



Crl.O.P.No.18397 of 2019
and
Crl.M.P.No.9326 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.09.2022

Pronounced on :27.09.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.18397 of 2019

and

Crl.M.P.No.9326 of 2019

1.Karuppasamy
2.Arumugam
3.Saravanakumar
4.Vanitharani
5.Suresh Kumar

.. Petitioners

/versus/

1.State rep.by:-
Sub Inspector of Police,
District Crime Branch,
Erode.

2.S.Hari Kumaran

.. Respondents



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Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records FIR in Crime No.1 of 2018 on the file of the Sub Inspector of Police, District Crime Branch, Erode and quash the same.

For Petitioners :Mr.B.Hari Krishnan

For Respondents :Mr.N.S.Suganthan
Govt.Advocate (Crl.Side) for R1

Mr.K.Myilsamy for R2

ORDER

This Criminal Original Petition to quash the First Information Report in Crime No.1 of 2018 on the file of the first respondent police is by the accused 4 to 8.

2. The petitioners plead that the impugned complaint was registered and taken up for investigation on the direction of the High Court based on the petition filed by the 2nd respondent suppressing facts and with



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malicious intention. The title dispute regarding the subject property is pending before the Civil Court and the parties are agitating their respective rights. While so, the criminal complaint was registered as per the direction of the High Court in a petition filed by the defacto complainant S.Hari Kumaran behind their back without causing notice to them. Alleging that the criminal complaint came to be registered by abusing the process of law with malafide intention, to harass the petitioners and to avoid facing the trial before the Civil Court where the disputed property is seized and under trial.

3. The learned counsel appearing for the 2nd respondent/defacto complainant submitted that this is a clear case of land grabbing. By fabricating the documents, suppressing the Court auction sale and dismissal of the earlier suit, recording compromise, the documents were fabricated and got registered by impersonisation and by forgery, as if the persons, who were dead, had executed the sale deeds dated 14/06/2013 and 08/09/2015. In spite of complaint to the Land Grabbing Cell, there was no progress in the



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investigation. Hence, the defacto complainant approached the High Court for registration of the complaint and investigate the same. Thus, Crime No.1 of 2018 came to be registered against the petitioners and others for offences under Sections 120-B, 420, 467, 468 and 471 IPC on 23/01/2018. Later, when the investigation did not progress, the second respondent filed Crl.O.P.No.5343/2019, for direction to the first respondent police to complete the investigation and file final report. This Court, vide order dated 28/02/2019 directed the first respondent to complete the investigation and file Final Report within 6 months. The first respondent sought extension of time to complete the investigation in their petition in Crl.M.P.No.10705/2019 and the same was allowed on 05/08/2019, granting 6 more months to complete the investigation and file the Final Report. Accordingly, on completion of the investigation, the first respondent has filed the Final Report before the Judicial Magistrate and the same has been taken on file in C.C.No.13/2022. Therefore, the petition to quash the FIR has become infructuous and to be dismissed.



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4. The First Respondent through the Sub-Inspector of Police has filed Status Report, wherein it is stated that, on the direction of the High Court the criminal complaint was registered in Crime No.1/2018. The interim stay of investigation of Crime No.1/2018 granted by the High Court in Crl.M.P.No.9326/2019 in Crl.O.P.No.18397/2019 on 12/07/2019 was not extended after 8 weeks. The defacto complainant filed Crl.O.P. No.5343/2019 to expedite the investigation and file report within the time prescribed. Therefore, on the direction of the High Court the Final Report was filed on 04/02/2020.

5. The learned Counsel for the petitioner Mr.B.Hari Krishnan, taking through the documents and the Orders passed by this Court and the Status Report highlighted, how the defacto complainant had abused the process of law by filing petitions seeking adverse orders against the petitioners suppressing the facts and the injunction order, without impleading them as party respondent. Also, how the petitioners are



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prejudiced by the suppression of pending civil suits and behind their back, the orders were obtained to register the criminal case and to expedite the investigation.

6. The property in dispute is the ancestral property of one Palani Gounder, who died intestate in the year 1985. He had three sons. They shared the property equally. The petitioners 3 and 4 are the purchasers of the property from Kuppusamy and others, who are legal heirs of Subramaniam, one of the descendants of Palani Gounder. While so, the defacto complainant claiming title over the property through one Ramasamy Gounder the auction purchaser of the property in E.P.No.236/1982, had initiated a civil suit in O.S. No.13/2018 on the file of learned District Munsif Court, Avinashi for declaration that the sale deeds dated 14/06/2013 and 08/09/2015 registered in favour of the petitioners are null and void. This suit was filed subsequent to the suit filed by the petitioner 3 and 4 in O.S.No.193/2017 for permanent injunction.



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7. The complaint, which was sought to be registered through the intervention of the High Court exercising the power under Section 482 of Cr.P.C deliberately does not disclose the pendency of the civil suits. To avoid exposure of the deliberate act of suppression, the 2nd respondent has not arrayed the accused as respondent for the Court to cause notice to them and hear them. The suppression of the pendency of civil suits for same cause of action and non arraigning the proposed accused in the direction petition to register the case, on the face of the record amounts to abuse of process of law. Further, when order in Crl.M.P.No.10705/2019 dated 05/08/2019 in the second petition Crl.O.P.No.5343/2019 filed by the respondents to expedite the investigation passed the order in Crl.M.P.No.9326/2019 in Crl.O.P.No.18397/2019 dated 12/07/2019 for stay of all further investigation in Cr.No.1/2018 was in force. Neither the defacto complainant nor the investigating officer had informed this Court that this Court has granted stay of further investigation of the complaint in Cr.No.1/2018 pending disposal of the Criminal Original Petition, when



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Crl.M.P.No.10705/2019 came up for extension of time to the investigation and file Final Report.

8. While the fact being so, in the Status Report filed by the Sub Inspector of Police attached to the first respondent Special Cell, she without any compunction and shy of falsehood has stated at paragraph 9, that the interim stay of further investigation in Crl.O.P.No.18397/2019 dated 12/07/2019 not extended. Whereas the stay of further investigation granted by this Court was in force till the disposal of this Criminal Original Petition.

9. For reference, the relevant part of the interim order is extracted below:-

“ 3. There shall be an order of interim stay of all further investigation in Crime No: 1/2018 on the file of the Sub-Inspector of Police, District Crime Branch, Erode, pending disposal of the Criminal Original Petition”.



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10. The disheartening part of the episode is that the interim stay of all further investigation till the disposal of this Criminal Original Petition as well as the order extending time to file final report was passed by one and the same learned Judge. The miscarriage of justice was due to wanton mischief of suppression of fact. The mischief monger, undoubtedly the defacto complainant/the second respondent herein, who knowing fully well that the dispute is purely and fundamentally civil in nature and if the entire facts are placed before the Court, the Court would be hesitant to exercise its inherent power under Section 482 Cr.P.C in reverence to the dictum of the Constitutional Bench judgement of the Hon'ble Supreme Court rendered in *Bhajanlal* case, had abused the process of law left, right and centre to an extend of getting orders behind back by suppressing the facts.

11. The facts of the case demonstrates how the inherent power of the High Court is abused by persons like the second respondent, who is



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bend upon to prosecute the petitioners with malicious intention, by suppressing facts and getting orders behind the back, adverse to the persons accused of offence.

12. To avoid such miscarriage of justice, in future the Registry of the High Court shall ensure before numbering any petition under Section 482 Cr.P.C or under Articles 226/227 of the Constitution of India, if any direction is sought against persons, who may be prejudiced by an order passed in the petition, be arraigned as respondent or the petitioner should mention in the petition itself how and why they need not be arraigned as respondent and hearing them is not warranted.

13. For the reasons stated, this Court allow the petition and quash the complaint in Cr.No.1/2018, which has culminated in filing of final report dated 04/02/2020 and taken on file as C.C.No.13/2022 by the Special Court for Exclusive Trial of Land Grabbing Cases, Erode despite the fact



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that this Court on 12/07/2019 passed stay order in Crl.O.P.No.18397 of 2019. To deter the attitude of suppressing the facts, this Court impose a cost of Rs.15,000/- (Rupees Fifteen Thousand only), which has to be paid by the second respondent to petitioners 1 to 5 (each of the petitioners Rs.3,000/-) payable within seven days from the date of receipt of copy of this order.

14. In the result, ***this Criminal Original Petition is allowed.***

Consequently, connected Miscellaneous Petition is closed.

27.09.2022

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

- 1.The Sub Inspector of Police, District Crime Branch, Erode.
- 2.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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