



Crl.R.C.No.1489 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1489 of 2022

and

Crl.M.P.No.16995 of 2022

1. Jayarama Reddy @ Jayapal Reddy

2. Nanjamma

3. Susilamma

4. Jayalakshmi

... Petitioners

Vs.

State represented by
The Inspector of Police,
Hudco Police Station,
Hosur, Krishnagiri District.

... Respondent

Prayer:

Criminal Revision Case filed under Section 397 & 401 Cr.P.C., to call for the records culminating in impugned order dated 24.08.2022 passed by the learned Judicial Magistrate No.II, Hosur in Crl.M.P.No.4332 of 2017 in C.C.No.96 of 2016 in Crime No.223 of 2015 and set aside the same by allowing the Criminal Revision Petition.



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For Petitioners : M/s.Arulselvam Associates

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed against the order dated 24.08.2022 passed in Crl.M.P.No.4332 of 2017 in C.C.No.96 of 2016 on the file of the learned Judicial Magistrate No.II, Hosur.

2. The respondent police registered a case in Crime No.223 of 2015 against the petitioners and others for the offence under Sections 465, 468, 471 read with 420 IPC and 109 IPC. After investigation, laid a charge sheet before the Judicial Magistrate No.II, Hosur. The learned Magistrate taken the charge sheet on file in C.C.No.96 of 2016. Pending the Calendar Case, the petitioners herein have filed the petition in Crl.M.P.No.4432 of 2017 under Section 239 Cr.P.C., to discharge them from the abovesaid case and the same was dismissed by the Magistrate. Aggrieved over the same, now the petitioners herein/A1 to 3 and A6 have filed the present Criminal Revision Case.

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3. Learned counsel for the petitioners would submit that final report does not containing any materials setting out the commission of offence punishable under Sections 465, 468, 471 read with 420 IPC and the petitioners are noway connected to the subject matter of the land and there is no prima facie case was made out against these petitioners. Further, he would submit that the first accused and the defacto complainant are close relatives as admitted by the prosecution. Grandfather of the first accused and great grandfather of the defacto complainant are brothers. A2 to A6 are the wife and daughters of Mr.Narayana Reddy, who is the cousin of the defacto complainant. When the complainant has set up claims to the properties by claiming that they have either their ancestral properties or the ancestral properties of their vendors, the petitioners cannot be held for any criminal charges for having dealt with their ancestral properties. Though the dispute between the parties are civil in nature, in order to give trouble to the petitioners, they foisted a false case. Final report and documents annexed with it, do not disclose any commission of offence against these petitioners. Therefore, there is no prima facie offence has been made out against these



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petitioners and the learned Magistrate erroneously dismissed the petition filed by the petitioners.

4. The learned Additional Public Prosecutor would submit that case was registered against the petitioners and yet another person for the allegations of forgery, cheating and impersonating the document and after investigation, laid a charge sheet before the learned Magistrate. At the time of deciding the petition under Section 239 Cr.P.C., the Court has to see the allegations mentioned in the final report filed by the Investigating Officer and the documents annexed with it. Whether the materials are sufficient to convict the accused or not cannot be decided at the time of framing charges. Therefore, the learned Magistrate rightly dismissed the petition and there is no merit in the Criminal Revision Case and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.



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6. Learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court rendered in *Mohammed Ibrahim and Others Vs. State of Bihar and another reported in 2009 (8) SSC 751*. The judgement relied upon by the learned counsel for the petitioners is not applicable to the present case at hand.

7. Admittedly, it is the case of the prosecution is that as per the final report, the petitioners herein and A4 and A5 are not owning the subject matter of the properties and with an intention to cheat the defacto complainant, had executed a sale agreement in favour of the seventh accused on 23.11.2009. Subsequently, the petitioners and other accused had cancelled the same on 11.12.2009 and in turn executed and registered a power of attorney in faovur of the seventh accused on the same date ie., on 11.12.2009. By virtue of the power of attorney, thereafter the seventh accused had registered a sale agreement in favour of the eighth accused on 28.11.2014 without any right and title, the abovesaid accused had created documents in order to attain wrongful gain. Hence the petitioners and other



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accused had committed for the offence under Sections 465, 468, 471 read with 420 IPC and 109 IPC.

8. It is a well settled proposition of law that at the time of deciding the petition under Section 239 Cr.P.C., the Court has to see the allegations levelled in the final report filed by the Investigating Officer under Section 173 Cr.P.C., and the documents annexed therewith and the Court cannot conduct a roving enquiry on the materials before it and it cannot consider the defence taken by the accused. Therefore, when there is prima facie allegation which shows that there is a commission of offence under the abovesaid charges, the Court can testify whether the petitioners have committed offence or not and whether the dispute between the parties are civil in nature or not that can be decided only at the time of trial not at this stage. Therefore, in this case, on a perusal of the report filed by the prosecution under Section 173 Cr.P.C and also the documents annexed there with prima facie there is a allegation as against these petitioners. Therefore, under these circumstances, the Court cannot conduct a roving enquiry on the materials placed by the prosecution. Hence, this Court does not find any



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perversity or illegality or irregularity in the order passed by the trial Court and there is no merit and the Revision and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed. The petitioners are at liberty to take their defence at the time of trial.

11.11.2022

mfa
Index:yes/No
Internet:yes/No

To

1. The Judicial Magistrate No.II, Hosur.
2. The Inspector of Police,
Hudco Police Station,
Hosur, Krishnagiri District.
3. The Public Prosecutor,
High Court,
Chennai.



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P.VELMURUGAN, J.

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