



CrI.O.P No.5018 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.5018 of 2021

and

CrI.M.P No.3205 of 2021

V.R.Gunasekaran

... Petitioner

Vs.

1. The State, rep. By
The Inspector of Police,
District Crime Branch
Kancheepuram.

2.V.Ashish Jain

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the entire records in FIR No.35 of 2016 pending investigation on the file of the first respondent and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.T.K.S.Bharathi

For Respondents : Mr.A.Damodaran for R1
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed, seeking to call for the records pertaining to the FIR in Crime No.35 of 2016 pending investigation on the file of the first respondent and quash the same insofar as the petitioner is concerned.

2.Heard the learned counsel appearing for the petitioner as well as learned Additional Public Prosecutor for the 1st respondent.

3, The case of the prosecution is that the subject property belongs to one Meena, and she has already bequeathed the same in favour of the 1st accused viz., Rajkumar by virtue of a Will dated 05.05.2000; after the death of Meena, in pursuance of the said Will, the 1st accused acquired the title and thereafter, he sold the same in favour of the complainant; the 2nd and 3rd accused, who are daughters of the deceased Meena have also sold the same property, by claiming hereditary right over the suit property in favour of A4. A4 entered into an agreement with A5 in respect of the subject property; In the meanwhile, a complaint was given by the complainant by stating that the



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accused conspired together and attempted to defraud her interest by creating documents; on the basis of the above complaint, a case has been registered in Crime No.35 of 2016 for the offences punishable under Sections. 465, 468, 471, 420 and 506(i) IPC.

4. The learned counsel for the petitioner/4th accused submitted that the 4th accused himself is a victim, who had lost his money in purchasing the property and trapped into the litigation. His further submission is that A4 is a bonafide purchaser and he has no criminal interest in purchasing the property.

5. The learned counsel for the 2nd respondent/de-facto complainant submitted that in the sale deed executed by A2 and A3 in favour of A4 itself, the fact about the interest of A1 in respect of the subject property has been shown; having known about A1's interest also in the said property, A4 had also purchased the same on 01.04.2011; immediately after purchasing the property within 1-1/2 years, he had entered into a sale agreement with the 5th accused; in the said sale agreement, part payments are said to have been made from the year 2008.



6. The sale agreement is dated 12.10.2012. On perusal of both the sale agreement and sale deed, it is seen that the property involved is one and the same. Though it is claimed by the learned counsel for the petitioner that there is no prima facie material to suspect the involvement of A4 also, his overtact is said to be his entering into a sale agreement. Wherein, it is stated that he has received payment as early as in the year 2008 and that would show that there are fundamental materials which has to be investigated against A4 himself. Since the materials available on record would also make out a case against A4, I do not think this is a case in which the powers of this Court should be exercised under Section 482 of Cr.P.C. In this context, it is relevant to refer the judgment of the Hon'ble Supreme Court held in **Neeharika Infrastructure Pvt. Ltd Vs. State of Maharastra and others** reported in **(2021 SCC OnLine SC 315)**. In the said case, it is held as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will



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not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR / complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR / complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint / FIR should be an exception rather than an ordinary rule..."

7. In the case in hand, prima facie materials are seen to be available to make out a case against the petitioner / Accused No.4 also. In view of the same, this Criminal Original Petition is liable to be dismissed.

8. In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

22.09.2022

Index : Yes/No
Speaking Order : Yes / No

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CrI.O.P No.5018 of 2018

To

1. The Inspector of Police,
District Crime Branch
Kancheepuram.
2. The Public Prosecutor
High Court of Madras.



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Crl.O.P No.5018 of 2021

R.N.MANJULA, J.,

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