, Thiruvannamalai District and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.V.R.Kamalanathan

For Respondent : Mr.K.Sivakumar
No.1

For Respondent : A.Damodaran
No.2 Additional Public Prosecutor

ORDER

The petitioners, who are the accused in C.C.No.24 of 2017 and who are facing trial for offences under Sections 463, 464, 468, 469, 470, 506(ii) and 120(b) of IPC, have filed this quash petition.

2.Earlier, the petitioners and the first respondent are the adjacent land owners. The first respondent lodged a complaint under Section 156(3) r/w Section 190 (1) Cr.P.C before the trial Court. The trial Court not inclined to



forward the complaint and directed to conduct 202 enquiry and thereafter, on examination of witnesses and sworn statement, a case in C.C.No.24 of 2017 was taken on file, summons were issued to the petitioners, who have shown as A1 to A4.

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3.The contention of the learned counsel for the petitioners is that it is a civil dispute, the property devolved on the petitioners from their ancestors and their ancestors purchased the property from one Ramanchetti, Kannan, Murugesan. The petitioners' ancestor is Ponnusamy Gounder, from him, it devolved upon the petitioners. The first respondent is the adjacent land owner and the first respondent's father viz., Kattaiyan Chetti purchased the property of only 66 cents from Ammakannummam, Munusamy Chetti, Ezhumalai, and Velayutham Chetti, now being the adjacent owners, now want to encroach upon the property and projected a case as though the petitioners fabricated document and claiming right over the property. The petitioners had also given a complaint to SRO, Thiruvannamalai, who in his letter No.2082/A1/2015 dated 14.09.2015 found that there is a claim and counter claim over the property and advised the parties to approach the Civil Court. Circumventing the same, the respondent filed a criminal complaint.

4.The learned counsel for the first respondent/complainant submits that the petitioners are owners of the property using some confusion in the Revenue and Registration department records, the petitioners are now claiming right over the property. The respondent produced all the relevant records before the lower Court, the lower Court, on perusal of the same, the sworn statement and evidence of witnesses found that prima facie case made against the petitioners, taken the case on file and issued summons. Thereafter, the petitioners immediately rush to the Court and obtained stay. Due to which, the trial in the lower Court is stalled.

5.This Court finds that there will be a rival claim over the property, based on the documents, which have to be decided only during trial and after recording evidences and on perusal of the documents, which cannot be done in a quash petition.

6.Counsel for the petitioners submits that A4 Franco S/o.Anthonysamy, is in abroad, his presence may be dispensed with. Further, he submits that the other petitioners are senior citizens, their appearance from the lower Court may also be dispensed with. Further, it is only documents based upon, the identity of the petitioners are not in dispute.

7.In view of the same, the petitioners are directed to file a petition under Section 205 Cr.P.C along with the undertaking affidavit that evidence can be recorded in their absence, they will not dispute their identity as well as recording of the evidence, they will be represented by the



counsel and they will not be a reason for any delay and they shall appear before the trial Court as and when directed by the trial Court. On such affidavit of undertaking, the trial Court to dispense with the presence of the petitioners. Accordingly, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

jd/sms

To

1.The Judicial Magistrate-I,
Thiruvannamalai District.

2.The Inspector of Police,
Anti-Land Grabbing Cell,
District Police Head Quarter,
Thiruvannamalai District.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.R.Kamalanathan, Advocate SR. No.12282

+lcc to Mr.D.Padmanabhan, Advocate SR. No.12408

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and

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GJ (CO)

PR (11/03/2022)