

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5843 of 2020

and

Crl.M.P.No.3320 of 2020

1. S.Panjalai
2. S.Chakravarthi ...Petitioners

Vs.

1. The State represented by,
The Inspector of Police,
District Crime Branch,
Thiruvallur District
(C.C.No.441 of 2019) ... 1st Respondent/Complainant
2. P.Kanniyammal ... 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., pleaded to call for the records and quash the entire proceedings in C.C.No.441 of 2019 pending on the file of the respondent police against them.

For Petitioners: Mr.Bhuvanesh
for R.Muniyapparaj

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

For R2 : Mr.G.Umeshwaran

ORDER

This Criminal Original Petition has been filed to quash the entire proceedings in C.C.No.441 of 2019 pending on the file of the learned Judicial Magistrate No.II, Thiruvallur.

2. The learned counsel for the petitioners submitted that already entire bundle has been handed over to the petitioners along with the change of vakalat long back. Even till today, the petitioners failed to engage any Advocate and also no one is

appeared before this Court by person or through counsel.

3. The second respondent/de-facto complainant lodged a complaint before the first respondent police lodging that the De-facto complainant/R2 and the 2nd petitioner herein grand daughter and son of the one Sarangapani. The above said Sarangapani was married Amsa and having three daughters. Thereafter, the Sarangapani was married another women namely Panjalai/1st petitioner and having one son namely Chakkaravarthy/2nd petitioner. Already there was a partition suit and subsequently it was decreed by the Civil Court in O.S.No.242 of 2001 that was challenged by the 2nd petitioner by way of an Appeal Suit No.1 of 2016 on the file of the Sub-Court at Thiruvallur. After that the Court had ordered two shares for the de-facto complainant/R2 and another two shares for the 1st petitioner out of four shares by an order dated 01.09.2014. In these circumstances, the 2nd petitioner with the help of 1st petitioner executed a "Gift Deed" in his favour, before the Manavala Nagar, Sub-Register Office vide Doc.No.3383 of 2017. Thereafter, the 1st petitioner and 2nd petitioner transferred the Electricity bill and other relevant revenue records in their name. While being so, the de-facto complainant/R2 preferred the complaint stating that the 1st and 2nd petitioners, with an intention to cheat, purposefully suppressed the fact and created the document in the name of the 2nd petitioner.

4. It is averred that the petitioners are mother and son. The 1st petitioner's husband is the de-facto complainant's grand father. After demise of her grand father, there was a dispute with regard to land between the de-facto complainant/R2 and the petitioners. While being so, the 1st petitioner filed a partition suit in O.S.No.258 of 1991 before the learned District Munsif Court at Thiruvallur and the same was decreed in her favour. An Appeal suit in A.S.No.1 of 2016 is pending between the parties on the file of the learned Sub-Court, Thiruvallur.

5. As per the decree, 1st petitioner executed a gift deed in favour of her son, 2nd petitioner, registered vide Doc.No.3383 of 2017. When this petition was posted for admission, this Court granted an interim stay on condition that the 1st petitioner shall cancel the gift deed executed in favour of the 2nd petitioner. Subsequently, the period was also extended till 21.09.2020.

6. The learned Government Advocate (Crl.Side) submitted that even till date, the 1st petitioner failed to comply with the condition imposed by this Court and that apart, there are specific allegations and materials are very much available to prosecute the petitioners for the offence under Sections 420, 465, 468 and 471 of IPC.

7. On perusal of the charge sheet and the statement recorded from the witnesses, there are specific averments and materials are available to attract the offences under Sections 420, 465, 468 and 471 of IPC.

8. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. The Hon'ble Supreme Court of India deals with in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in

this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

10. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

As such, the grounds raised by the petitioners are question of fact and it cannot be considered by this Court in the quash petition filed under Section 482 of Cr.P.C.

11. At this juncture, the learned Government Advocate (Crl.Side) submitted that the case in C.C.No.441 of 2019 on the file of the learned Judicial Magistrate No.II, Thiruvallur has been now transferred to the file of the learned Sub-Court for Land Grabbing, Thiruvallur and renumbered as C.C.No.30 of 2022.

12. Considering the above submission, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ham/rgi

To

1. The Judicial Magistrate No.II,
Thiruvallur.
2. The Subordinate Judge,
Sub Court for Land-Grabbing,
Thiruvallur.
3. The Inspector of Police,
District Crime Branch,
Thiruvallur District.
4. The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.5843 of 2020
and
Crl.M.P.No.3320 of 2020

GPL(CO)
UMA(13/07/2022)