



Crl.O.P.(MD) No.12871 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12871 of 2022

and

Crl.M.P(MD) Nos.8159 & 8160 of 2022

Kangaraj

... Petitioner/Accused No.8

Vs

1. The State through
The Inspector of Police,
District Crime Branch,
Pudukkottai District.
In Crime No.4 of 2012.

... 1st Respondent/ Complainant

2. C.N.Madhavarao

... 2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records of the impugned proceedings of the charge sheet in C.C.No.31 of 2020, on the file of the learned Judicial Magistrate No.II, Pudukkottai, in so far as the petitioner is concerned.

For Petitioner	: Mr.K.Jeyamohan
For R1	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.31 of 2020, on the file of the learned Judicial Magistrate No.II, Pudukkottai.

2. The case of the prosecution is that the defacto complainant, C.N.Madhavarao has two siblings, by name, Prabakarn and Premila. His sister, by name, Premila was married to one Balakrishnan. From and out of the income earned by the said Balakrishnan, a house property was purchased in Plot No.225 in S.No.256 and 257 situated at Pudukkottai Village and Taluk. Thereafter, the said Balakrishnan died, on 25.11.1999. As the said Balakrishnan and the said Premila did not have any legal heirs, the sister of the defacto complainant executed a Will, dated 22.02.2007 in favour of the defacto complainant in respect of the above said property. Subsequently, his sister died on 13.11.2010. While that being so, the second accused in this case, has sent a legal notice dated 02.06.2010 to the sister of the defacto complainant stating that she has executed a sale agreement to sell the property for a sum of Rs.6,00,000/- (Rupees Six Lakhs



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only) and though the second accused has paid Rs.3,00,000/- (Rupees three Lakhs only), she has not come forward to sell the above property.

Thereafter, the first accused, by forging a legal heir certificate showing himself, as if, he is the surviving legal heir of the said Premila, has given power to the third accused and have registered the same Doc.No.627/2011 on the file of Sub Registrar, Pudukkottai. In the said power document, the fourth and fifth accused are the attesting witnesses. Thereafter, in view of the above said alleged power, the third accused has sold the property to the sixth accused for a sale consideration of Rs.6,90,000/- (Rupees Six lakhs Ninety Thousand only) and the same was registered vide document No.2612 of 2011 on the file of Sub Registrar, Pudukkottai. The accused Nos. 7 and 8 are the attesting witnesses in the said sale deed. Subsequent to the sale of the above said property to the 6th accused, the accused Nos.9 and 10 are residing in the said place as tenants. While the same was questioned by the defacto complainant, the accused Nos. 9 and 10 were threatened the defacto complainant with dire consequences. Hence, the complaint.

3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as



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alleged by the prosecution. He further submitted that he is only an attesting witness. Hence, the learned counsel prays for quashing the proceeding in respect of this petition alone.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner is the attested witness of the sale deed and he is not real owner of the property. The defacto complainant gave a statement at the time of investigation before the police that this petitioner is a broker at Pudukkottai, wherein the disputed property is situated. The petitioner/A8 was introduced through one Sivabalan to the defacto complainant and the defacto complainant informed the accused to arrange a tenant and thereafter, to see the parties to sell the disputed house. In this regard, the defacto complainant gave a power of attorney. Since the defacto complainant suspected the activities of the petitioner, after 1-½ months. cancelled the power deed on 14.02.2011. Hence, the learned Additional Public Prosecutor prays for dismissal of this petition.



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5. I have considered the matter in the light of the submissions made by both the counsel.

6. A perusal of the records would reveal that in this case, totally 10 accused and the petitioner is the A8. The case has been registered in Crime No.4 of 2012 for the offences under Sections 419, 420, 423, 465, 467, 468, 471, 120(b) and 506(ii) I.P.C. After investigation, final report has been filed and the same was taken on file as C.C.No.31 of 2020 by the Judicial Magistrate No.II, Pudukkottai.

7. According to the petitioner, the petitioner is being 8th accused and the attested witness to the disputed sale deed, he is not connected with the fabrication of the sale deed, which is strongly objected by the learned Additional Public Prosecutor on the ground that the defacto complainant clearly gave a statement before the police that this petitioner is a broker and the defacto complainant also gave power of attorney in favour of this petitioner on 14.02.2011 and thereafter, cancelled the power of attorney since he suspected the petitioner. Thus, the petitioner is having knowledge about the owner of the property. The petitioner is not disputed the fact that



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he is knowing the real owner of the property. This disputed fact cannot be considered while exercising the power under Section 482 of Cr.P.C. This disputed fact has to be adjudicated by let in evidence before the trial court and it cannot be quashed. The factual defence raised by the petitioner cannot be adjudicated. I find no merit in this petition.

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

26.07.2022

Internet: Yes./No
Index: Yes/no
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To

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

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V.SIVAGNANAM, J.

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ORDER IN
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