



Crl.O.P.Nos.15622 and 28742 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.15622 and 28742 of 2019

and

Crl.M.P.Nos.7768 & 15353 of 2019

1.S.Gokilam
2.S.Kumaran
3.G.Kiruthika
4.G.Sreemathi
5.M.Sivanandham

... Petitioner in Crl.O.P.No.15622 of 2019

Gunasekaran

... Petitioner in Crl.O.P.No.28742 of 2019

-Vs.-

1.State rep by,
Inspector of Police,
District Crime Branch,
Namakkal District
(Crime No.9 of 2019)

2.Sinkaram

.. Respondents in both Crl.OPs



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Prayer in Crl.O.P.No.15622 of 2019:

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in Crime No.9 of 2019 on the file of the Inspector of Police, District Crime Branch, Namakkal District and quash all the proceedings in Crime No.9 of 2019 on the file of the first respondent police.

Prayer in Crl.O.P.No.28742 of 2019:

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.110 of 2019 on the file of the Inspector of Police, District Crime Branch, Namakkal District and quash all the proceedings in C.C.No.110 of 2019 on the file of the District Munsif cum Judicial Magistrate, Paramathy, Namakkal District.

For Petitioners
in both Crl.OPs

:Mr.S.Shanmuga Velayudham,
Senior Counsel
for Mr.B.Vasudevan

For Respondent
in both Crl.OPs

:Mr.N.S.Suganthan,
Government Advocate (Criminal side)
for R1

Mr.Deepan Uday for R2



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COMMON ORDER

This is a classic case of abuse of process of law and misuse of inherent power vested with the High Court under Section 482 Cr.P.C, to force the Investigating Agency to register the complaint, which is not worth investigation and purely a dispute civil in nature.

2. The brief background of the case is that Kesava Sankara Muniyappa Mudhaliyar died on 01.04.2002 leaving behind three sons and one daughter and substantially worth of immovable property in Kabilakkurichi Village. The male descendants of Kesava Sankara Muniyappa Mudhaliyar had entered into the partition deed among themselves and got it registered on 23.06.2008. The recital in the partition deed indicates that even during the lifetime of Kesava Sankara Muniyappa Mudhaliyar, there was oral partition among his sons and accordingly the property of Kesava Sankara Muniyappa Mudhaliyar has been divided among the three sons and the same is reduced into writing through this partition deed. Alleging that Gokilam/daughter of the deceased Kesava



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Sankara Muniyappa Mudhaliyar, who have no right or share in the property left by Kesava Sankara Muniyappa Mudhaliyar, had created a gift deed dated 26.09.2016, settling 1/4th share of the property in favour of her daughter fraudulently. The said document dated 26.09.2016 is an outcome of conspiracy to cheat the real title holders of the property namely the *de facto* complainant and his brothers, who are the male descendants of Kesava Sankara Muniyappa Mudhaliyar, through fabrication of records and documents.

3. This complaint was registered in FIR No.9 of 2019 by District Crime Branch on 06.04.2019. On receipt of summons, the five accused, who are petitioners in Crl.O.P.No.15622 of 2019, had filed a quash petition and the same was entertained by this Court and an interim stay of further investigation was granted on 19.06.2019. However, the first respondent police, with all alacrity, had completed the investigation and alleged to have prepare the final report on 19.06.2019 (day on which the stay was granted) and filed it before the learned Judicial Magistrate on 24.06.2019 after the grant of interim stay of further proceedings.



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4. In the final report apart from the aforesaid five petitioners, who are shown as A1 to A5, one Gunasekaran, who is the petitioner in Crl.O.P.No.28742 of 2019, has also been arrayed as A6. The said Gunasekaran had preferred a petition in Crl.O.P.No.28742 of 2019 to quash the criminal case in C.C.No.110 of 2019 pending on the file of the learned District Munsif cum Judicial Magistrate, Paramathy, pursuant to the final report in Crime No.9 of 2019.

5. The learner Senior counsel appearing for the petitioner in both the petitions at the outset submitted that undue alacrity shown by the Investigating Officer in this case in filing a final report, in spite of interim stay, would clearly show not only the non-application of mind towards the complaint but also the perversity. The fact, which has been not disclosed by the complainant, ought to have been properly investigated by the Investigating Officer before filing the final report.



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6. The learned counsel further contended that the very fact that the *de facto* complaint had claims right over the property of Kesava Sankara Muniyappa Mudhaliyar, who died intestate, is based on the alleged partition deed. The said partition deed is not between all the legal heirs of the deceased person, who died intestate. The petitioners herein are one of the legal heirs and descendants of the deceased person, who died intestate leaving behind property, which is the subject matter of a civil dispute pending. Regarding the settlement deed executed by the first accused/Gokilam in favour of her daughter/Shrimati/fourth accused, the *de facto* complainant has already insisted a suit to declare settlement deed as void and the said suit is pending in O.S.No.33 of 2017. There is another suit filed against this petitioners by the *de facto* complainant and others for mandatory injunction not to issue Patta to the petitioners and the same is pending in O.S.No.128 of 2017.

7. While so, suppressing the facts that the matter is purely of a dispute, which is civil in nature and the civil suits are pending between the



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parties, a criminal complaint has been filed against the ostensible co-owners as if they forged the documents and committed the offence of cheating.

8. This is a civil dispute over title between the descendants of Kesava Sankara Muniyappa Mudhaliyar and the matter already been seized by the Civil Court. The final report is alleged have been filed obviously without proper investigation, when the investigation been stayed by this Court by an order dated 19.06.2019. Therefore, the facts of the cases squarely fall under the parameters laid down by Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal* reported in *1992 Supp (1) SCC 335*. A pure civil dispute between the siblings of Kesava Sankara Muniyappa Mudhaliyar regarding title of the property has been given a criminal colour to harass the co-owners.

9. In view of the above, these Criminal Original Petitions are allowed. Accordingly, the FIR.No.9 of 2019 is quashed. Consequently



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C.C.No.110 of 2019 filed, despite of interim stay granted by this Court, is also quashed. The connected miscellaneous petitions are also closed.

02.11.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa

To

- 1.The District Munsif cum Judicial Magistrate,
Paramathy,
Namakkal District.
- 2.The Inspector of Police,
District Crime Branch,
Namakkal District
(Crime No.9 of 2019)
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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