



WEB COPY

Crl.O.P(MD)No.8493 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2022

PRONOUNCED ON : 19.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.8493 of 2021

and

Crl.M.P(MD)Nos.4365 & 4366 of 2021

Dr.O.Chandran

... Petitioner/Accused No.9

Vs.

1.The State represented by,
The Inspector of Police,
Usilampatti Town Police Station,
Usilampatti,
Madurai District.
(Crime No.381 of 2007).

... 1st Respondent/Complainant

2.Ramar

... 2nd Respondent/
Defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned charge sheet in C.C.No.209 of 2011 pending before the learned District Munsif Judicial Magistrate Court No.I, Usilampatti, Madurai District in connection with Crime No.381 of 2007 dated 01.11.2007 for the offences under Sections 193, 406, 418, 420, 423, 468 and 471 of I.P.C on the file of the first respondent and quash the same as illegal as against the petitioner/Accused No.9.

For Petitioner	: Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R - 1	: Mr.B.Thanga Aravindh Government Advocate (Criminal Side)
For R - 2	: Mr.K.Surendran

ORDER

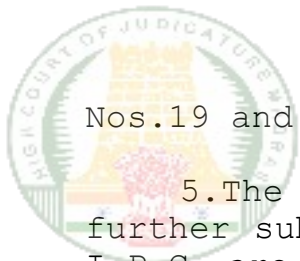
This Criminal Original Petition has been filed to quash the proceedings in C.C.No.209 of 2011 on the file of the learned District Munsif Judicial Magistrate No.I, Usilampatti, Madurai District in connection with Crime No.381 of 2007 dated 01.11.2007 for the offences under Sections 193, 406, 418, 420, 423, 468 and 471 of I.P.C on the file of the first respondent and quash the same as illegal as against the petitioner/Accused No.9.



2. There are totally 20 accused, in which the petitioner is arraigned as A.9.

3. The case of the prosecution is that the defacto complainant is a life time member of the Kallar Kali Kazagam and it is a registered Society under the Societies Registration Act and runs private aided College at Usilampatti, Madurai District. In the year 2002, the said Kazagam had 1150 life time members and all of them are the members and among the members, an executive committee consisting of 16 members including the Secretary, the President and the Treasurer are to be elected through election once in three years. On 29.12.2002, the said Kalagam has decided to sell one of its properties situated at Mela Ponnagaram, Arapalayam, Madurai. Therefore, the general body has convened and passed a resolution in order to sell the property. Thereafter, by virtue of general body authorization, the Executive Committee and Secretary decided to sell the property in favour of A.19 and A.20. After receipt of the entire payment of sale consideration, the Kalagam has executed a sale deed to A.19 and A.2, vide Document No.1343 of 2004, dated 09.06.2004. The property value is at Rs.65 lakhs, whereas the said property sold out only for the sale consideration of Rs.25,54,333/-, thereby, they caused loss to the said Kalagam. Further, at the time of passing resolutions, they forged the signatures of some of the members of the said Kalagam including the defacto complainant. Hence, the defacto complainant has lodged the complaint and the same has been registered by the first respondent against the petitioners and others in Crime No.381 of 2007 for the offences under Sections 193, 406, 418, 420, 423 and 465 of I.P.C. Later on, the first respondent has filed the charge sheet in C.C.No.209 of 2011 for the offences under Section 193, 406, 418, 420, 423, 468 and 471 of I.P.C and now the trial is pending before the learned District Munsif Judicial Magistrate No.I, Usilampatti, Madurai District.

4. Mr. Ajmal Khan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is a Doctor and he is also one of the Executive Committee member of Kallar Kalvi Kalagam and the said position is honorary. The petitioner never involved in day-to-day functions of the said Kalagam. According to the bye-laws, the Secretary, President and Treasurer are the active participants in the affairs of the Society. While being so, without any concrete material, due to general and vague allegations, the petitioner has been implicated as an accused in the present proceedings. The property in dispute has been occupied and encumbrance was created by some other person for a period of 30 to 40 years. The Society was not in a position either to recover the property nor to collect the rent. Therefore, for the welfare of the Society and in order to avoid total loss, the property was sold out to Accused Nos.19 and 20. Except Accused Nos.19 and 20, no one has come forward to purchase the said property. In fact, in Crl.O.P(MD) No.15831 of 2016, by an order dated 14.12.2020, this Court quashed proceedings as against the purchasers, namely Accused



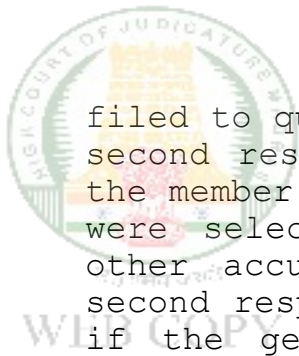
Nos.19 and 20.

5.The learned Senior Counsel appearing for the petitioner would further submit that the offences under Sections 418, 420 and 423 of I.P.C are not at all made out as against the petitioner. To constitute an offence under Section 420 of I.P.C, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security. While being so, the sale deed was executed in favour of Accused Nos.19 and 20 and they have never made any complaint. In fact, they were added as accused in this case. He further submitted that the offences under Sections 468 and 471 of I.P.C are also not made out as against the petitioner. To constitute an offence under Sections 468 and 471 of I.P.C, the accused should have used the said forged document as genuine one.

6.Per contra, the learned counsel appearing for the second respondent submitted that the petitioner was elected as Treasurer in the said Kalagam and he involved in day-to-day affairs of the said Kalagam. The subject property is vested with the members of the executive or managing committee of the Kallar Kalvi Kalagam, as per the proviso of the bye-law. By resolution No.8 in the general body meeting, dated 29.12.2002 of the Kallar Kavli Kalagam held at Veerapandi and stated about the selling of the property for higher value. The guideline value of the property is Rs.64,88,250/- whereas, the subject property was sold out for a sum of Rs.25,54,333/-. The second respondent's signature was forged in the resolution and executed the sale deed. In the said sale deed, it was recited that the executive committee on 07.12.2003 have relegated the power to the Secretary by its resolution. Hence, the petitioner, as one of the signatories to the resolution of the executive committee, is privy to the offence of acting on a resolution of the general body, in which the second respondent's signature was forged besides that various illegalities were committed. Therefore, there are materials to attract the offences as against the petitioner.

7.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

8.On a perusal of the materials available on record revealed that the learned District Munsif cum Judicial Magistrate No.I, Usilampatti, Madurai District forwarded the complaint in Crl.M.P.No.5638 of 2007, by an order dated 12.10.2007 under Section 156(3) of Cr.P.C. In pursuant to the said direction, the first respondent registered the case in Crime No.381 of 2007. After completion of investigation, filed a final report and the same has been taken cognizance in C.C.No.209 of 2011 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti, Madurai



filed to quash the entire proceedings as against the petitioner. The second respondent lodged the complaint alleging that he is one of the member of the Kallar Kalvi Kalagam, in which the accused persons were selected as managing committee, wherein the petitioner and other accused persons said to have forged the signature of the second respondent and other life members of Kallar Kalvi Kalagam as if the general body meeting conducted on 29.12.2002 and passed resolution to sell the subject property. On the strength of the said resolution, the subject property was sold in total sale consideration of Rs.25,54,333/-, whereas its market value worth about Rs.65,00,000/-. While discharging their official duty, the accused persons conspired together and thereby cheated and sold the subject property for meagre price.

9.Further, on a perusal of statement of the other witnesses revealed that on 29.12.2002, general body meeting was held at Bharathi Perumal Samy Community Hall, Veerapand, Theni District, where signatures were obtained from the members without assigning the details of the resolution. Whereas on 29.12.2002, during night hours, the accused persons have forged the signature of the members, who have not participated in the meeting and thereby passed resolution to sell the property. Therefore, there are sufficient materials to prosecute the petitioner.

10.It is 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.**, wherein the Honourable Supreme Court of India held 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.



11. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Invstigation Vs. Arvind Khanna**, wherein the Honourable Supreme Court of India has 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."

12. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, wherein the Honourable Supreme Court of India has held as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.



.....
13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

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

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.209 of 2011 on the file of the learned District Munsif Judicial Magistrate Court No.I, Usilampatti, Madurai District. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this order.

14. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// 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 District Munsif Judicial Magistrate Court No.I,
Usilampatti, Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Usilampatti Town Police Station,
Usilampatti,
Madurai District.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-19808[F] dated
20/04/2022)

Crl.O.P (MD) No.8493 of 2021
19.04.2022

SG (CO)
KB (27.04.2022) 7P 5C