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Crl.O.P.(MD)No.3409 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.07.2022

PRONOUNCED ON: 17.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.3409 of 2019

and

Crl.M.P.(MD)No.1947 of 2019

Mohan @ Victor Mohan Singh

: Petitioner/Accused No.2

Vs.

1. State represented by

The Inspector of Police,
Nazareth Police Station,
Thoothukudi District.

: 1st Respondent/Complainant

2. Augustin Immanuel

:2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to the F.I.R. in Crime No.21 of 2019, on the file of the first respondent police and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.S.Manikandan
Government Advocate (Crl.Side)
for R.1
: Mr.M.P.Senthil
for R.2



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the F.I.R., in Cr.No.21 of 2019, on the file of the Nazareth Police Station and quash the same.

2. The petitioner is the second accused in Cr.No.21 of 2019, on the file of the first respondent police. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.21 of 2019 against three persons, including the petitioner herein, on 21.02.2019 for the alleged offences under Sections 465, 468, 471 and 420 I.P.C.

3. The case of the prosecution is that the property in dispute was originally owned by the defacto complainant's father G.V.Dhanaraj who purchased the same through three sale deeds, vide document Nos.1073/1959 and 980 and 981/1962 of Alwar Thirunagari Sub-Registrar office, that the said Dhanaraj had died on 27.09.2009, leaving behind his only son – the defacto complainant and he has become the owner of the properties, that on 09.12.2018, when the petitioner/second accused was cutting the trees in the land belonging to the defacto complainant, the same was questioned by the defacto complainant, that the second accused had claimed that the said land was belonging to his



sister-in-law/ third accused and immediately the second accused went to the police station and lodged a complaint, that the defacto complainant through Sub-Registrar office came to know that the accused had fabricated a power of attorney deed, dated 29.06.2009 as if the same was executed by the defacto complainant's father Dhanaraj, that they have created the power deed by impersonation and by using fake photo, signature and ration card, that subsequently the first accused transferred the said property in favour of his wife – third accused, vide sale deed dated 26.05.2011, that since the power of attorney deed itself is invalid and illegal, the question of transferring the property in favour of the third accused does not arise and that therefore, the defacto complainant was constrained to lodge the above complaint.

4. The case of the petitioner is that all the allegations levelled in the F.I.R., do not make out any case against the petitioner, that the petitioner is an attesting witness to the power of attorney deed and the other accused are the bonafide purchasers, but the second respondent lodged the complaint against the petitioner and others leaving the vendor of the property and that the attitude of the second respondent would only show that he lodged the above complaint to extract money from the petitioner.



5. The learned Counsel for the petitioner would further submit that the petitioner had already lodged a complaint dated 10.12.2018 against the second respondent before the first respondent, that the first respondent, after conducting enquiry, closed the complaint, as the allegations are purely of civil in nature, that the first respondent has directed the petitioner as well as the second respondent to approach the competent civil Court, that the third accused, in pursuance of the said direction, has filed a civil suit in O.S.No.12 of 2019, on the file of the District Munsif Court, Srivaikundam and the same is pending, that the second respondent has lodged another complaint before the Anti-Land Grabbing Special Cell, Thoothukudi and the same was also closed as civil in nature, that the second respondent by suppressing the above facts, has lodged the present complaint again and the first respondent in collusion with the second respondent, registered the case and that therefore the impugned F.I.R is liable to be quashed.

6. It is the specific case of the petitioner that the petitioner has previously lodged a complaint against the second respondent and the second respondent has also lodged a complaint with Anti-Land Grabbing Special Cell, Thoothukudi, but both the complaints were closed as the disputes are of civil in nature and that the second respondent by suppressing the above aspects, lodged the present complaint falsely implicating the petitioner. Even assuming for arguments sake, that there were previous complaints, the closure of earlier complaints by itself is



not a ground or reason for quashing the F.I.R., registered on the basis of the subsequent complaint and there is absolutely no legal bar or prohibition for registration of the case.

7. As rightly contended by the learned Counsel for the petitioner, the third accused has filed a civil suit in O.S.No.12 of 2019 claiming permanent injunction restraining the defendant, who is the defacto complainant herein and his men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. It is further evident from the records that the defacto complainant has also filed written statement and counter claim and that the learned District Munsif, Srivaikundam dismissed the suit for default on 08.11.2019 and subsequently, the counter claim of the defacto complainant was decreed and thereby declaring that the sale deed dated 26.05.2011 in Document No.864/2011 in the name of the plaintiff before the Nasareth Sub Registrar Office is null and void.

8. It is not the case of the petitioner that the suit in O.S.No.1 of 2019 (O.S.NO.12 of 2019) which was dismissed for default, was restored to file and that the judgment and decree passed with respect to the counter claim was set aside. As rightly pointed out by the learned Counsel for the second respondent, the competent civil Court has given a finding that the power of attorney deed



cannot be held as true and valid document. As already pointed out, according to the second respondent, the photograph affixed in the alleged power of attorney is not the photograph of his father, that the signature found therein is not that of his father and that the voter identity card shown in the power of attorney deed relates to family card of one Dhanaraj Joseph David, S/o Thiodar David and not connected with the plaintiff's father. As rightly contended by the learned Counsel for the second respondent and the learned Government Advocate (Crl.Side) appearing for the first respondent, it is not the case of the petitioner that the judgment and decree of the District Munsif, Srivaikundam passed in the counter claim has been stayed by the competent appellate Court.

9. The first respondent has filed a counter affidavit, wherein it has been specifically stated that the power of attorney deed was fraudulently created by all the accused by impersonating through fake photograph, signature and ration card, that the impugned F.I.R was filed only after proper enquiry with due deliberations, such as comparison of signatures, fake and original documents etc., and that the complaint was properly enquired and investigated as per the directions of this Court.

10. The learned Counsel for the second respondent has relied on the judgment of the Hon'ble Supreme Court in *Neeharika Infrastructure Pvt. Ltd.,*



Vs. State of Maharashtra and Others reported in ***(2021)2 MLJ (Crl) 299 (SC)***,

wherein the Hon'ble Apex Court, after referring to various decisions has listed out their conclusions and the relevant paragraph is extracted hereunder:

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under [Section 482](#) Cr.P.C and/or under [Article 226](#) of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/charge sheet is filed under [Section 173](#) Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or*



genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may



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file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under [Section 482](#) Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint;*

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482](#) Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are



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hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under [Section 173](#) Cr.P.C., while dismissing/disposing of the quashing petition under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”



11. It is pertinent to mention that the Hon'ble Supreme Court in in ***Dhruvaram Murlidhar Sonar vs The State Of Maharashtra*** reported in **2019(18) SCC 191**, after considering the decision of the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Others,*** reported in **1992 Supp (1) SCC 335**, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

12. It is pertinent to note that this Court in exercise of its jurisdiction under Section 482 Cr.P.C., cannot go into truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. A perusal of F.I.R., and other materials makes out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused.

13. In the above circumstances, I do not find any justification to quash the proceedings as against the petitioner, as the case does not fall in any of the



categories recognised by the Hon'ble Apex Court, which may justify their quashing. Consequently, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

14. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The first respondent police is directed to complete the investigation and file a final report before the jurisdictional Court within a period of three months from the date of receipt of a copy of this order.

17.08.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
Nazareth Police Station,
Thoothukudi District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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