



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.01.2022

Pronounced on : 24.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.O.P. (MD) .Nos.1288 and 5950 of 2019

and

Crl.M.P. (MD) Nos.627, 628, 3832 and 3833 of 2019

1.M.Vijaya

2.M.Alamelu Mangai

: Petitioners/A1 and A2

(in CRL.O.P. (MD) .No.1288 of 2019)

3.Velmurugan

4.Paulraj

: Petitioners/A3 and A4

(in CRL.O.P. (MD) .No.5850 of 2019)

Vs.

1.The State rep.by

The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi.

(Crime No.99 of 2017)

: Respondent/Complainant

(in both petitions)

2.Vairaprakash

: Respondent/Defacto Complainant

(in both petitions)

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in C.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Sivakasi and quash the same.

(in CRL.O.P. (MD) .No.1288 of 2019)

For Petitioners

: Mr.AL.Kannan,

for Mr.V.R.Shanmuganathan,

(in CRL.O.P. (MD) .No.5950 of 2019)

For Petitioners

: Mr.Manikandan,

for Mr.V.R.Shanmuganathan,

For Respondents

: Mr.R.Sivakumar,

Government Advocate (Criminal Side),
for R1.

: Mr.M.Jothi Basu, for R2.

COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 482 of Cr.P.C, seeking orders to call for the records relating to the charge sheet in C.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Sivakasi and quash the same.



2. The petitioners are the accused 1 to 4 in C.C.No.225 of 2018 on the file of the learned Judicial Magistrate No.I, Sivakasi. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.99 of 2017 against the petitioners for the offence punishable under Sections 465, 468, 471 and 474 of IPC.

3. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C, dated 19.06.2018 against the petitioners for the offence under Sections 465, 468, 471 and 474 of IPC and the case was taken on file in C.C.No.225 of 2018 and that the same is pending on the file of the learned Judicial Magistrate No.I, Sivakasi.

4. The case of the prosecution is that the property situated in old Door No.16, New Door No.33, Thiruthangal Road, Sivakasi Town, Virudhunagar District was originally belonging to the father of the defacto complainant Soundarapandian, that he executed a settlement deed dated 26.09.2012 in favour of the defacto complainant in which, he had settled the properties including the said property and that the third petitioner who is the brother of the defacto complainant along with other accused had created rental agreements in favour of the accused 1 and 2 as if the same were executed by his father Soundarapandian and thereby helped the accused 1 and 2 to obtain TIN number in their names from Commercial Department. Hence, the complaint.

5. Admittedly, the second respondent/defacto complainant and the third accused are brothers and are the sons of the said Soundarapandian.

6. The case of the petitioners is that since there were disputes between the brothers in sharing the family properties, the third accused has filed a civil suit and the same is pending, that their father Soundarapandian had entered into a rental agreement for a period of 11 months with one R.N.Kamalam Aachi to run a paper company in the name and Style of M/s.Sri Murugan Paper Company, that the agreement was mutually renewed and the same was lastly renewed on 01.06.2015 for the period from 01.06.2015 to 31.05.2016, that after the death of the said Kamalam Aachi in August 2015, that the accused 1 and 2, who are the daughter-in-laws of the said Kamalam Aachi approached the third accused and his father Soundarapandian and informed that they have decided to convert the proprietary business to partnership firm, that as per the request of the accused 1 and 2, the said Soundarapandian had executed a fresh rental agreement in the names of the accused 1 and 2 and on that basis, they have obtained TIN number from the Commercial Department, that the accused 1 and 2 have been doing their business with knowledge of the defacto complainant and their father Soundarapandian and the same was never questioned by the defacto complainant and that the defacto complainant having enmity with the third accused has lodged a complaint, falsely implicated the petitioners.



7. It is not in dispute that the third accused has filed a suit in O.S.No.81 of 2013 against the defacto complainant, their father Soundarapandian and Sister Santhalakshmi, for partition and that the same is pending on the file of the Sub Court, Sivakasi.

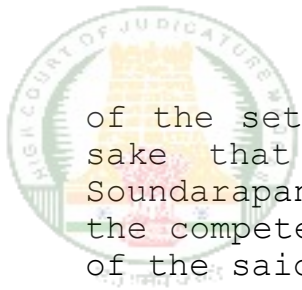
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8.The main contention of the defacto complainant/intervenor is that the mother-in-law of the accused 1 and 2 Kamalam Aachi was the tenant in respect of the said property, that her sons Meyyappan and Manikandan were running the shop, that the defacto complainant after settlement deed in his favour, had demanded the Kamalam Aachi and her sons to vacate the property, that the said tenants at the instigation of the third accused had refused to vacate the shops, that after the death of the said Kamalam Aachi on 06.08.2018, the petitioners have created a document as if the said Soundarapandian entered into a rental agreement with the accused 1 and 2, that the accused 3 and 4 had subscribed their signatures as witnesses to the said document, that the accused 1 and 2 have then submitted the said document before the Assistant Commissioner of Commercial Tax Department, Sivakasi and received the TIN number for their business, that the defacto complainant's father Soundarapandian has never entered into any rental agreement with the accused at any point of time, that since the complaint to the concerned Police was of no avail, the second respondent was constrained to file a petition under Section 156 (3) Cr.P.C before the jurisdictional Magistrate Court and that on the basis of the order passed in Crl.MP.No.638 of 2019, FIR came to be registered.

9.It is pertinent to note that the third accused in his Criminal Original Petition has specifically admitted that the property in question was originally belonging to his father Soundarapandian.

10.As already pointed out, according to the defacto complainant, the said Soundarapandian had executed a settlement deed dated 26.09.2012, settling his properties including the property in dispute in favour of the defacto complainant. But the third accused has taken a stand that the settlement under which, the defacto complainant has claimed ownership, is a fabricated document and taking advantage of the disputes between the third accused and his father, the defacto complainant had created the forgery and fabricated settlement deed only to defeat the rights and the share in the family properties.

11.The learned counsel for the intervenor as well as the learned Government Advocate (Criminal Side) would submit that the father of the defacto complainant and the third accused, Soundarapandian, in his statement under Section 161(3) Cr.P.C has specifically admitted the execution of settlement deed in favour of the defacto complainant. It is not the case of the third accused Soundarapandian has denied and disputed the execution



of the settlement deed. Whatever it is, even assuming for argument sake that the settlement deed allegedly executed by the said Soundarapandian in favour of the defacto complainant is disputed, the competent Civil Court alone can decide the validity and legality of the said document.

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12. In the case on hand, it is the specific case of the defacto complainant that the third accused in collusion with other accused had fabricated the rental agreement forging the signature of his father Soundarapandia. But according to the accused, the rental agreement has been executed by the said Soundarapandian.

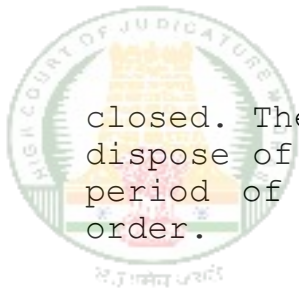
13. The learned counsel for the intervenor as well as the learned Government Advocate (Criminal Side) would submit that the said Soundarapandian in his statement has specifically disputed the execution of said rental agreement. Whatever it is, whether the rental agreement has been executed by the said Soundarapandian in favour of accused 1 and 2 or whether the petitioners had created and fabricated the rental agreement by forging the signatures of the Soundarapandian are the aspects that cannot be gone into in the present petition and the same are matter for trial.

14. This Court in exercise of its jurisdiction under Section 482 Cr.P.C cannot go into the truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. Upon perusal of the facts and circumstances of the case and the rival submissions made by the learned counsels on record, this Court is of the view that all the submissions made by them are directed towards the disputed questions of fact and the same cannot be adjudicated by this Court under Section 482 Cr.P.C.

15. The Hon'ble Supreme Court in ***Dr.Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and others*** reported in **2019 (2018) SCC 191** has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the Section itself.

16. In the case on hand, a perusal of the FIR and the statements and other records produced along with the charge sheet makes out a *prima facie* case against the accused and there appear to be sufficient ground for proceeding against them and as such, the question of quashing the charge sheet does not arise. Consequently, this Court concludes that the above petitions are devoid of merits and the same are liable to be dismissed.

17. In the result, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are



closed. The learned Magistrate is directed to complete the trial and dispose of the case as expeditiously as possible preferably within a period of five months from the date of receipt of copy of this order.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Judicial Magistrate No.I, Sivakasi.

2.The Inspector of Police,
Sivakasi Town Police Station, Sivakasi.

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

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-14428[F] dated 25/03/2022)

+1 CC to M/s.S.MANIKANDAN, Advocate (SR-14611[F] dated 25/03/2022)

CRL.O.P.(MD).Nos.1288 and 5950 of 2019

and

Cr1.M.P.(MD)Nos.627, 628, 3832 and 3833 of 2019
24.03.2022

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