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Crl.O.P.(MD)Nos.7628 and 10902 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26/04/2022

Pronounced on : 11/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)Nos.7628 and 10902 of 2019

and

Crl.MP(MD)Nos.4703, 4704, 6850 and 6851 of 2019

(1)Crl.OP(MD)No.7628 of 2019:-

Senguttuvel : Petitioner/A3

Vs.

1.The State rep. By its
Inspector of Police,
Crime Branch C.I.D.,
Karur District,
Karur.

: R1/Complainant

2.Ravi @ Raveendiran

: R2/De-facto Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with case in CC No.419 of 2018 on the file of the Judicial Magistrate No.II, Karur and quash the same.

For Petitioner : Mr.V.Sukumar

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

For 2nd Respondent : Mr.V.Subramanian



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

(2)Cr1.OP(MD)No.10902 of 2019:-

S.Anand

: Petitioner/A6

Vs.

1.The State rep. By its
Inspector of Police,
Crime Branch C.I.D.,
Karur District,
Karur.

: R1/Complainant

2.Ravi @ Raveendiran

: R2/De-facto Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with case in CC No.419 of 2018 on the file of the Judicial Magistrate No.II, Karur and quash the same.

For Petitioner : Mr.AR.L.Sunaresan
Senior counsel
for M/s.AL.Gandhimathi

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

For 2nd Respondent : Mr.V.Subramanian

COMMON ORDER

These criminal original petitions are filed seeking quashment of the case in CC No.419 of 2018 on the file of the Judicial Magistrate No.II, Karur.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

2.The case of the prosecution in brief:-

WEB COPY

The de-facto complainant lodged a complaint stating that his father Ayyasamy Nadar died, on 19/09/1988; His elder brother namely Balakrishnan died some one year prior to the date of death of the Ayyasamy, after executing the partition deed, dated 02/12/1959, by which, 'A' schedule property was allotted to his father and after his death, it was inherited by her legal heirs. His mother made objection for transfer of patta in respect of survey No.233. During enquiry, he was informed that his father executed a Will, dated 12/09/1988. But no such Will was executed by his father. Because even before the above said date, his father was in coma stage. A2 to A6, some six years prior to the complaint offered to purchase the property, but that was rejected. But A1 in collusion with the other accused persons, created the above said Will and by cheating, sold the property. A1 is the brother of the de-facto complainant. On the basis of the complaint given by him, the case was registered and after completing the formalities of investigation, final report was filed against 9 persons alleging that they have committed the offences punishable under sections 467, 468, 471 420 and 471 r/w 120(b) IPC and section 420 r/w 120(B) IPC.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

3.In the final report, it has been stated that in pursuance of the criminal conspiracy, on 12/09/1998, A1 to A9 created a forged Will and utilising the same as genuine document, executed the sale deed in favour of A2 to A6. A7 is an Advocate practising in Karur and A8 and A9 are stated to be the clients of A7. In the office of A7, the above said conspiracy of fabricating document and forging the Will was hatched. A7 alleged to have created the alleged forged Will. As per the direction of A7, A8 and A9 have attested in the above said forged Will. So these are the allegations in brief.

4.Seeking quashment of the same, A3 and A6 have preferred these petitions.

5.A3 is stated to be the purchaser of the property. His case is that he is a *bona fide* purchaser for valuable consideration. The other accused namely A2 to A6, after confirming the possession and title of A1, they along with the other persons purchased the property.

6.The case of the 6th accused is that he was aged about 25 years in 1998, studying in Australia, stayed there in October, 1987 and he is noway involved in the above said alleged forging of the Will.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

7.Heard both sides.

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8.An elaborate argument was advanced by the learned Senior counsel appearing for the petitioners, the de-facto complainant, who is the Intervenor, and the learned Additional Public Prosecutor.

9.The relationship of A1 and the de-facto complainant is not disputed. They are blood brothers. It is not in dispute that the property originally belonged to their father Ayyasamy Nadar. He died, on 19/09/1998. It is also not denied that the disputed Will is dated 18/09/1988.

10.Now as stated above, it is the case of the de-facto complainant to the effect that the above said Will was forged by A1 with the connivance of A2 to A9. A7 is an Advocate, who prepared the document. A8 and A9 are the attesting witnesses. A2 to A6 stated to be the purchasers. Now A1 is not before this court, only the subsequent purchasers are.

11.Now the learned Senior counsel appearing for the petitioners would submit that since the genuineness of the Will is under dispute, that cannot be decided by the



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

criminal court; It is out and out a civil issue; So, that cannot be tried and decided by the criminal court; A criminal colour has been given to the civil dispute. For that purpose, the learned Senior counsel appearing for the petitioners relied upon several judgments on this aspect.

12.Per contra, it is the contention on the part of the 2nd respondent to the effect that there was a large scale conspiracy and two FIRs have been registered. One for the property of the mother and another for the property of the father. Since no proper action was taken, he took appropriate steps to get the investigation transferred to the respondent police. During the course of the investigation, the expert opinion was obtained. Only on the basis of the above said opinion, the closed FIR was reopened by the concerned jurisdictional Magistrate and it was transferred to CB-CID Police. Against which, revision was also filed and that was dismissed, over which, SLP was filed and not pressing case, the above said SLP was also dismissed. So according to the learned counsel appearing for the 2nd respondent, circumstantial evidence is clearly against the case of the petitioners. So, they must be directed to undergo the trial process.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

13.Now let us go to the issue, whether *prima facie* materials have been collected to proceed against the petitioners.

14.The statement of the document expert, attached to the Forensic Sciences Department, Mylapore, Chennai has been recorded and he has stated that the signature in the disputed document, dated 12/09/1988 was marked as Q1-Q3 and they were compared with the admitted signatures, which was sent along with the letter and it was found that Q1-Q3 does not tally with that of the admitted signature. According to him, those are found to be forged one.

15.But the learned Senior counsel appearing for the petitioners would submit that the document, which was sent for comparison was not the contemporaneous document in nature; Only xerox copy has been submitted for comparison, it is not permissible and reliable.

16.I am unable to record any finding on this aspect. It requires thorough trial process through the evidence which can be undertaken only during the course of trial process. So I am of the considered view that no discussion can be made by this court on the reliability, etc. It is too a premature stage.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

17.Now a short point, which arises for consideration is whether these petitioners can be discharged from the cases on the ground that they are only the subsequent purchasers for value without any notice.

18.The learned Additional Public Prosecutor would submit that the allegation of conspiracy has been made out. Materials have been collected and only a thorough trial process will prove the case of the prosecution.

19.So in the background of the above facts, let us go to the factual aspect and the back ground of the issue.

20.It is seen that on 14/04/1985 Ayyasamy Nadar and Amirthavalli entered into a sale agreement with A2 to A5 in respect of the property in survey Nos.217, 233, 235, 195, 196. Survey Nos.195 and 196 belongs to Amirthavalli. Rest of the properties belong to Ayyasamy Nadar. Later, there was a quarrel between Ayyasamy Nadar and Amirthavalli. Ayyasamy Nadar came to A1's house and started living with him. Amirthavalli started living with the de-facto complainant. A2 and A5 filed a suit in O.S No.95 of 1994 before the Sub Court, Karur, seeking for specific performance in respect of the sale agreement, which was



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

entered between themselves and Amirthavalli Ammal in respect of of Survey No.196. Through court proceedings, they got the sale deed executed, on 11/02/2002. After that Ayyasamy Nadar died. Taking advantage of the same, according the prosecution, they decided to create the forged Will.

21.The learned counsel appearing for the de-facto complainant heavily relied upon these circumstances to show that they already entered into a sale agreement with the father and mother and later, also got a decree. So they very much knew about the property history. This, according to him, will show that there was a conspiracy between the petitioners and A1 also. A suit in O.S No.360 of 2002 was filed by A1 wherein the de-facto complainant and Amirthavalli Ammal were required to show the accounts and it was scheme decree suit, wherein all the properties were included, the disputed Will also mentioned in the written statement. It is further seen that the correct date of the disputed Will is 10/07/1986, which is a registered one and the Will, dated 19/01/1986, is an unregistered one.

22.Another circumstance that has been relied upon by the de-facto complainant is that the property situated in



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

Survey Nos.195 and 196 belong to his mother. But those properties are not also available still. Even that property was sold in 1985, in respect of survey No.196, as mentioned above, the case was registered in 1994 before the Sub Court, Karur. As mentioned above, that was also registered in respect of Chinnaraj @ R.Padmanaban and Balasubramanaian. But those properties were also included in the sale. According to the de-facto complainant, A2 very well knew about the history and the history of the property. In spite of that, they purchased the same from A1.

23.It is further submitted by the de-facto complainant that A1 entered into an agreement of sale with A2, A3 and A4 for selling the property in Survey Nos.217, 223 and 235. No whisper has been made with reference to the Will, dated 12/09/1988. It is further submitted that in 1959, there was a partition between the father and mother. As stated above, by which survey Nos.217, 233 and 235 was allotted to the father and mother was allotted with survey Nos.195 and 196; But these petitioners purchased the property on the basis of the above said alleged Will. So according to him, these two circumstances clearly stand against the petitioners, this sufficient enough to record a *prima facie* finding that there was a conspiracy.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

24.No doubt, these are the factual grounds, materials have been collected by the Investigating Officer during the course of investigation. Sitting in section 482 Cr.P.C, jurisdiction, this court cannot go into the factual aspects. But suffice to say that *prima facie* circumstance is available to proceed against the petitioners also.

25.But the learned Senior counsel appearing for the petitioners would rely upon the decision of the Hon'ble Supreme Court in the case of **Pepsi Foods Limited and another Vs. Special Judicial Magistrate and others [(1998)5 SCC 749]** for the purpose or argument that whether the disputed Will is a true one or not, cannot be a matter for consideration by the criminal court and it requires a thorough analysis by the civil court.

26.As stated, in the opening para of the judgment, according to the learned Senior counsel, a criminal colour has been given to the civil dispute, it has been repeatedly closed by the earlier Investigating Officer stating that it is only purely a civil issue. But however, subsequent proceedings were initiated to nullify the above said finding.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

27.The learned Senior counsel appearing for the petitioners would further rely upon the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others [1992 Supp(1) SCC 335]*** for the purpose of argument, contending that when *prima facie* case shows a civil issue involved, then they are entitled for discharge. But in the factual back ground of the case, as pointed by the learned counsel appearing for the second respondent, I am afraid that such an extreme step of quashing the criminal proceedings against the petitioners is permissible under law. Whether any criminal conspiracy occurred between the parties, whether the petitioners are the beneficiaries of the crime is also a matter for consideration by the trial court. So I find no merit in these criminal original petitions. Accordingly, these criminal original petitions are dismissed. Since the case of the old year and the final report was filed in 2018, even after a lapse of 14 years, the case has been dragged, there shall be a direction to the concerned trial court to expedite the trial process and complete the same within a period of six months from the date of receipt of a copy of this order.



Crl.O.P.(MD)Nos.7628 and 10902 of 2019

28.With the above direction, both criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

11.08.2022

Internet:Yes/No
Index:Yes/No
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To,

- 1.The Judicial Magistrate No.II,
Karur.
- 2.The Inspector of Police,
Crime Branch C.I.D.,
Karur District,
Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)Nos.7628 and 10902 of 2019

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Crl.O.P. (MD) Nos.7628 and 10902 of 2019

11/08/2022