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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL.O.P.NOS.24018, 24019,
24990 AND 24991 OF 2017

AND

CRL.M.P.NOS.13899 AND 13900, 14415
AND 14416 OF 2017

AND

CRL.M.P.NOS.10839, 1518 AND 1519 OF 2018

S.Mohan ...Petitioner in Crl.O.P.Nos.24018
and 24019 of 2017

Lalith Kumar Bhandari ...Petitioner in Crl.O.P.Nos.24990
and 24991 of 2017

Versus

1.Mr.Antony Gomes,

2.The Inspector of Police,
Central Crime Branch,
Land Grabbing Cell, Team II,
Vepery, Chennai. ...Respondents in Crl.O.P.Nos.24018
and 24990 of 2017

1.M/s.Hallmark Infrastructure Private Ltd.,
Rep. By its Coordinator Mr.Senthilkumar
Having office at No.43(Old NO.62/2)
Suite-A, 1st Floor, United Plaza,
T.Nagar, Chennai - 600 017.

2.The Inspector of Police,
Central Crime Branch,
Landu Grabbing Cell, Team II,
Vepery, Chennai. ...Respondents in Crl.O.P.Nos.24019
and 24991 of 2017

COMMON PRAYER : Criminal Original Petition filed under Section
482 of Criminal Procedure Code, to set aside the order as
against the petitioner in the order dated 24.07.2017 in
C.M.P.Nos.1028 and 2073 of 2017 in Crime No.41 of 2013 on the
file of the Judicial Magistrate-II, Chengulpet.



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For Petitioner
in Crl.O.P.24018
and 24019 of 2017

: Mr.B.Kumar
Senior Counsel
for Mr.G.Prabhakar

For Petitioner
in Crl.O.P.Nos.24990
and 24991 of 2017

: Mr.V.Karthik
Senior Counsel
for Mr.M.P.Jaya prakash

For Respondents
in Crl.O.P.Nos.24018
and 24990 of 2017

: Mr.N.R.Elango
Senior Counsel
for Mr.R.Vivekanantham for R1
Mr.R.Kishore Kumar for R2
Government Advocate (Crl.Side)

For Respondents
in Crl.O.P.Nos.24019
and 24991 of 2017

: No appearance for R1
Mr.R.Kishore Kumar for R2
Government Advocate (Crl.Side)

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the order of the learned Judicial Magistrate taking cognizance of the offence under Sections 419, 120(b), 465, 468 and 471 IPC, based on the protest petition filed by one Hallmark who is the petitioner in C.M.P.No.2073 of 2017 has requested the above protest petition to be treated as protest petition filed by his subsequent purchaser one Antony Gomes.

2 .The crux of the allegations in the original complaint is that the de facto complainant has purchased the property in the year, 2008 in respect of S.No.158/11A2A1 from A1 to an extent of 2.53 acres in total. The crux of the allegations attributed against the accused is that he has purchased the property from one Mr.Gopal son of Arasan who has no title to the property who has made as confirming party in the sale deed. Besides, he has also executed a Power of Attorney in favour of A2. Pursuant to the same, A3 purchased the property. The first informant namely the Hallmark stated to have purchased the property from true owner to an extent of Rs.2,00,000/- by way of sale deed dated 11.12.2008. It is the contention that Gopal/A1 has impersonated himself as a son of one Arasan, actually he is the son of one Appu .Hence, the crux of the allegations pressed as if there was impersonation by A1 to create the documents in order to grab the property of the complainant. Originally, the complaint was investigated by the concerned jurisdiction Police and filed the



negative report, the same was set aside by this Court and investigation was directed to be conducted by the independent officer nominated by the Superintendent of Police. The independent Officer appointed by the Superintendent of Police has also filed the final report i.e., negative report concluding that the property is purchased by the complainant as well as the accused A3 are not the same and there was no impersonation. In the meanwhile, the property purchased by the defacto complainant was sold to one Antony Gomes.

3. Challenging the final report, two protest petitions have been filed by one by the original defacto complainant and another by Antony Gomes, the other subsequent purchaser from defacto complainant. It is relevant to note that the defacto complainant filed the protest petition and also prayed before Judicial Magistrate to treat as that of one filed by the Antony Gomes.

4. Learned Judicial Magistrate while accepting finding of the investigation officers that the properties are different one, took cognizance of the offence on the basis of the protest petition mainly on the ground that there is an allegation of impersonation by A1; A2 and A3 are also party to that. Accordingly, the cognizance was taken for the offence referred above. Challenging the above proceedings, these two petitions have been filed.

5. Heard the learned counsel for the petitioner who submitted that when the learned Magistrate has accepted the finding of the investigation agency that the property purchased by the defacto complainant and A3 are different, the question of creation of false documents does not arise at all and his further contention that the patta also issued in the name of the A3 which was also confirmed by the RDO. The above proceedings also challenged before this Court by way of writ petition. The Writ Petition was dismissed, as against which, writ appeal also filed which was also dismissed holding that there is serious dispute over the title, the same has to be resolved only in the Civil Court. Ultimately, the SLP is also filed, the same is also dismissed. His further contention that A3 already filed the suit for permanent injunction in O.S.No.98/2013 and interim injunction is granted in his favour and still it is operating and similarly, the subsequent purchaser has also filed suit for declaration in O.S.No.107 of 2016 on the file of District Court, Chengalpet. Therefore, when the Court has held that there is serious dispute over the title, the same cannot be gone into by the Criminal Court and his further contention that A2 and A3 are only purchasers, therefore, they cannot be proceeded for any offence for the alleged impersonation said to have been committed by A1.



6. It is his further contention that the learned Magistrate had taken cognizance not on the basis of the materials collected by the Investigation Officer but only on the basis of the protest petition filed by the defacto complainant without following the procedure contemplated under Sections 200 and 202 Cr.P.C., and the same is not maintainable in the eye of law. Therefore, it is the main contention that the order of the learned Trial Judge taking cognizance has to be set aside.

7. Per contra, Mr.N.R.Elango, learned Senior Counsel submitted that it is only clear case of impersonation. The learned Magistrate has applied his mind and took cognizance. It is also his contention that on an earlier occasion, this Court in Civil Revision Petition No.56 of 2015 dated 29.06.2015, wherein with regard to the tile and the locus standi of the defacto complainant is also raised in the above Civil Revision Petition. This Court negatived contentions and directed for further investigation. The above order reached its finality. Therefore, the factual aspects which are already recorded by this Court and have reached finality, are once again sought to be argued. Hence, he submitted that there is prima facie materials available against the accused. The learned Magistrate has applied his mind. Therefore, this Court cannot go into merits at this stage and the same cannot be quashed.

8. This Court has perused the materials available on record. The present petitioners are arrayed as A2 and A3. A2 is said to be a Power Agent of A1 and A3 has purchased one portion of 1.48 acres on the basis of the Power of Attorney, he totally purchased 2.53 acres vide two sale deeds. One of the sale deed executed by the Power Agent is a cause of action for the criminal prosecution. The de facto complainant also purchased two acres of the property from legal heirs of one Gopal S/o Arasu. The main allegation is that A1 claimed to be Gopal who has already died in the year 1999, has executed a Power of Attorney. The learned Magistrate took cognizance only on the basis of the Power of Attorney executed by A1 taking note of the alleged allegation of impersonation. Be that as it may, various documents relating to the property are also sought to be relied upon before this Court. The fact that Patta was issued in favour of A3 is not in dispute which was challenged in a Writ Petition No.7973 of 2013, whereas, this Court vide order dated 05.08.2013 has held that there is a serious dispute over title of the property, the same has to be resolved in the Civil Court, as against which, Writ Appeal has been filed in W.A.No.2140 of 2013. The Court confirmed the order of the single judge by order dated 07.02.2014, which was also challenged in SLP which was dismissed. These facts are not in dispute, similarly, Criminal R.C.No.56 of 2015 dated 22.01.2015. In that order, the similar grounds have been raised, however, this Court considering the



elaborate submissions, has appointed an Independent Investigation Officer to investigate the matter.

9. The above order was also challenged in S.L.P.No.7829 of 2014 on 14.08.2014 which was also dismissed and the factual aspects have been disclosed in various aspects as canvassed by both sides which was already subject matter of writ petition and Criminal RC. Therefore, this Court need not dwell much on the factual aspects. The crux of the allegations is only with regard to the alleged impersonation.

10. It is the contention of the learned counsel appearing for the petitioners that A1 has executed documents on the ground that since his name is appeared in the Revenue Records. He executed the documents as a confirming party, such act will not amount to impersonation. Such contention has to be seen in the context of the evidence before the Trial Court. Therefore, this Court is of the view that factual aspects need not be gone into at this stage but, as far as the legal grounds raised taking cognizance by the Trial Court, this Court finds force in the submission of the learned Senior Counsel for the petitioners.

11. Learned Judicial Magistrate has taken cognizance mainly based on the protest petition. The protest petition filed by the defacto complainant treated as compliant. Only based on the above protest petition cognizance was directly taken.

12. It is to be noted that learned Magistrate while taking cognizance on the basis of taking cognizance on the basis of protest petition ha not followed procedure contemplated under Sections 200 and 202 of Cr.P.C. which is not according to law. If the Magistrate takes cognizance on the basis of the materials collected by the Investigation Agency, despite the fact that negative final report has been filed, in such a case, he need not follow the procedure under Sections 200 and 202 Cr.P.C. as the materials were already on record to apply his mind to take cognizance. But here in this case, the learned Magistrate has not relied upon any materials collected by the Investigation Officer, whereas, he took cognizance mainly on the basis of the protest petition filed by the Defacto Complainant and his subsequent purchaser Antony Gomes and without any witnesses being examined. Therefore taking cognizance without following procedure contemplated in Sections 200 and 202, certainly, is not according to law.

13. It is relevant to note that Hon'ble Apex Court in the case of Vishnu Kumar Tiwari vs. State of Uttar Pradesh reported in 2019(8) SCC 27 has held in Paragraph Nos. 42, 43 and 46 as follows:

42. In the facts of this case, having regard to



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the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Section 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In *Mahabir Prasad Agarwala v. State*, a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in *Qasim v. State*, a learned Single Judge of the High Court of



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Judicature at Allahabad, inter alia, held as follows:

"6. ... In the case of Abhinandan Jha also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under Section 200 Cr.P.C. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses or a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case."

46. If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report.

14. Learned counsel appearing for the respondent also placed reliance on the larger Bench by the Apex Court reported in (1989) 2 SCC 132 in the case of M/s.India Carat Pvt Ltd V. State of Karnataka has held in Paragraph No.16 as follows:

16. The position is, therefore, now well settled that upon receipt of a police report



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under section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused.

The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Section 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(b) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

15. From the above judgments, it is clear that whenever Magistrate takes cognizance based on Police Report, despite it is negative report, he is not bound to follow the procedure laid down under Sections 200 and 202 Cr.P.C. Similar view is also taken by the Hon'ble Apex Court reported in (2019) 8 SCC 27 as stated supra.

16. Taking note of the above judgments, this court is of the view that while the Magistrate decides to reject the Police Report and apply his mind on the basis of the materials collected by the Investigation Agency, in that case, he is not bound to follow the procedures contemplated under Section 200 and 202 of Cr.P.C, whereas, treating the protest petition as complaint and for taking such cognizance, there must be materials by way of evidence produced by the witnesses, whereas, in this case, merely on the basis of the submissions and protest petitions, the learned Magistrate took cognizance and it is not in accordance with law.



17. Taking note of the fact that the order of the Magistrate cannot be sustained in the eye of law, however, considering the nature of the allegations levelled, it is for the Magistrate to follow the procedure contemplated under Sections 200 and 202 of Cr.P.C and apply his mind on the basis of the evidence produced by the complainant and decide the case on merits. It is also relevant to note that, as the learned Magistrate has already treated the protest petition as complaint, the matter is remanded only for the purpose of giving an opportunity to the defacto complainant to adduce evidence for application of mind by the Magistrate. The learned Magistrate shall decide the issue on the basis of the evidence produced by the Defacto Complainant. It is also made clear that earlier orders or findings recorded in various proceedings need not be considered by the learned Magistrate while applying his mind. The learned Magistrate shall take decision on the basis of the evidence produced before him and shall decide the issue on his own merits.

18. With the above observation, the order taking cognizance is set aside. As a sequel, these Criminal Original Petitions are allowed and the matter is remanded back to the learned Magistrate for following the procedure contemplated under Sections 200 and 202 Cr.P.C. and for adducing evidence by the complainant. Thereafter, learned Magistrate apply his mind on the materials produced before him and to decide the matter. The learned Magistrate shall do such exercise as expeditiously as possible. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

msv

To

- 1.The Inspector of Police,
CCB Police Station,
Salem City.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Inspector of Police,
Central Crime Branch,
Land Grabbing Cell, Team II,
Vepery, Chennai.



4.The Judicial Magistrate II,
Chengalpet.

+1cc to Mr.G.Prabhakar, Advocate Sr.No.4252

+1cc to Mr.R.Vivekananthan, Advocate Sr.No.3882

Crl.O.P.Nos.24018, 24019,
24990 and 24991 of 2017
and Crl.M.P.Nos.13899 and 13900, 14415
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and Crl.M.P.Nos.10839, 1518 and 1519 of 2018

NRL (CO)
RVM(09/02/2022)