



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.01.2022

PRONOUNCED ON : 21.02.2022

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

Crl.O.P. (MD)No.9272 of 2019

and

Crl.M.P. (MD)Nos.5910 and 5911 of 2019

Pakiyanathan : Appellant/Accused No.5

Vs.

1.State represented by
The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
(Crime No.45 of 2012) : 1st Respondent/Complainant

2.S.Krishnakanththan : 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for records pertaining to the petition in C.C.No.8 of 2018, before the Judicial Magistrate, Ambasamudaram and quash the same as against the petitioner.

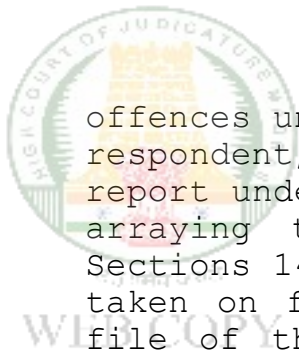
For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.R.Sivakumar
Government Advocate (Crl.Side)
for R.1
: Mr.T.S.R.Venkatramana
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.8 of 2018, on the file of the Judicial Magistrate Court, Ambasamudaram and quash the same as against the petitioner.

2. The petitioner is the fifth accused in C.C.No.8 of 2018, on the file of the Court of Judicial Magistrate, Ambasamudaram. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.45 of 2012 against 8 persons for the



offences under Sections 147, 417, 420, 468 and 471 I.P.C. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.c., dated 14.11.2017 against 8 accused arraying the petitioner as 5th accused for the offences under Sections 147, 417, 420, 468, 471 and 120(b) I.P.C., and the case was taken on file in C.C.No.8 of 2018 and the same is pending on the file of the Judicial Magistrate Court, Ambasamudaram, Tirunelveli District.

3. The case of the prosecution is that an extent of 12 cents in Survey No.525 of Vickramasingapuram Village, Tirunelveli District was originally belonged to Sivanupandiyan - father of the defacto complainant and after his demise, a partition suit is pending before the Sub Court, Tirunelveli in O.S.NO.132 of 1968 among the legal heirs of the above said deceased Sivanupandiyan, that the first accused has fabricated a document as if she is the owner of the said property and sold the same to the second accused vide sale deed dated 09.12.2009 and that the accused 3 to 6 had abetted the other accused in the commission of offence and that the entire transaction had taken place with the conspiracy of the accused 7 and 8.

4. The learned Counsel for the petitioner would submit that though the alleged occurrence had taken place on 09.12.2009, the complaint was lodged before the first respondent only on 09.02.2012, after the lapse of more than 2 years and the second respondent has not offered any explanation for the said inordinate delay. He would further submit that a specific allegation against the petitioner is that he had signed as a witness in the sale deed dated 09.12.2009 which was allegedly executed by the first accused in favour of the second accused and that except the signature found in the alleged document, there is no other material to connect the petitioner in this crime, that the first accused was already reported to be dead on 25.11.2011, but the case was registered only on 09.12.2012 and that too after the death of the first accused and that therefore, the offence alleged against the petitioner under Sections 147, 468 and 120(b) I.P.C., are not made out.

5. The learned Government Advocate (Crl.Side) appearing for the State would submit that all the accused had conspired together and assembled unlawfully and executed a sale deed through the first accused in favour of the second accused with the co-operation of the accused 3 and 4 and the accused 5 and 6 have stood as witnesses to the said document and that the accused 7 and 8 were the key persons to execute the sale deed in favour of the second accused through the first accused and that since the prosecution has shown prima facie case against all the accused to proceed further, the above Criminal Original Petition is liable to be dismissed.

6. As rightly contended by the learned Counsel for the second respondent, the accused 7 and 8 have filed a similar petition in C.C.No.3921 of 2018 under Section 482 Cr.P.C., to quash the



charge sheet in C.C.No.8 of 2018 and the learned Judge of this Court, vide order dated 07.11.2019, by holding that there are specific allegations against the petitioners and the documents which are relied upon by the petitioners therein have to be tested before the trial Court, dismissed the Criminal Original Petition.

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7. Moreover it is not in dispute that the sixth accused Ramasamy has filed another petition in Crl.O.P.(MD)No.10077 of 2018 under Section 482 Cr.P.C., to call for the records in C.C.No.8 of 2018 and quash the same and that this Court, vide order dated 07.11.2019 has dismissed the same and it is necessary to refer the following passages in Crl.O.P.(MD)No.10077 of 2019, which are extracted hereunder:

"6.The petitioner is arraigned as A6 and he has been charged for the offences under Sections 147, 468 and 120 (B) I.P.C. According to the case of prosecution, this petitioner along with A5 has extended his co-operation to execute the sale deed. A1 is the real owner of the property and she has derived the property from her ancestors. In fact, the 2nd respondent filed a suit in O.S.No.262 of 2009 on the file of the Additional District Munsif, Ambasamudram as against A1 and others and the same was dismissed vide order dated 27.04.2019. According to the learned counsel for the petitioners, A1 derived title over the disputed property by the sale deed dated 02.11.1971 executed by the mother of the 2nd respondent/defacto complainant.

7.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 in the case of **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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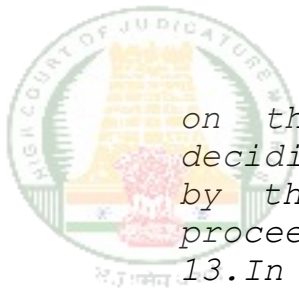
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint 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.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated 02.04.2019 in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues



on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

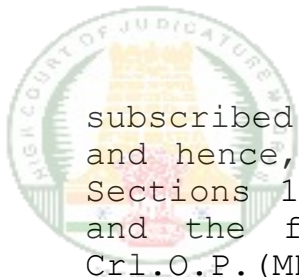
9. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in **Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna**, dated 17.10.2019 wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C. 20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

10. Considering the above said judgments, this Court is of the view that there are specific allegations as against the petitioner. Further, the mixed question of facts can not be considered by this Court that too under Section 48 of Cr.P.C. Further, this Court today i.e. On 07.11.2019 dismissed the quash petition filed by A7 and A8 in Crl.O.P. (MD) No.3921 of 2018."

8. In the present case, it is pertinent to note that the accused 3 and 5 had extended their co-operation for executing the sale deed, but on the other hand, according to the prosecution, the fourth accused and the fifth accused - petitioner herein had



subscribed their signatures in the alleged sale deed as witnesses and hence, the petitioner has been charged for the offences under Sections 147, 468 and 120(b) I.P.C. The judgments referred above and the findings given by the learned Judge of this Court in Crl.O.P.(MD)No.10077 of 2018 are squarely applicable to the case on hand, since the petitioner also stands on the same footing as that of the petitioner in Crl.O.P.(MD)No.10077 of 2018. Considering the above, this Court has no hesitation to hold that above Criminal Original Petition, which is devoid of merits, is liable to be dismissed. However, the personal appearance of the petitioner before the trial Court is ordered to be dispensed with on conditions that he shall appear at the time of questioning under Section 313 of Cr.P.C., and at the time of passing judgment and on all the hearings, specifically directed by the trial Court. The petitioner is further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event his presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, ***in State of Uttar Pradesh Vs. Shambunath Singh***, reported in ***2001 (4) SCC 667***.

9. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

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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 Court, Ambasamudaram.
2. The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.



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

+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-7927[F] dated
22/02/2022)

Crl.O.P. (MD)No.9272 of 2019
21.02.2022

RD(09.03.2022) 7P 5C