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CrI.O.P.No.6175 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

CrI.O.P.No.6175 of 2021 and
CrI.M.P.No.4077 of 2021

M.Murugan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Inspector of Police,
Team-27, Central Crime Branch,
Veppery, Chennai – 8.
(Crime No.9 of 2020)

2.Mr.P.Jothi

...

Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the impugned FIR, registered in Crime No.9 of 2020, on the file of the 1st respondent police, in so far as the petitioner / 5th accused is concerned.

For Petitioner : Mr.R.Veeramani

For Respondents : Mr.A.Damodaran,

Additional Public Prosecutor for R1

: Mr.R.Krishnasamy for R2



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ORDER

This Criminal Original Petition has been preferred to call for the records and to quash the impugned FIR registered in Crime No.9 of 2020, on the file of the 1st respondent police, in so far as the petitioner / 5th accused is concerned.

2. Heard Mr.R.Veeramani, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent and Mr.R.Krishnasamy, learned counsel for the second respondent.

3. The defacto complainant is the father of the first accused. The second accused is the wife of the first accused. The third accused is the son of the first accused. The fifth accused is the agreement holder in respect of the disputed property. The said agreement has been executed by the first accused in favour of the fifth accused. As per the case of the prosecution, the defacto complainant being the absolute owner of the disputed property was in enjoyment of the same. The property was allotted to the share of the second respondent in a family partition. The defacto complainant has settled the above said property in favour of his daughters viz., Anandhi, Meera and Uma. The



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first accused who is the son of the defacto complainant had settled the very same property in favour of his wife / second accused, despite knowing that he did not have any title in the property. Thereafter, A1 colluded with A2 and A3 and with the arrangement made by A6, they entered into a sale agreement with the petitioner / fifth accused to sell the property in favour of the petitioner / fifth accused for a sale consideration of Rs.10,00,00,000/-. On the above allegations, a case has been registered in Crime No.9 of 2020, against the accused persons.

4. The learned counsel for the petitioner submitted that the petitioner / fifth accused is an innocent purchaser who had entered into a sale agreement by believing that his vendors have title in respect of the disputed property; since the dispute is only between the defacto complainant and his son, the petitioner can in no way be impleaded in the complaint given by the second respondent.

5. The dispute between the defacto complainant and his son in respect of the disputed property can be civil in nature, but the defacto complainant has alleged that his son had criminal intention to create documents in favour of his



wife by knowing very well that he did not have any title in respect of the disputed property; so far as the petitioner / fifth accused is concerned, he is a third party and he is not the family member of the defacto complainant and he had not entered into any family settlement with the defacto complainant. Since the partition between the defacto complainant and the first accused is said to be an oral partition, the facts about the partition can only be within the knowledge of the defacto complainant and the accused or any of the family members. The fifth accused is the outsider and he cannot be aware of the partition deed unless it is a registered one.

6. So far as the petitioner / fifth accused is concerned, he had entered into an agreement with the first accused by believing that he would have had a valid title. If the first accused does not have any valid title and he had received money from the petitioner / fifth accused, that will affect the interest of the petitioner / fifth accused as well. In any case, the petitioner / fifth accused who is also an aggrieved person, cannot be arrayed as an accused, though he could have been considered as a witness. In fact, the Bank statement of the petitioner / fifth accused would also show that he has paid advance amount in pursuance of the alleged sale agreement. So the defacto complainant can maintain his



case by alleging any criminal intention only against his son or any of his family members and not against an outsider / petitioner who is not a party to the alleged oral partition.

7. Since there is no *prima facie* materials available on record to show that the petitioner / fifth accused have any criminal intention to enter into a sale agreement with the first accused in respect of the disputed property, I find no reason to implead him as the accused in this case. It is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others, reported in 1992 Supp (1) Supreme Court Cases 335***, as shown under:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2)



of the Code;

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(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;



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(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

8. The facts of this case would show that no case is made out against the petitioner and hence it is an appropriate case where this Court can invoke its powers under Section 482 of Cr.P.C. to quash the proceedings as against the petitioner / fifth accused.

9. In the result, this Criminal Original Petition is allowed and the FIR in Crime No.9 of 2020, on the file of the 1st respondent police is quashed as against the petitioner / fifth accused. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking / Non Speaking Order
gsk

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R.N.MANJULA, J.

gsk

To

- 1.The Inspector of Police,
Team-27, Central Crime Branch,
Veppery, Chennai – 8.
- 2.The Public Prosecutor,
High Court of Madras.

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