



Crl.RC.No.158 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2022

PRONOUNCED ON : 22.09.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.158 of 2022

and

Crl.M.P.No.1429 of 2022

- 1.Kunjumolbaby
- 2.Lizy Sebastian
- 3.Rachel Alexander
- 4.Elsy Robin
- 5.Gracy Thomas
- 6.Ponnamma Thomas
- 7.Prince Thomas
- 8.Nancy
- 9.A.A.Thomas
- 10.D.Kumar

Vs.

- 1.The State represented by
The Assistant Commissioner of Police,
Land Grabbing Cell II
C.C.B. Veppery, Chennai – 600007
- 2.Dr.Soundarapandian
(R2 impleaded as per order in Crl.M.P.No.2196 of 2022)

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in Crl.RC.No.158 of 2022 dated 21.02.2022

... Respondents

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records pertaining to the order made in Crl.M.P.No.4384 of 2020 in C.C.No.5108 of 2016 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai – 600008 dated 13.09.2021 and set aside the same.

For Petitioner : Mr.S.Selva Thirumurugan
For Respondent-1 : Mr.S.Sugendran
Additional Public Prosecutor
For Respondent-2 : Mr.A.Uma Sankar

ORDER

This Criminal Revision Case has been filed seeking to set aside order made in Crl.M.P.No.4384 of 2020 in C.C.No.5108 of 2016 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai – 600008 dated 13.09.2021.



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2. The respondent police registered the case in Crime No.322 of 2014 for the offences under Sections 420, 465, 467, 471, 447 read with 120(B) IPC against the petitioners based on the complaint given by the defacto complainant. The respondent police after investigation laid charge sheet before the Chief Metropolitan Magistrate, Egmore, Chennai, and the same was taken on file in C.C.No.5108 of 2016 and during pendency of the Calender Case, the petitioners herein had filed a petition before the learned Chief Metropolitan Magistrate, Egmore, Chennai, under Section 239 Cr.P.C. seeking to discharge them from the above said case. The learned Magistrate after giving opportunity to both the parties and considering the materials, dismissed the petition and declined to discharge them from the case. Aggrieved over the same, the petitioners have filed the present revision before this Court.

3. The learned counsel for the petitioners would submit that the case of



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the complainant is that the defacto complainant and his wife, his sons and daughters-in-law have purchased the immovable property of vacant land in Old S.No.20/2A Koyambedu Village No.106, Egmore-Nungambakkam Taluk, Chennai District, divided into Plot Nos.1 to 10 under various sale deeds in the year 1993 and 1994, from 10 person out of 10 sale deeds. Further, he would submit that the stand of the prosecution is that the land comprising in S.No.20/2A, Koyambedu Village was grabbed by the petitioners. Therefore, the charge sheet was filed against the petitioners for the above said offences. The learned counsel for the petitioners would submit that according to the “A” Register of Koyambedu dated 31.10.1962, Koyambedu Village is an “inam land”. The survey number (field number) of Koyambedu Vilage was 20. Subsequently, the said survey number 20 was further divided into 20/1, 20/2, 20/3, 20/4. Survey No.20/1 is referred as Canal; Survey No.20/2 contained the lands measuring 56 cents; Survey No.20/3 contained land measuring 58 cents and Survey No.20/4 contained land measuring to the total extent of 18 cents and all these lands except S.No.20/1 Canal are totally measuring to an extent 1.32 Acres, all these lands are referred to in the “A”



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Register as Grama Mirasudhar Gramathaar. A forged amended “A” Register of No.106 Koyambedu Village dated 01.06.1973 was manipulated and prepared by the defacto complainant Dr.Soundarapandian wherein, it was conveniently stated that S.No.20/2 measuring to an extent of 1.32 acres stood in the name of Sundararaja Mudaliar and the same was used by the said Dr.Soundarapandian in the civil suit also. Further he would submit that in the notification for acquisition under Section 4(1) of the land acquisition Act issued in G.O.R.No.1852 Labour (Housing) Department dated 09.09.1971 published in the Government Gazette of Tamilnadu on 06.10.1971, the lands comprised in S.No.20/2 measuring to an extent of 1.32 acres stood in the name of “Grama Mirasudar”. That apart, in the declaration issued under Section 6 of the Land Acquisition Act issued in G.O.Ms.No.890 Labour, Employment and Housing (housing) dated 21.09.1974, published in the Government Gazette of Tamil Nadu on 25.09.1974, the lands comprised in Survey No.20/2 measuring to an extent of 1.32 acres stood in the name of “Grama Mirasudhar”. The learned counsel for the petitioner would further submit that in the proceeding for withdrawal from acquisition of lands under



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Land Acquisition Act issued in letter No.50227/A/82-1 Housing and Urban Development dated 18.11.1982, the lands comprised in Survey No.20/2 measuring to an extent of .76 cents stood in the name of “Grama Mirasudar”. But the defacto complainant namely Dr.Soundarapandian was able to forge and fabricate the “A” Register No.106, Koyambedu Village dated 01.06.1973 wherein, it was conveniently stated that the Survey No.20/2 measuring to an extent 1.32 acres stood in the name of Sundararaja Mudaliar and the same was used by the said Dr.Soundarapandian in the Civil Suits also. Based on the fabricated “A” Register, the defacto complainant was able to obtain Patta in his name and he has alleged that innocent persons namely the petitioners herein had fabricated the documents to grab his land.

3 (a) The learned counsel for the petitioners would further submit that even as per the sale deed filed by the prosecution, the lands comprised under Old Survey No.20/2A, Koyambedu Village was originally owned by A.K.Sundararaja Mudaliar and his son Sampath and they having inherited the said land from one Kandasamy Mudaliar. Further, in the sale deed



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Doc.No.1640/1955, being one of the documents filed by the prosecution, it is stated as, the items in Survey Nos. 21/6, 21/2, 17/2 are the properties purchased by one Kandasamy Mudaliar and inherited by A.K.Sundaraja Mudaliar and his son Sampath. However, while narrating about the lands comprising in Survey No.20/2 measuring to an extent of .56 cents, it is stated that the same was mortgaged in favour of one Raju Oodayar and it is stated as if, the said money was repaid to Raju Oodayar from the sale consideration. The mortgage deed Doc.No.2231/1944 in respect of Survey No.20/2 has not been released till date. More over A.K.Sundaraja Mudaliar neither had any right to sell nor to mortgage the property in Suvery No.20/2, Koyambedu Village. Even as per the prosecution, the Doc.No.1640/1955, A.K.Sundarajara Mudaliar sold the entire property to and in favour of Tarapore and Company on 07.09.1955 itself and the said Sundararaja Mudaliar died on 10.09.1960 whereas, a fabricated “A” Register forged by Dr.Soundarapandian showed as if Patta was issued in respect of lands in Survey No.20/2 Koyambedu Village to an extent of 1.32 acres in favour of A.K.Sundarajara Mudaliar on 01.06.1973. This would be further clarified



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when the “A” Register of No.106 Koyambedu Village dated 31.10.1962 is perused would clearly reveal that after the registration of Doc. No.1640/1955 for all the Survey numbers sold to Tarapore, Patta has been changed in the name of Tarapore company. Whereas, the lands comprised in S.No.20/2, Patta remained as “Grama Mirasudar”. Hence, it is evidently clear that the case of the complainant has been founded on fabricated documents. He would further submit that there is absolutely no recital in the Doc.No.1640/1955 about the title in respect of the lands comprised in S.No.20/2 Koyambedu Village. The so called vendor A.K.Sundararaja Mudaliar and others were not mentioned as to how they obtained the title to the property conveyed to Tarapore and Company Brick Works. No Patta was produced by Soundarapandian to show that K.Sundararaja Mudaliar was in in possession of the said property conveyed to M/s.Tarapore Company.

3(b). The learned counsel for the petitioners would further submit that the defacto complainant and his family members filed writ petitions in W.P.No.27276/2004, W.P.No.27279/2004, W.P.No.27278/2004 and



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W.P.No.27277 of 2004 challenging the orders passed by the District Collector dated 01.06.2004 and for consequential relief not to disturb the peaceful possession and enjoyment of their respective house sites in Old Survey No.20/2A Koyambedu Village, before this Court wherein, they have stated that they had purchased house sites in Old Survey No.20/2A Koyambedu Village and the said property is a portion of a Vast landed property comprised in Survey No.20/2 Koyambedu Village to an extent of 1.32 cents derived by Sundararaja Mudaliar by way of Patta which had been issued by the settlement Tahsildar and the same was sold to the vendors of the deacto complainant and his family and there was a communication from the Tahsildar dated 24.12.2001 to the District Collector to change the entries in the revenue records and the order dated 01.06.2004 came to be challenged. The State, contended that the entire extent of 1.32 acres of land in Survey No.20/2 has been classified as Inam Nanjai and the sale deed of Sundararaja Mudaliar to and in favour of Tarapor Company is not valid and the portion of the land measuring to an extent of 0.56 cents comprising in S.No.20/2 was acquired for the formation of inner ring road and the award was passed by the Special



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Tahsildar (Land Acquisition). Subsequently, award was passed and compensation was paid to land owners. However, in respect of Survey No.20/2, award was not passed since the land was treated as Government Inam Land for which nobody is entitled to get any compensation. This Court by its order dated 15.11.2012 dismissed all the writ petitions giving liberty to the defacto complainant and his family members to approach proper Civil forum for remedy within a period of six months from the date of receipt of a copy of the said order. The defacto complainant had suppressed all the above said facts and the Investigating Officer had also knowingly suppressed the above fact. A mere perusal of the above mentioned paragraphs would clearly reveal that A.K.Sundararaja Mudaliar had no right to sell the property comprised in Survey No.20/2 Koyambedu Village and it would be evidently clear that the Patta stands in the name of Grama Mirasdar in respect of Survey No.20/2 measuring to an extent of 1.32 acres Koyambedu Village. In spite of production of the above orders of this Court categorically pointing out the guilt of the defacto complainant and the falsity of his complaint, the learned Chief Metropolitan Magistrate gravely failed to consider the same

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and dismissed the petition. He would further submit that in the sale deeds of the defacto complainant and his family members filed by the prosecution, a document namely a release deed dated 22.04.1968 was shown as the parent document in Doc.No.1726/1968 on the file of the sub-Registrar, Saidapet, Chennai – 600 015. However, the said document was purposely omitted to be filed by the prosecution. The petitioners applied for the same and obtained a certificate copy of the said document and was put to great shock to see that the said document was not a release deed but a sale deed in respect of some other village namely Virugambakkam and it did not relate to the deacto complainant and their vendors. When the said document was produced before the learned Magistrate, the prosecution represented that they would conduct some other investigation and produce the release deed. Accordingly the prosecution produced the release deed dated 22.04.1968 registered as Doc.No.1726/1968 on the file of the Sub -Registrar Office, North Madras. The prosecution claimed that the said release deed is the parent document of all the 10 sale deeds of the deacto complainant and his family members. A cursory perusal of the said release deed would clearly reveal that the crucial



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Survey No.20/2 Koyambedu Village is conspicuously absent in the parent document. While so, the prosecution will have to explain as to how the documents came to be registered and released. The learned Magistrate failed to look into that and simply dismissed the petition. He placed reliance of the Judgment of the Hon'ble Supreme Court in ***“State of M.P. Vs. Sheetla Sahai” reported in (2009) 8 SCC 617*** and the relevant paragraphs are extracted hereunder;

52. In this case, the probative value of the materials on record has not been gone into. The Materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr.Tulsi that where the entire materials collected during investigation have been placed before the court as part of the charge-sheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the



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others which are in favour of the accused.

53. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, sub-section (5) of Section 173 of the code of Criminal Procedure shall become meaningless.

54. The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrived at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.



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Therefore, the order of the Chief Metropolitan Magistrate is liable to be set aside and this Revision has to be allowed and the petitioners have to be discharged from the above said case.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that the petitioners have forged the Patta without any valid documents and the investigation also revealed the same. Therefore, the charge sheet was filed and when the petitioners filed the discharge petition before the Magistrate, the learned Magistrate considered the entire facts and dismissed the same. If the petitioners have any grievance, they can agitate only during the trial. Further, there are prima facie allegations against the petitioners and the probative value of the documents cannot be gone into at this stage. Therefore, the revision petition has to be dismissed.

5. During the pendency of this revision petition, on the application filed by the defacto complainant, the defacto complainant has been impleaded



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as 2nd respondent in this revision petition.

6. The learned counsel for the 2nd respondent/ defacto complainant would submit that the petitioners have forged the Patta without any valid documents and therefore, the 2nd respondent/defacto complainant filed a complaint before the respondent police and the respondent police after investigation, laid the charge sheet as against the petitioners. He would submit that the defacto complainant and his family members had purchased 10 plots for the valuable consideration and they are all in possession of the same and that the Patta stands in the name of the deacto complainant. While so, without cancelling the same, the petitioners have forged the Patta and they also forged the documents and claiming title over the same. As far as, claiming of the title is concerned, since they have filed civil suits and the same is pending, they can work out their remedy before the Civil Court. Further, since the investigation revealed that the petitioners have forged the Patta and created the documents, whatever the defence, the petitioners can substantiate the same during trial and there is no ground to discharge the



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petitioners from this case. Hence, the revision is liable to be dismissed.

7. Heard the learned counsel for the petitioners, learned Additional Public Prosecutor appearing for the respondent police and the learned counsel for the 2nd respondent/defacto complainant and also perused the materials on record.

8. It is seen that the respondent police registered the case against the petitioners in Crime No.322 of 2014 for the offences under Sections 420, 465, 467, 471, 447 read with 120(B) IPC based on the complaint given by the 2nd respondent/defacto complainant. The 1st respondent police registered a case and investigated the matter. From the oral statements of the witnesses and the documents collected, the prosecution came to the conclusion that the petitioners herein have forged the Patta and created the documents to grab the properties. The main defence taken by the petitioners is that the deacto complainant made use of his power and obtained the Patta in his name by influencing the Revenue Officials and the S.No.20/2 are not mentioned in the



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Parent document and therefore, the title has not been conveyed to the defacto complainant. But this document has not been considered either by the Investigating Officer while laying charge sheet or by the Magistrate while taking the charge sheet on file and passing orders in the petition for discharge.

9. The main allegation against the petitioners is that the petitioners forged the Patta and also created several documents and tried to grab the properties of the defacto complainant. Whether the petitioners have got title or not; Whether the defacto complainant has got title or not; Whether the vendors have got tile or not; Whether the Survey Number was mentioned or not; all that cannot be decided by this Court at this stage. Already suits have been filed and the same are pending. Therefore, at this stage while deciding the petition under Section 239 Cr.P.C., the Court has to see the charge sheet filed by the Investigating Officer under Section 173 Cr.P.C. and the documents annexed with that and the defence taken by the accused need not be considered at this stage. Whether the vendors of the defacto complainant have got title or not; whether the defacto complainant fully knowing well that



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their vendors had no title and still he purchased the same or not; that cannot be decided in the criminal case.

10. Admittedly, the Patta has been in the name of the defacto complainant. The allegation is that the petitioners have forged the Patta and created documents. At the time of framing of charges, the Magistrate has to look into the allegation and also the final report filed by the Investigating Officer and the documents annexed to that. However, the validity of the documents cannot be gone into at this stage. The probative value also cannot be gone into at this stage. Further, the Judgement of the Hon'ble Supreme Court, relied on by the learned counsel for the petitioners, is not applicable to the present case on hand. The Investigating Officer cannot go into the validity of the documents which was collected during investigation. He has to see only prima facie allegations and the supportive documents for levelling the allegations and the validity of the documents or admissibility of the documents or conveyance of the title, all these can be gone into at the time of trial and not at the time of framing of charges which is a settled proposition



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of law. The defence taken by the accused cannot be gone at this stage.

11. In the citation referred to by the counsel for the petitioners the document of the prosecution itself apparently showed that there was no prima facie case, whereas in this case, the defacto complainant has got the sale deed and they got the Patta. Whether they got the sale deed knowing fully well that their vendors had no title or parent document: cannot be gone into at this stage more so over when the civil suits are pending. Under these circumstances, this Court does not find any perversity in the order passed by the learned Magistrate and there is no merit in this revision.

12. Accordingly, this Criminal Revision Case is dismissed.
Consequently, connected Miscellaneous Petition is closed.

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To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai – 600008
2. The Assistant Commissioner of Police,
Land Grabbing Cell II
C.C.B. Veppery, Chennai – 600007
3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN,J.

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Pre-Deliver order in

Criminal Revision Case No.158 of 2022

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