



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2022

PRONOUNCED ON : 17.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.11320 of 2021

and

Crl.M.P(MD)No.5778 of 2021

WEB COPY

1.M.K.M.Mohamed Shafi

2.M.Ayesha Dowladh

... Petitioners/Accused Nos.1 & 2

Vs.

1.State represented by,
The Inspector of Police,
District Crime Branch,
Tirunelveli.

(Crime No.17 of 2016). ... 1st Respondent/Complainant

2.Ganapathiraman

... 2nd Respondent/
Defacto complainant

3.V.S.Velayutham

... 3rd Respondent

(R - 3 impleaded vide order dated 17.11.2021
made in Crl.M.P(MD)No.6921 of 2021)

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records of the impugned charge sheet in C.C.No.262
of 2021 on the file of the Special Court for Land Grabbing Cases,
Tirunelveli and quash the same against the petitioners.

For Petitioners : Mr.G.Prabhu Rajadurai

For R - 1 : Mr.R.M.Anbunidhi
Additional Public Prosecutor

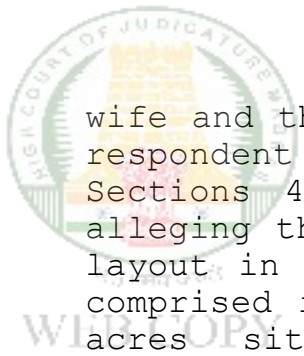
For R - 2 : Mr.Chengiz Khan

For R - 3 : Mr.N.Dilip Kumar

ORDER

This Criminal Original Petition has been filed to quash the
charge-sheet in C.C.No.262 of 2021 on the file of the Special Court
for Land Grabbing Cases, Tirunelveli, as against the petitioners.

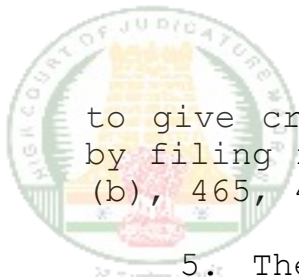
2. There are totally 10 accused, in which the petitioner are
arraigned as Accused Nos.1 and 2. The petitioners are husband and
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wife and they were implicated on the complaint lodged by the second respondent in Crime No.17 of 2016 registered for the offences under Sections 417, 420, 120(b), 465, 467, 468, 471 and 109 of I.P.C alleging that the petitioners advertised that they have developed a layout in the name and style of 'Shifa Golden City' for the land comprised in Survey Nos.9 and 11 admeasuring 12.29 acres and 2.85 acres situated in Konganthanparai Village, Tirunelveli. One Annamalai had purchased a plot bearing No.E7 and he had given power of attorney to one Abdul Karim. The second respondent purchased the said plot by a registered sale deed, dated 10.07.2009 and constructed a house and residing there. In the year 2010, the petitioners approached the second respondent and informed that certain persons have filed a suit in O.S.No.117 of 2010 before the civil Court and to conduct the trial, they obtained his signature. However, later the said suit was decreed in favour of the plaintiff declaring that the said property belonged to the plaintiff and ordered recovery of the suit property. Thereafter, the second respondent came to know that the said property has been purchased by the plaintiff's Mandagapadi in the year 1985 and as such the petitioners have committed the offence of forgery and cheating.

3. Whereas, the case of the petitioners is that they promoted a company in the name and style 'Shifa Housing Private Limited' in Tirunelveli for development of real estate. They developed the project in the name of 'Shifa Golden City' and it spreads around 22 acres. They layout the same and divided into 333 house plots, in which already 126 plots have already sold out. Almost all the purchasers have constructed their house and living there peacefully. The second respondent did not purchase the plot No.E7 directly from the petitioners.

4. The learned counsel appearing for the petitioners contended that the statement of witnesses annexed to the charge-sheet would not disclose any commission of offence of either forgery or cheating. They purchased the property comprised in Survey No.9 to an extent of 15.35 acres, the property comprised in Survey No.10 to an extent of 2.02 acres and the property comprised in Survey No.11 to an extent of 5.5 acres out of the total extent of 17.14 acres by three separate sale deeds from the original owner. Thereafter, in the year 2010, one Kuttalammal Religious and Charitable Trust filed a suit in O.S.No.117 of 2020 before the District Court, Tirunelveli, claiming title in respect of the property in Survey No.9 to an extent of 12.29 acres and Survey No.11 to an extent of 2.85 acres and also prayed for recovery of possession. After contest, the said suit was decreed and aggrieved by the same, the petitioner filed an appeal suit in A.S(MD)No.84 of 2016 on the file of this Court and this Court stayed all further proceedings in the Judgment and Decree passed in O.S.No.117 of 2020 on the file of the District Court, Tirunelveli and the said appeal suit is pending. Therefore, all the disputes raised in the present



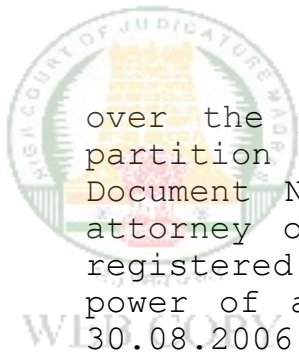
to give criminal colour for the civil dispute and finally achieved by filing final report for the offences under Sections 417, 420, 120 (b), 465, 467, 468, 471 and 109 of I.P.C.

5. The learned counsel appearing for the petitioners further submitted that the disputed properties are part of a large extent admeasuring 243 acres owned by one Sethu Subramania Pillai. Thereafter, he sold half of the un-divided share of the said property to five groups of persons each with 1/5th un-divided share. The descendants of the said Sethu Subramaniam Pillai again sold 1/8th share to one Velu Thevar and he became entitled to have 1/4th un-divided share in the large extent. Again one Konathu Mohamed Ali Tharaganar and his brother purchased 1/4th un-divided share from the other descendants of the said Sethu Subramania Pillai. From the descendants of the above said vendors, the plaintiff purchased the disputed properties. Therefore, the plaintiff or the vendors cannot claim any specific portion exclusive from the larger extent, since they have purchased un-divided share. On 15.06.2006, the successors from the above said group of persons joined together and entered into a partition deed. Therefore, the petitioners were not aware of the documents executed in favour of the said Trust. In fact, the encumbrance certificate did not disclose any prior transaction in respect of the disputed property. Therefore, the counter party rightly approached the civil Court and it is pending in A.S(MD)No.84 of 2016 before this Court. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in ***Criminal Appeal No.932 of 2021*** in the case of ***Randheer Singh Vs. The State of Uttar Pradesh and others.***

6. The learned counsel appearing for the third respondent contended that already the petitioners filed a petition before this Court in Crl.O.P(MD)No.15265 of 2016 to quash the F.I.R registered in Crime No.17 of 2016 and the same was dismissed by this Court by an order, dated 16.03.2020. He further submitted that there are specific allegations as against the petitioners to attract the offences under Sections 417, 420, 120(b), 465, 467, 468, 471 and 109 of I.P.C. He has also produced a statement recorded under Section 161(3) of Cr.P.C.

7. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the first respondent, the learned counsel appearing for the second respondent and the learned counsel appearing for the third respondent.

8. On a perusal of the statement recorded under Section 161(3) of Cr.P.C revealed that the petitioners and other accused persons have already approached the third respondent to purchase the disputed property. However, the third respondent refused their offer for the reason that already they have planned to start a School and as such, refused to sell the same. Thereafter, without any title



over the property, all the accused persons have entered into a partition deed, dated 15.05.2006 and the same was registered vide Document No.2767 of 2006. Immediately, they executed a power of attorney on the strength of the partition deed and the same was registered vide Document No.835 of 2006. On 29.08.2006, another power of attorney registered vide Document No.923 of 2006 and on 30.08.2006 another power of attorney registered Document No.935 of 2006. Thereafter, again on 14.08.2006 another power of attorney executed and registered vide Document No.1335 of 2006. Likewise, all the sharers executed so many power of attorney's in favour of 11 persons. Through the said power holders, the petitioners have purchased the disputed properties by four sale deeds on 31.08.2006. Therefore, there are specific averments and allegations as against the petitioners. In fact, the father of the third respondent filed a suit in O.S.No.117 of 2010, in which, the trial Court also endorsed the statement recorded under Section 161(3) of Cr.P.C.

9. 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.**, in which the Honourable Supreme Court has 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.

10. 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 Investigation Vs. Arvind Khanna**, 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."

11. 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**, in which, the Honourable Supreme 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.



12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.262 of 2021 on the file of the Special Court for Land Grabbing Cases, Tirunelveli. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners 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 nine months from the date of receipt of copy of this order.

13. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

Ps

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 Special Court for Land Grabbing Cases,
Tirunelveli.
- 2.The Inspector of Police,
District Crime Branch, Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-12870[F] dated 18/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13085[F] dated 18/03/2022)

Order made in
Crl.O.P(MD)No.11320 of 2021
17.03.2022

svs(CO)

TR(28.03.2022) 6P 6C

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