



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.2473 of 2022

and

Crl.M.P(MD) No.1824 of 2022

WEB COPY

Selvaraja ... Petitioner/Accused Rank Not Known

Vs

1. The Inspector of Police
District Crime Branch(DCB)
Sivagangai District ... 1st Respondent/Complainant

2.Rajeswari ... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records pertaining to the Crime No.34 of 2019 dated 22.10.2019 on the file of the Inspector of Police, DCB, Sivagangai District and quash the same in so far as the petitioner is concerned

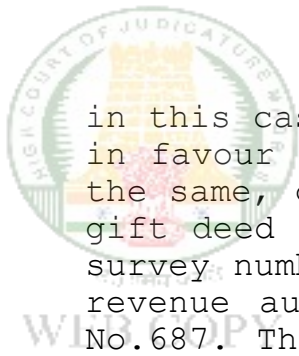
For Petitioner : Mr.D.Haroon Rasheed

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.34 of 2019 dated 22.10.2019 on the file of the Inspector of Police, DCB, Sivagangai District

2. The case of the prosecution is that the property in Survey No.113/6 total to an extent of 2 acres 6 cents situated at Thirupachethy South Village, Sivagangai District in which 1 acre 81 cents was purchased by the defacto complainant from the property holders 3 persons by name Ganesan Pillai, Kameshwaran and Thiruvayee Ammal in the year 1977 through unregistered oral sale deed. Thereafter the defacto complainant is in the possession and doing agricultural in the said land. The said land was taken care by the defacto complainant's brother one Gajendran. While so, in order to avoid the further complication the defacto complainant approached the land holders for want of executing the registered sale deed based on which the earlier owner Selvam and Thiruvayee alone come forward on 23.06.2004 and executed a sale deed to an extend of 1 acre 41 cents and remaining 40 cents not at all executed by the previous owner i.e., Kameshwaran who is arrayed as an accused No.5



in this case. Moreover, the revenue officials wrongly issued a patta in favour of the defacto complainant's brother. In order to rectify the same, on 04.07.2013 the defacto complainant's brother executed a gift deed in favour of the defacto complainant. Thereafter the said survey number was classified as 113/6B and patta also issued by the revenue authority in favour of the defacto complainant vide patta No.687. Thereafter the said Kameshwaran in respect of the 40 cents he has not come forward to execute the same instead he makes encumbrance the same with the help of other accused. All the accused are join together and the A5 in this case i.e., Kameswaran executed an unregistered bogus sale through Rs.20/- document in favour of the other accused persons i.e., A to A4. Hence the present complaint came to be registered

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 34 of 2019 for the offences under Sections 209,406,468,420 and 120(B) of IPC as against the petitioner.

4. The learned Additional Public Prosecutor would submit that though the petitioner is not the named accused, his name has been implicated during investigation. He would also submit that out of eight accused the petitioner is arrayed as sixth accused and specific overt act has been attributed as against the petitioner as alleged by the defacto complainant.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019 - Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.**, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking



cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the



accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

7. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police
District Crime Branch (DCB)
Sivagangai District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(15.02.2022) 4P 3C