



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM:

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

Crl.O.P.(MD) No.3536 of 2022

and Crl.M.P(MD) No.2605 of 2022

WEB COPY

Balasubramani

...Petitioner/ Accused No.2

Vs.

1. The State Rep.by
The Inspector of Police,
DCB Police Station,
Virudhunagar,
Virudhunagar District.
(FIR No.15 of 2021)

... Respondent/ Complainant

2. Raj

...Respondent/Informant

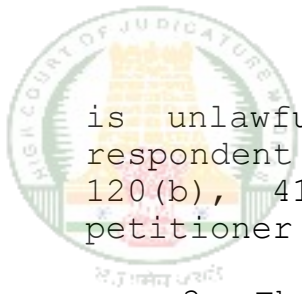
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records pertaining to the FIR No.15 of 2021 dated 14.09.2021 on the file of the 1st respondent, DCB Police Station, Virudhunagar, Virudhunagar District and quash the same in so far as the petitioner alone.

For Petitioner	:	M/s.Murugappan R
For Respondents	:	Mr.R.M.Anbunithi
No.1	:	Additional Public Prosecutor
For R2	:	Mr. Balaji. A

ORDER

This petition has been filed to quash the First Information Report in Crime No. 15 of 2021 dated 14.09.2021 on the file of the 1st respondent, DCB Police Station, Virudhunagar, Virudhunagar District.

2. The case of the prosecution is that on 05.04.2021 , the petitioner purchased a property bearing Survey No. 466/1A - Patta No. 203, extents of 3 acres and 30 cents, situated at Kottaipatti Village, Virudhunagar Taluk, Virudhunagar District from its owner Ramasamy, S/o. Nagappan, it was registered as document No.2372/2021 at the Sub Registrar Office-No.II, Virudhunagar. Now, the informant namely Raj, S/o.Ramasamy Naicker (late), Allampatti Village, Virudhunagar, Virudhunagar District, lodged complaint that the aforesaid property stands in his father name Ramasamy S/o. Nagappan, who expired on 05.07.2000 left behind 8 persons as his legal heirs. Therefore, the Registration of the aforesaid document

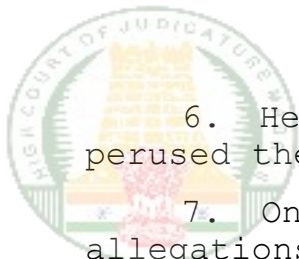


is unlawful and lodged complaint with the Respondent and the respondent registered a case FIR No.15/2021, dated 14.09.2021, U/s. 120(b), 419, 420, 465, 467, 468 and 471 of IPC against the petitioner and another one and investigating the case.

3. The learned counsel for the petitioner would submit that there are totally two accused and the petitioner herein is arrayed as A2. The petitioner is the bonafide purchaser in respect of the subject property from the first accused in S.No.466/111 situated at Kottaipatti Village, Virudhunagar Taluk. The allegations are that the first accused impersonated a person and executed sale deed in favour of the second respondent. He also relied upon the judgment of the Hon'ble Supreme Court of India in Crl.A.No.136 of 2022 in the case of **Smt.Rekha Jain and Anr vs. The State of Uttar Pradesh and Ors.** He further submitted that the petitioner already filed a petition for anticipatory bail and when the enquiry was pending on the file of the Inspector of Police, Land Grabbing Special wing, Virudhunagar, in which the Inspector of Police, Land Grabbing Special wing submitted before this Court based on the complaint given by the defacto complainant enquiry was conducted and closed, therefore no action has been taken since no case has been made out, hence he seeks quashment of the entire proceedings.

4. The learned counsel for the defacto complainant would submit that the petitioner is residing at Aruppukottai, where as the property is situated in Kottaipatti Village, Virudhunagar District. The petitioner only impersonated the defacto complainant father and through the first accused had executed sale in his favour. While pending investigation the sale deed in favour of the second respondent also cancelled and the said patta was mutated in favour of the defacto complainant and other legal heirs of the deceased. There are specific allegations as against the petitioner and it has to be investigated to unearth the crime committed by the petitioner herein.

5. The learned Additional Public Prosecutor would submit that the defacto complainant lodged complaint before the Land Grabbing Special Wing and subsequently it was transferred to the file of the first respondent for investigation. The first respondent find prima facie to register the case and registered the case in Crime No. 15 of 2021 for the offences under Sections 120(b), 419, 420, 465, 467, 468 and 471 of IPC. He would also submit that there are totally two accused in this case and the petitioner herein is arrayed as A2. The petitioner herein impersonated the defacto complainant's father and through him the first accused has executed sale deed in his favour. There are specific allegations as against the petitioner and the FIR cannot be quashed at the threshold.



6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. On persual of the complaint lodged there are specific allegations as against the petitioner herein alleging that the petitioner has impersonated the defacto complainant father through the first accused and executed sale deed in his favour in respect of the property comprised in S.No.466/11 situated at Kottaipatti Village, Virudhunagar Taluk, whereas the defacto complainant's father died as early as on 05.07.2007 itself. However on 05.04.2021, the petitioner through the first accused impersonated the said Nagappa Naicker had executed the sale deed. There are specific allegations as against the petitioner to make out the case as against the petitioner. Further so far as the judgment relied upon by the petitioner is concerned it is the defacto complainant itself who had no objection to quash the criminal proceedings as against the petitioner, therefore the said case is not applicable to the present case on hand. In this regard, it is 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 Pokarnekhar 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."

8. 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/-

Deputy Registrar (A/Cs)

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/ /2022

Sub Assistant Registrar(CS)

aav



To

1. The Inspector of Police
DCB Police Station
Virudhunagar
Virudhunagar District

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

CrI.O.P. (MD) No.3536 of 2022
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RD(08.03.2022) 5P 3C