



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.06.2022

PRONOUNCED ON :16.06.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NOS.20356 AND 22691 OF 2019

AND

CRL.M.P.NOS.10469 AND 11808 OF 2019

Cr1.O.P.No.20356 of 2019:

1.C.V.Subramanian

2.S.Ramani

.. Petitioners/
Accused 1 & 2 Nos.

/versus/

1.State rep.by
The Inspector of Police,
G-3, Kilpauk Police Station,
Chennai.

... 1st Respondent/Complainant

2.C.V.Manigandan

.. 2nd Respondent/
Defacto Complainant

Prayer:

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records in Crime No.148 of 2019 on the file of the 1st respondent and quash the same.

For Petitioners :Mr.S.Santhosh

For Respondents :Mr.N.S.Suganthan for R1
Mr.R.Rajasekaran for R2

Cr1.O.P.No.22691 of 2019:

M.Kannan

.. Petitioner/
Accused No.3



/versus/

1.State rep.by
The Inspector of Police,
G-3, Kilpauk Police Station,
Chennai.

... 1st Respondent/Complainant

2.C.V.Manigandan

.. 2nd Respondent/
Defacto Complainant

Prayer:

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records in Crime No.148 of 2019 on the file of the 1st respondent and quash the same.

For Petitioner	:Mr.S.Hajamohideen Gisthi
For Respondents	:Mr.N.S.Suganthan for R1
	Mr.R.Rajasekaran for R2

COMMON ORDER

These two petitions are filed to quash the First Information Report, which is pending on the file of the respondent police for investigation regarding the alleged offence punishable under Sections 117, 420, 465 and 468 of IPC.

2. The impugned First Information Report in Crime No.148/2019 came to be registered on 03/05/2019 on a complaint given by one Manikandan, who has alleged that, his brother C.V.Subramanian gave a false complaint dated 09/01/2019 to the Kilpauk Police Station stating that the original document No.846/1974 in respect of the property bearing survey Nos.865/24, 865/23 and 865/10 (presently corresponding to Door No.152, Narayanaguru Road, Choolai) lost on 20/10/2018. Based on this complaint, got a Non-Traceable Certificate from the police on 09/02/2019 to enable C.V.Subramanaiam (first petitioner in CrI.O.P.No. 20356/2019), S.Ramani (second petitioner in CrI.O.P.No.20356/2019) and Kannan (the petitioner in CrI.O.P.No. 22691/2019) to get the sale deeds executed by the petitioners in CrI.O.P.No.20356/2019 in favour of the petitioner in CrI.O.P.No.22691/2019, which was withheld by the Sub-Registrar, Purasaiwakkam for want of original parent document. While in fact, they know that the original document is in possession of the complainant and the same was given to his custody, since major portion of the property was allotted to him in the partition, pursuant to the compromise decree passed in



O.S.No.714/1996, dated 10/04/1996. The petitioners had committed the said alleged crime to get the sale deeds registered in respect of portion of the property, which was allotted to him and in his exclusive possession and enjoyment.

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3. The learned counsel appearing for C.V.Subramaniam and Ramani, who are the petitioners in Crl.O.P.No.20356/2019 submitted that, the petitioners are owners of the property which they have sold to Kannan (the petitioner in Crl.O.P.No.22691/2019) for valuable consideration and what they have alienated is the portion, they got under the partition deed. Though in the complaint, it is alleged that the suits are pending regarding the property, it does not disclose any particulars about it. Further, pendency of suit will not be a bar for the lawful owners to alienate the property, unless there is specific restraint order from the competent Court. He further submitted that, under the compromise deed the front portion of the building in the subject property (Door No.152/22) was allotted to the petitioners and rear portion of the building (Door No.152/23) allotted to the complainant/second respondent land to be held by them in common. The petitioners as lawful owners of the building and corresponding undivided share in the land, have every right to deal with the property. While so, with intention to grab their share, the complainant continuously making false claim. He went to the extent of filing suit seeking injunction against these petitioners not to alienate their share. The suit was dismissed and suppressing those facts, the impugned complaint is filed.

4. Regarding the allegation of obtaining Non-Traceable Certificate giving false declaration, which is subject matter of the impugned First Information Report, the learned counsel for the petitioners states that, the Non-Traceable Certificate was obtained bonafidely. The complaint does not disclose any cognizable offences. The respondent police has registered the First Information Report mechanically without proper enquiry by giving criminal colour to a civil dispute.

5. The learned counsel appearing for Kannan the petitioner in Crl.O.P.No.22691/2019, the purchaser of the property submits that, he is a bona fide purchaser of the property. The Non-Traceable Certificate was obtained by his vendor and he has no knowledge or role in lodging the complaint regarding loss of document or the declaration alleged to have been given by the vendor.

6. He relied upon an unreported judgement of this Court dated 31/03/2022 rendered in Lawrence -vs- State of Tamilnadu,



where this Court has quashed the final report as against the purchaser of the property from the power agent of the complainant. In that case, the owner of the property has alleged that his power agent transferred the property to the petitioner (Lawrence) without his knowledge and consent by misusing the power of attorney deed, thereby grabbed the property. The High Court on finding that, when the petitioner purchased the property, the power of attorney deed was in force and no civil proceedings initiated by the owner for rendition of accounts, the final report was quashed following the dictum laid by Supreme Court in State of Haryana and others -vs- Ch.Bhajan Lal and others reported in (AIR 1992 SC 604). Fact of this judgment is entirely different from the facts of the case under consideration.

7. As far as the facts of this case is concerned, there is a specific allegation that the complaint dated 20/10/2018 to the Kilpauk Police by the first accused alleging loss of document and the declaration were made falsely with knowledge that the original document is in possession of the complainant. Such a false complaint and declaration were made knowingly for the purpose of getting Non-Traceable Certificate in turn to create counter title over the share held by the complainant/ 2nd respondent herein.

8. On the face of the records, the petitioners are beneficiary of the Non-Traceable Certificate issued by the Kilpauk Police, based on the said complaint. By producing the Non-Traceable Certificate so obtained sale deeds kept pending by Registration department got released. The allegation is that through the said sale deeds, property owned by the complainant is included and sold. Whether this complaint was made with knowledge that the document was never in possession of the first accused and with any mens rea to commit fraud or cheating can be ascertained only in the investigation.

9. As a result, these Criminal Original Petitions filed to quash the First Information Report are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

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Sub Assistant Registrar



To:

1. The Inspector of Police, G-3,
Kilpauk Police Station,
Chennai.

2. The Public Prosecutor, High Court, Madras.

+1cc to Mr.S.Santhosh, Advocate, S.R.No.36687

+1cc to Mr.R.Rajasekaran, Advocate, S.R.No.35780

+2ccs to Mr.S.Hajamohideen Gisthi, Advocate, S.R.No.35730

Crl.O.P.Nos.20356 and 22691 of 2019
and

Crl.M.P.Nos.10469 and 11808 of 2019

MG(CO)
PM/22/06/2022