



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5567 of 2020
and Crl.M.P.No.3134 of 2020

1.Badrunisha,
2.Faritha
3.M.Nagaraj

...Petitioner

Vs.

1.The Inspector of Police,
B-7, Police Station (Crime),
Ramanathapuram,
Coimbatore.

2.B.Shayin

...Respondents

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No.1238 of 2019, on the file of the learned Judicial Magistrate VI, Coimbatore and quash the same.

For Petitioner : Mr.R.Rajarajan

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to call for records pending in C.C.No.1238 of 2019, on the file of the learned Judicial Magistrate VI, Coimbatore and quash the same.

2.The petitioners were charged for the offence u/s.120 (b), 465, 468, 471, 420 and 506(1) I.P.C.

3.The case of the prosecution is that one Pyarajohn, died intestate on 24.03.2010. He died leaving behind his three brothers viz., Amir, Babu, Abdul Kadhar and three sisters viz. Malliga, Noorjagan and Gowgarjohn as his legal heirs. One of the Brothers Babu also died leaving his wife and children as his legal heirs. The defacto complainant is the son of the said Babu. The legal heirs of the said Babu is also entitled for share in the properties left by the deceased Pyarajohn. During his life time, the said Pyarajohn had purchased properties in Coimbatore. It is the further allegation of the defacto complainant is that the 1st accused is not a legally

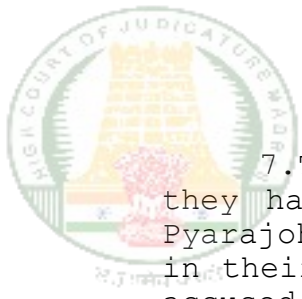


wedded wife of the said Pyarajohn and the 2nd accused is not the daughter born out of the wedlock between the said Pyarajohn and the 1st accused. The 1st and 2nd accused, who are the 1st and 2nd petitioners herein, obtained a forged legal heir certificate claiming to be the legal heirs of the aforesaid Pyarajohn. The 3rd petitioner herein is the husband of the 2nd petitioner and he has also conspired with them. On the basis of the forged legal heir certificate, the accused had sold a portion of the property to the third parties who were arrayed as accused No.4 and 5. The accused 1 to 3 had also misappropriated the amounts available in the bank account of said Pyarajohn. Hence the complaint.

4.After completion of investigation, the 1st respondent filed a final report, in which, the 4th and 5th accused were exonerated from the aforesaid charges on the basis that they were the bonafide purchasers under the valid consideration. Hence, the petitioners 1 to 3 alone were charged for the offence u/s.120(b), 465, 468, 471, 420 and 506(1) I.P.C. The 1st petitioner had earlier married Mohammed Hanifa and obtained divorce from him in 1973, thereafter, she got married with one Pyarajohn, according to Mohammedan Law in the year 1973. However, it was not registered and later it was registered before the Coimbatore Mouli Kasim Syed Hasin Kamath in the year 1976 for the purpose of applying passport to the 2nd petitioner who is the daughter through said Pyarajohn.

5.When that being the case, the husband of the 1st petitioner died on 24.03.2010, leaving behind 1st and 2nd petitioner as his legal heirs. During the life time of Pyarajohn, he had purchased a vacant land and house property at Nanjundapuram, Singanallur and Souripalayam. Therefore, during his lifetime, he also executed Hiba / settlement deed dated 18.02.2009 in favour of the petitioners 1 and 2 as his wife and daughter. After the demise of the said Pyarajohn, the petitioners 1 and 2 applied for legal heir certificate before the Tahsildhar, Coimbatore. After due enquiry, they were issued legal heir certificate. When that being so, the 2nd respondent had lodged a complaint and the petitioners were charged for the aforesaid offences.

6.In fact, the 2nd respondent had created a forged and fabricated legal heir certificate dated 21.12.2011 in favour of him and his family members as legal heirs of the deceased Pyarajohn. Thereafter, the 2nd respondent and others have filed a Suit for declaration, declaring that they are the legal heirs of the deceased Pyarajohn and for partition in O.S.No.582 of 2012 before the 4th Additional District Judge, Coimbatore. The said Suit was dismissed vide judgment and decree dated 03.12.2019. Further, the trial Court concluded that the complainant and others viz. the plaintiffs are not the legal heirs and the legal heir certificate obtained by them dated 21.12.2011 is a forged one.



7.The impugned charge as against the petitioners is that they have forged the legal heir certificate of the deceased Pyarajohn and sold out the subject property which were settled in their favour and executed sale deed in favour of 4th and 5th accused. In fact, the 1st respondent after completion of investigation found that the accused No.4 and 5 are the bonafide purchasers and the 3rd petitioner is none other than the husband of the 2nd petitioner.

8.Now, the Civil Court has also concluded that the 1st petitioner is the legally wedded wife of the said Pyarajohn and the 2nd petitioner was born to the deceased Pyarajohn and they are the legal heirs of the deceased Pyarajohn. The City Court also further held that the defacto complainant and his family members are not the legal heirs of the deceased Pyarajohn.

9.That apart, the petitioners lodged a complaint as against the 2nd respondent and others alleging that they have fabricated the legal heir certificate dated 21.12.2011 and the 2nd respondent and his family members are facing trial. Therefore, no offences are made out as against the petitioners as alleged by the prosecution and keeping the C.C.No.1238 of 2019 pending on the file of the learned Judicial Magistrate VI, Coimbatore is nothing but only an abuse of process of law and the same cannot be sustainable as against the petitioners.

10.Subject to the above observations, the proceedings in C.C.No.1238 of 2019 on the file of the learned Judicial Magistrate VI, Coimbatore for the offences under Section 120 (b), 465, 468, 471, 420 and 506(1) I.P.C. is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate VI.
Coimbatore

2.The Chief Judicial Magistrate,
Coimbatore.



3.The Inspector of Police,
B-7, Police Station (Crime),
Ramanathapuram,
Coimbatore.

WEB COPY

4.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

CrI.O.P.No.5567 of 2020
&CrI.M.P.No.3134 of 2020

AJB (CO)
PR (20/06/2022)