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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2022

PRONOUNCED ON: 29.08.2022

CORAM

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

Crl.O.P.(MD)No.10759 of 2019
and
Crl.M.P.(MD)Nos.6771 and 6772 of 2019

1.C.Thanka Beril Mabel

2.K.Rayappan

: Petitioners/Accused Nos.1 and 2

Vs.

1.The State represented by

The Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

(Crime No.102 of 2011)

: Respondent/Complainant

2.Devasagayam

: 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to the case in Charge Sheet in C.C.No.126 of 2017, pending on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District and quash the same as against the petitioners.



For Petitioners : Mr.R.Anand
For Respondents : Mr.K.Sanjai Gandhi
Government Advocate(Crl.Side)
for R.1

: Mr.M.Suresh
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the charge sheet in C.C.No.126 of 2017, pending on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District and quash the same.

2. The petitioners are the accused 1 and 2 in C.C.No.126 of 2017, on the file of the Court Judicial Magistrate No.I, Nagercoil. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.102 of 2011, dated 15.12.2011, against the petitioners for the offences under Sections 467, 468 and 420 I.P.C. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C., dated 14.08.2015 against the petitioners under Sections 120(b), 467, 468 and 420 I.P.C., and the case was taken on file in C.C.NO.126 of 2017 and the same is pending on the file of the Judicial Magistrate Court No.I, Nagercoil, Kanyakumari District.



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3. Admittedly, the first petitioner is the wife of the second petitioner and are residing at Tamil Nadu Housing Board Colony, Nagercoil. The case of the prosecution is that the petitioners 1 and 2, on 26.04.1989, vide document Nos. 1532/1989 and 1533/1989, have purchased a property each measuring to an extent of 1.28 and 1.22 cents respectively, that subsequently they have also got a rectification deed, dated 02.05.1989, vide document No.1579/1989, that the second petitioner-husband has settled his portion of the property to his wife – first petitioner on 30.03.2004, vide document No.1086/2004 and as a result of which, the first petitioner has become the owner of the entire property, that subsequently the first petitioner has sold the property, which was purchased by her, to the defacto complainant vide sale deed dated 20.03.2006 through document No.927/2006, for valuable consideration, that thereafter the first petitioner has executed a sale deed in respect of the entire property in favour of a Trust called “The Pendecaste Evangelism Trust”, Nagercoil for a sum of Rs.4,00,000/- represented by its Secretary, that the said Secretary of the Trust is none other than the husband of the first petitioner, ie., the second petitioner and that the petitioners 1 and 2 with sole intention to cheat the defacto complainant, had conspired together and created the sale deeds and thereby attempted to grab the property.



4. The case of the petitioners is that the available materials which have been collected during the course of investigation would not meet out the requirements for making out the penal provisions and therefore, the petitioners are constrained to file the above petition, invoking Section 482 Cr.P.C., for quashing the charge sheet.

5. The learned Counsel for the petitioners would submit that the sale deed dated 27.03.2006, can never be said as a false document, as the same does not come within the purview of the document prescribed under Section 464 I.P.C., and that unless it is alleged that the petitioners have forged the signature of the second respondent and tried to claim right over them, merely making a claim would not mulct the criminal liability upon the petitioners. The learned Counsel would further submit that admittedly, it is not a case where the impersonation has been alleged and according to the second respondent, he has got right of dealing with the said property, whereas the petitioners have been claiming that their own right in respect of the said property, have not been eschewed from consideration and that therefore, the only remedy available to the second respondent is to file a civil suit and not through the criminal prosecution.



6. The learned Counsel for the petitioners would further submit that the collection of materials do not indicate that there was a meeting of mind between the petitioners for the purpose of committing the offence of forgery and none of the witnesses would speak that there was a pre-arranged plan for cheating the second respondent, and that since the petitioners have allegedly executed the subsequent sale deed on 27.03.2006, the second respondent did not have any *locus standi* to question such later document, as he cannot be called as an aggrieved person. He would further submit that the learned Magistrate at the time of taking cognizance has not assigned any reason as to his subjective satisfaction for proceeding further. No doubt, the learned Counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in ***Mohammed Ibrahim and Others Vs. State of Bihar and another*** reported in ***(2009)8 Supreme Court Cases 751***.

7. The learned Counsel for the second respondent would submit that the factual aspects of the present case are entirely different. But according to the petitioners, the principles explained in the above judgment are squarely applicable to the present case. In the said decision of the case, the main case of the prosecution is that the first accused who had no connection with the land of the complainant had executed two registered sale deeds in favour of the second accused, that the accused 3 to 5, being the witness, scribe and stamp vendor



respectively in regard to the sale deeds, had conspired with the accused 1 and 2 to forge the said documents and that when the complainant confronted the accused 1 and 2 about the said forgery, they abused him and hit him with fists and informed him that he can do what he wanted, but they will get possession of the land on the basis of the said documents. After filing of the final report, the accused therein had applied for discharge. It is pertinent to mention that the complainant and the first accused were cousins, that the paternal grandfather of the complainant and the paternal grandfather of the first accused were brothers and they were the owners of the property in dispute. The Hon'ble Supreme Court had started to examine the matter, after referring to the principle, that the criminal Courts should ensure that the proceedings before it are not used for settling the scores or to pressurise the parties to settle the civil dispute and the relevant passage is extracted hereunder:

“8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”



8. Thereafter, the Hon'ble Supreme Court went on to consider the ingredients of the offences with which the accused therein were charged and concluded that the appeal is to be allowed in part and thereby quashing the case for the offences under Sections 420, 467, 471 and 504 I.P.C., and allowed the prosecution to proceed for the offence under Section 323 and 341 I.P.C..

9. In the present case, as already pointed out, the petitioners are husband and wife. More importantly, the first petitioner wife has sold the property purchased by her to the defacto complainant on 20.03.2006 and on 27.03.2006, the first petitioner has sold the entire property in favour of the Trust in which the second petitioner is a Secretary. It is pertinent to mention that the second sale deed was executed within seven days since the execution of the first sale deed in favour of the defacto complainant. Admittedly, the petitioners have not offered any reason or explanation for executing the subsequent sale deed in favour of the said Trust. Moreover, the petitioners have not denied the factum of executing the sale deed in favour of the defacto complainant by the first petitioner and thereafter, the subsequent sale deed in favour of the Trust represented by its Secretary – second petitioner herein.



10. When the matter was taken up for hearing on 08.12.2021, this Court directed the Registry to call for a report from the learned Judicial Magistrate No.I, Nagercoil regarding the stage of the case in C.C.No.126 of 2017. In pursuance of the same, the learned Judicial Magistrate has submitted a report dated 29.12.2021 stating that the case is pending for trial and posted for examination of listed witnesses No.1 to No.4. Subsequently, the learned Counsel for the petitioners would submit that they are attempting compromise between the parties in respect of the present case and also the civil suit between the parties, but subsequently the compromise talks ended in failure.

11. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Kaptan Singh Vs. State of U.P.**, reported in **2021 (3) Crimes (SC) 247**.

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers Under Section 482 Code of Criminal Procedure has quashed the criminal proceedings for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code. It is required to be noted that when the High Court in exercise of powers Under Section 482 Code of Criminal Procedure quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the Accused persons, has filed the



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charge-sheet before the Learned Magistrate for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition Under Section 482 Code of Criminal Procedure was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation / inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is



disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2. In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers Under Section 482 Code of Criminal Procedure to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction Under Section 482 Code of Criminal Procedure though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers Under Section 482 Code of Criminal Procedure. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers Under Section 482 Code of Criminal Procedure.”

12. Upon careful perusal of the F.I.R. and the materials collected by the Investigating Officer, on the basis of which, the charge sheet has been filed,



makes out a *prima facie* case against the accused at this stage and there appears to be sufficient ground for proceeding against the accused. Hence this Court do not find any justification to quash the charge sheet or the proceedings against the petitioners arising out of them, as the case does not fall in any of the categories recognised by the Hon'ble Apex Court, which may justify their quashing.

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

29.08.2022

Index : Yes/No

Internet : Yes/No

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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 No.I,
Nagercoil, Kanyakumari District.
2. The Inspector of Police,
District Crime Branch,
Nagercoil, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.10759 of

K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)No.10759 of 2019

29.08.2022