



Crl.O.P.No.14303 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.14303 of 2020
and Crl.M.P.No.5457 of 2020

Rafi Ahamed

...Petitioner

-Vs-

1. V.Palanivelu
2. M.Karthikeyan
3. Abdul Razack

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the order dated 02.04.2019 in Cr.M.P.No.3165 of 2018 in C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.I, Mayiladuthurai.

For Petitioner : Mr.N.A.Nassir Hussain

For Respondents

For R1 : Mr.K.Subburam

For R2 & R3 : No appearance

ORDER

This petition has been filed to quash the order dated 02.04.2019 passed in Cr.M.P.No.3165 of 2018 in C.C.No.148 of 2019 on the file of the learned Judicial Magistrate No.I, Mayiladuthurai, thereby



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taken cognizance of the complaint lodged by the first respondent under Section 200 of Cr.P.C., in C.C.No.148 of 2019 on his file.

2. The first respondent lodged complaint alleging that the accused persons had registered a Society in the name of Nachimuthu Nagar Kudiyrupoor Nala Sangam before the District Registrar, Mayiladuthurai vide registration No.114/2013 on 21.10.2013. They also filed a suit as against the first respondent on the file of the Principal District Munsif Court to grab his property and succeeded in their attempt thereby causing mental agony and financial loss. Further alleged that the association is a fake association and created by false and fabricated documents and 27 members were enrolled in the society without their consent and one such member had given complaint that false office address had been given while registering the society.

3. On the said complaint, the learned Magistrate examined P.W.1 & P.W.2 and P.W.3 in part and has taken cognizance for the offences under Sections 463, 409, 177, 191 of IPC and Sections 47, 48 of Tamil Nadu Societies Registration Act r/w Section 192 of IPC and issued



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summon to the petitioner. Aggrieved by the same, the petitioner filed this present petition with the above said prayer.

4. The learned counsel appearing for the petitioner would submit that one of the member of the Society viz., Treasurer was examined as P.W.3 and on the document produced by P.W.3, the learned Magistrate had taken cognizance. It is a violation of his constitutional right enshrined under Article 20(3) of the Constitution of India. He further submitted that in respect of the subject property, which is alleged to have been forged and fabricated by the petitioner's association, declared in favour of the petitioner's association and the same is confirmed by this Court in S.A.No.794 of 2019 by the judgment dated 24.01.2022.

4.1. He further submitted that to take cognizance for the offence under Sections 47 & 48 of the Tamil Nadu Societies Registration Act, the first respondent ought to have obtained sanction to prosecute the petitioner herein. Without obtaining any sanction, the present complaint has been foisted as against the petitioner and the learned Magistrate



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without considering the facts and circumstances, mechanically had taken cognizance and issued summon. Therefore, he prayed to quash the entire proceedings.

5. Per contra, the learned counsel appearing for the first respondent/complainant submitted that the only ground raised by the petitioner is that one of the member viz., Treasurer of Association called Nachimuthu Nagar Kudiyirupoor Nala Sangam, was examined as one of the witnesses and on the document produced by him, the learned Magistrate had taken cognizance and it is violation of Article 20(3) of the Constitution of India. He also drawn the attention of this Court to the order passed by the learned Magistrate that P.W.3 was partly examined and his proof affidavit was not taken considered as alleged by the petitioner herein.

5.1. That apart, the petitioner produced false document while registration of the association and also without consent of the members, he himself added the persons who are not interested to join as member in the association. Therefore, he produced false document as if the members



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paid the subscription fee. Therefore, there are specific averments to attract the offence as such, the learned Magistrate has taken cognizance to prosecute the petitioner herein. He further submitted that all the grounds raised by the petitioner cannot be considered herein under Section 482 of Cr.P.C., since all are mixed question of facts and it can be considered only during trial before the Trial Court. Hence, he prayed for dismissal of this petition.

6. Heard Mr.N.A.Nassir Hussain, learned counsel appearing for the petitioner and Mr.K.Subburam, learned counsel appearing for the first respondent.

7. There are totally three accused in which, the petitioner is arrayed as A2. The first respondent lodged complaint and the same has been taken cognizance by the learned Magistrate by the impugned order dated 02.04.2019 in Cr.M.P.No.3165 of 2018, for the offences under Sections 463, 409, 177, 191 of IPC and Sections 47, 48 of Tamil Nadu Societies Registration Act r/w Section 192 of IPC and issued summon to the petitioner. Aggrieved by the same, the petitioner filed the present petition before this Court.



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8. The crux of the allegation made in the complaint is that the petitioner and the second respondent had registered a society by name Nachimuthu Nagar Kudiyrupoor Nala Sangam bearing Reg. No.114/13 on 21.10.2013 and filed a suit against the first respondent on the file of the Principal District Munsif Court to grab his property and succeeded in their attempt thereby causing mental agony and financial loss. It is further alleged that the association is a fake association created by false and fabricated documents and that 27 members were enrolled in the society without their consent and one such member had given complaint that false office address had been given by the petitioner. All the allegations are bald and vague and there is no *prima facie* case to constitute any of the offence as alleged by the first respondent.

9. The petitioner is the Secretary of Nachimuthu Nagar Kudiyrupoor Nala Sangam, Mayiladuthurai. The said association filed suit for permanent injunction, restraining the first respondent herein and others from encroaching or making any construction in the suit common property. The said suit was decreed in O.S.No.265 of 2013 on the file of the Principal District Munsif Court, Mayiladuthurai. Aggrieved by the



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same, the first respondent and others preferred an Appeal Suit in A.S.No.71 of 2017 on the file of the Principal Sub Court, Mayiladuthurai and the same was allowed by reversing the judgment passed by the trial Court. Aggrieved by the same the petitioner's association filed a Second Appeal before this Court in S.A.No.794 of 2019 and same was allowed by confirming the judgment and decree passed by the trial Court, thereby restrained the first respondent and other from encroaching or making any construction in the suit property.

10. Originally, the property owned by one Nachimuthu Mudaliar and he formed a layout. It was duly approved by the Deputy Director of Town Planning, Trichy and also Mayiladuthurai Municipality. As per the approval, the subject property ad measuring 11,200 sq.ft., was demarcated for public purpose. Thereafter, as per the approved layout so many persons purchased their respective plots and constructed houses. After demise of the said Nachimuthu Mudaliar, his legal heirs sold out the portion of the land, which was demarcated for public purpose, in favour of the first respondent herein.



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11. The first respondent had taken a stand that though the subject property was allotted for public purpose, it was not utilized for that purpose, for which it was allotted, within three years as such, the person who formed the layout, got every right to sell away the property. Admittedly, it is approved layout and all the persons who purchased their respective plots, had constructed their houses. Thereafter, on the partition deed executed among the family members of the said Nachimuthu Mudaliar, the subject property was sold out in favour of the first respondent.

12. However, the subject property cannot be subjected for partition and the trial Court rightly held that the sale deed which was produced by the first respondent cannot be considered as legal document. Therefore, the first respondent cannot take a stand that the association formed by the petitioner only with an intention to grab the first respondent's property. Therefore, there is absolutely no question of fabrication of document or forging of signature committed by the petitioner or other accused persons.



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13. Insofar as the other offences under Sections 47 & 48 of the

Tamil Nadu Societies Registration Act are concerned, as rightly pointed out by the learned counsel appearing for the petitioner, the first respondent ought to have obtained prior sanction as contemplated under Section 52 (2) of Tamil Nadu Societies Registration Act. It is relevant to extract the said Section as follows:-

“ 52 Powers of Inspector General of Registration:-

(2) No prosecution shall be instituted under this Act without the previous sanction in writing of the Inspector General of Registration.”

Accordingly, without previous sanction in writing of the Inspector General of Registration, not below the rank of Deputy General of Registration, no prosecution shall be instituted under the Tamil Nadu Societies Registration Act.

14. Admittedly, the first respondent failed to get any prior sanction to prosecute the petitioner's association and others for the offences under Section 47 & 48 of the Tamil Nadu Societies Registration Act. Therefore, the entire complaint is nothing but clear abuse of process of law, since no offence is made out as against any of the accused in the present complaint. If at all any grievances over the formation of the



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association and other issues, the first respondent can very well institute a suit before the civil Court.

15. In view of the above discussions, the entire complaint is nothing but clear abuse of process of law and it cannot be sustained as against the accused persons and it is liable to be quashed. Accordingly the impugned order dated 02.04.2019 passed by the learned Judicial Magistrate No.I, Mayiladuthurai, in Cr.M.P.No.3165 of 2018 in C.C.No.148 of 2019 is hereby quashed.

16. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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WEB COPY

To

1.The Judicial Magistrate No.I,
Mayiladuthurai



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G.K.ILANTHIRAIYAN. J.

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