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Crl.O.P.No.14420 of 2019
and
Crl.M.P.No.7015 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.10.2022

Pronounced on :03.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.14420 of 2019
and
Crl.M.P.No.7015 of 2019

1.V.Packirisamy

2.V.Narayanasamy

.. Petitioners/Accused 1 and 2

/versus/

1.The State Rep by
The Inspector of Police,
Anti Land Grabbing Special Cell,
Nagapattinam.

2.Ganeshamoorthi

..Respondents/Respondents

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the FIR in Crime No.4 of 2019 on the file of the respondent police and quash the same.



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For Petitioners :Mr.Dr.A.Thiyagarajan,
Senior Counsel
for Mr.Ramakrishnan
For Respondents :Mr.N.S.Suganthan
Government Advocate (Crl.Side) for R1
Mr.P.Vijendran for R2

ORDER

The petitioners herein are sons of late Vasudeva Pillai. The second respondent herein filed a petition under Section 482 of Cr.P.C before this Court to direct the first respondent to register his complaint. Accordingly, the complaint came to be registered in Crime No.4/2019 by the first respondent and taken up for investigation.

2. In the said complaint, it is alleged that 7.38 acres of valuable agricultural land belongs to the Village Temple was fraudulently been exchanged for useless land through a registered exchange deed dated 28/12/1963. This fraudulent exchange of land was done by the then Mirasu of the Village Ayyasamy, who also happened to be the Dharmakarthha of the



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Village Temple, without knowledge of the villagers. After exchanging the valuable land as worthless waste land, the said Ayyasamy died handing over the land to his family members. In the year 2001, the family members of Ayyasamy effected partition of the temple land and got in exchange along with other properties left behind by Ayyasamy. Under the said partition deed, the temple land got in exchange was allotted to one Kannadasan, S/o Ayyasamy. The said Kannadasan, after executing a General Power of Attorney in favour of his cousin Mr.Pakkirisamy, S/o Vasudeva Pillai died. Mr.Pakkirisamy has sold a portion of the property to one Narayanasamy. Further, Mr.Pakkirisamy, his wife Mangalam, Rajeshwari and Geethanjali both daughters of late Kannadasan had sold the properties to various 3rd parties. Thus, the temple land been by act of fraud been grabbed by the petitioners thereby they have committed offences under Section 406, 420, 465 and 471 IPC.



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3. In this petition to quash the above complaint, it is stated that the complaint is made out of ill motive by the second respondent to wreck his personal vengeance against the petitioners. Being aggrieved by the action taken by them against one Mariyappan for land grabbing, listing out litigations and complaints against the 2nd respondent and his relatives for act of malfeasance, the petitioners had stated that the allegation of breach of trust, cheating, forgery and fabrication of documents are baseless and entire reading of the complaint alleging fraud in the deed of exchange registered 55 years ago by the grand father of the petitioners *per se* cannot be mulched on the petitioners, who were hardly 7 years and 5 years old respectively when the exchange deed was executed and acted upon.

4. With the same allegation and relief, the second respondent filed a suit against the petitioners in O.S.No.277/2017 before the District Munsif Court Sirkazhi. The said plaint was rejected. After rejection of the suit, suppressing all the facts adverse to the second respondent, the criminal



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complaint came to be registered through an order of the High Court. The malice in lodging the complaint, after failed in the attempt to succeed in the civil proceedings explicitly seen from the conduct of the second respondent. Hence, the criminal prosecution is liable to be quashed.

5. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the *mens rea* to commit the criminal of breach of trust, cheating, forgery and fabrication of document could be implicitly seen from the partition deed of the year 2001 and the subsequent sale deeds. The transactions in question were done with full knowledge that the valuable temple land taken in exchange by fraud and the same been sold without any valid title. The petitioners, who are beneficiary of the fraudulent exchange deed cannot be exonerated from prosecution. The learned counsel for the second respondent further submitted that this is not a civil dispute and given criminal colour, but an exclusive case of temple land grabbing by deceit. While the temple land taken by Ayyasamy is today



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worth several crores of rupees, the land given to the temple is almost barren and yield nothing.

6. Reading the meaning of the latin term “mens rea” from Law Lexicons and Law Dictionary, the learned counsel submitted, in this case with criminal intention to perfect the defective title derived through the fraudulent exchange deed the petitioners have indulged in transferring the property by creating multiple encumbrances so that the tracing and recovery of the temple land will become difficult.

7. The learned counsel for the second respondent further to buttress the point that the Court should sparingly exercise its power under Section 482 Cr.P.C to quash FIR and even a *prima facie* case of criminal intent is sufficient to maintain the complaint of land grabbing, relied upon the following judgments.

(a)Kaptan Singh –vs- State of Uttar Pradesh and



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another: [(2021)9 Supreme Court Cases 35];

(b) Arnab Manoharanjan Goswami –vs- State of Maharashtra and others: [(2021)3 SCC 427];

(c) R.Kalyani –vs- Janak C. Mehta and others: [(2009)1 SCC 516];

(d) Monica Kumar (Dr.) and another –vs- State of Uttar Pradesh and others: [(2008) 8 SCC 781];

(e) State of Haryana –vs- Bhajan laland others: [1992 Suppl (1) SCC 335]; and

(f) R.P.Kapoor –vs- State of Punjab: [CDJ 1960 SC 166].

8. Heard the counsels and records perused.

9. The allegation in the impugned complaint is that in the year 1963, much valuable property of the temple was taken in exchange for a less valuable property held by Ayyasamy. This allegation is the foundation for the complaint lodged after 55 years of the exchange deed. However, in the exchange deed dated 28/12/1963 and registered as document No: 3/1964 at Sub Registrar Office, Mayavarum clearly speaks about the location and



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nature of the land held by the temple and the nature of the land given to the temple in exchange of the land. As per the exchange deed, the 'A' schedule land held by the temple and the 'B' schedule land given in exchange to it owned by Ayyasamy Pillai were of equal value (Rs.3500/-). The land held by the temple being not fit for cultivation and requires huge investment to make it cultivable and derive income out of it, Ayyasamy being the Hereditary Trustee of the temple had given his land in exchange to temple to derive income. The recital *prima facie* indicates, the exchange was made with bonafide intention and the same not questioned by anyone including the HR & CE Department till O.S.No.277/2017 filed by one Mariappan, the uncle of the 2nd respondent seeking declaration that the subject land belongs to the temple. This suit apparently filed in retaliation to the registration of the complaint in Crime No.11/2016 given against Mariyappan regarding his settlement deed executed in favour of his son in respect of 9 acres land as fraudulent document. Later, as per the direction of the High Court, the said Mariyappan has cancelled this settlement deed on 14/12//2017. Also, the



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records reveals that the suit in O.S.No.277/2017 filed to declare the land held by the petitioners as property of the temple been rejected by the District Munsif Court on 12/10/2018 holding that, without making any representation or complaint to the HR & CE Department regarding the alleged fraud in exchanging the temple property or without arraying the HR & CE Department as necessary and proper party, there is no cause of action to maintain the suit.

10. The complaint in Crime No.4/2019 happened to be registered pursuant to the direction of this Court passed in Crl.O.P.No.3731/2018 dated 08/02/2018. Though the High Court has directed the respondent police to enquiry and register the complaint, if any commission of cognizable offence is made out from the complaint, mechanically, the the complaint has been registered. The FIR does not indicate any preliminary enquiry conducted before registering the FIR. While the alleged fraud is attributed in relation to a document executed 55 years ago and against a person dead long



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ago, the first respondent police had not applied its mind before registering the FIR, how the petitioners, who are grand children of the said Ayyasamy can be prosecuted for alleged offences for breach of trust or cheating without ascertaining the veracity of the facts mentioned in the complaint.

11. Apparently, the property alleged to have been grabbed was given by the temple in exchange of other property. That property is still in possession and enjoyment of the temple. The temple property register maintained by the HR & CE Department has recorded the exchange of property in the year 1963 and reaping the benefit of the property taken in exchange. While so, because due to improvement made by the forefathers of the petitioners by investing in the land which they got in exchange and due to other logistic factors, the value of the land got in exchange might have increased by efflux of time, this cannot be reason to suspect the exchange deed a fraudulent document.



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12. The complaint does not disclose any cognizable offence. The allegation that cognizable offence committed 55 years ago by a person who died long ago is an imaginary and illusionary allegation invented by a disgruntled person. The allegations had been already tested by a Civil Court in O.S.No.277/2017 initiated at the behest of the second respondent and got rejected. Suppressing this fact, the complaint had been made and the same registered without proper preliminary investigation, which is necessary and mandated in the order of this Court dated 08/02/2018 following the dictum laid by the Hon'ble Supreme Court in ***Lalitha Kumari's case***. For this reason also the impugned First Information Report is liable to be quashed apart from the fact that the complaint by the third party in connection with the document executed 55 years back and acted upon by the parties concern is purely manifestation and outcome of malice.



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13. Hence, **this Criminal Original Petition is allowed.** The complaint in Crime No.4/2019 registered on 06/01/2019 by the first respondent police is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

03.11.2022

Index:yes/no
speaking order/non speaking order
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To :

1.The Inspector of Police,
Anti Land Grabbing Special Cell,
Nagapattinam.

2.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.



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Delivery Order made in
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