



Crl.O.P.(MD) No.12940 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12940 of 2022

and

CRL. M.P(MD) No.8214 of 2022

M.Ganesh

... Petitioner/ Accused No.9

Vs

1. The State of Tamil Nadu

Represented by

The Sub Inspector of Police,

Naraikinaru Police Station,

Thoothukudi District.

... 1st Respondent/Complainant

2. M.Madasamy

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with FIR in Crime No.23 of 2022, dated 18.05.2022 on the file of the first respondent Police and quash the same as against the petitioner.

For Petitioner : Mr.Raguvaran Gopalan

For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed by the petitioner herein challenging the case registered in Crime No.23 of 2022, dated 18.05.2022, for the offences under Sections 465, 468, 471 and 420 I.P.C, by the first respondent police.

2. The facts of the case are as follows:

The defacto complainant/M.Madasamy filed a private complaint before the Judicial Magistrate No.II, Kovilpatti. The learned Judicial Magistrate has taken on file in Cr.M.P.No.4067 of 2019, dated 15.04.2019 and forwarded the complaint to the first respondent police to investigate the case. The respondent police recieved the complaint on 18.05.2022 and on recieving the complaint, registered the case in Crime No.23 of 2022 for the offences under Sections 465, 468, 471 and 420 I.P.C, on 18.05.2022 against the following persons, viz., 1.Subbammal, 2.Madathi, 3.Selvarani, 4.Shamuthirakani, 5.Annalakshmi, 6.Chelladurai, 7.Muthumalai Arunachalam Alias Madasamy, 8.Chellakani Sudalaikannu and



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9. Ganesh.M. In the complaint, the complainant alleged that the properties at Kalappaipatti Village, Kayatharu Taluk, Thoothukudi District, Punjai land in (1) Survey No.227/4 in 29.00 Hectare, (2) Survey No.228/3 in 92.00 hectare, (3) Survey No.228/4 in 97.50 Hectare, (4) Survey No.37/3 in 92.00 Hectare, (5) Survey No.37/5 in 41.50 hectare and (6) Survey No.37/8 in 68.00 Hectare, totalling 4.20.50 Hectares, originally owned by the complainant's father viz., Mookan and his mother viz. Senbagamuthu @ Senbagamuthammal. They have purchased the property on 20.02.1970 by way of a registered sale deed in Document No.326/1970 and further by way of settlement deed executed by one Madasamy, S/o. Poochan on 25.08.1950 by way of Document No.1026/1950 and thereby, they owned the properties mentioned in the item Nos.4 and 6 in the complaint. Totally, 6 items of properties were owned by the parents of the complainant. The mother of the complainant died on 11.09.1995 and the father of the complainant died on 16.06.2002. The legal heirs are the complainant and his brothers.

3. In these circumstances, A1 to A8, namely, (1) Subbammal, (2) Madathi, (3) Selvarani, (4) Shamuthirakani, (5) Annalakshmi, (6)



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Chelladurai, (7) Muthumalai Arunachalam Alias Madasamy and (8)

Chellakani Sudalaikannu, who are not connected with the property colluding with 9th accused/this petitioner, viz., Ganesh.M., executed a sale deed in favour of the 9th accused on 04.05.2018 and the document was not registered at the jurisdictional Sub Registrar Office, Kalappaipatti Village, but, registered wantonly at Sub Registrar Office, Surandai, Tirunelveli District. Since all the accused with an intention to grab the properties created document and grabbed land, the defacto complainant gave the impugned complaint.

4. The learned counsel for the petitioner submitted that the petitioner is the 9th accused in the impugned FIR in Crime No.23 of 2022, dated 18.05.2022, for the offences under Sections 465, 468, 471 and 420 I.P.C, on the file of the first respondent police. He is only authorized representative of NEPL (NVR Energy Private Limited). He purchased on behalf of the NEPL the disputed property by sale deed, dated 04.05.2018. Accused Nos.1 to 8 represented to NEPL that they are the lawful owners of the disputed property, believing their representation, NEPL *bonafidely*



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purchased the lands for valuable consideration. Subsequently, the property was transferred to Narbheram Solar TN Private Limited (NSTN). Again, NSTN has sold the disputed property to Mercanus Mercantile Private Limited (MMPL). At present, MMPL is in possession of the disputed property. The MMPL has also filed a Civil Suit in O.S.No.127 of 2021 before the Sub-Court, Kovilpatti with a prayer for declaration of title over the disputed property and arrayed the accused A1 to A8, NEPL, NSTN and the defacto complainant as defendants in the suit.

5. The learned counsel for the petitioner further submitted that the MMPL offered to convey the disputed property to the defacto complainant and his siblings but, since they refused to accept it, filed the suit. On a reading of the impugned FIR, it will be very clear that there is no allegation or overtact against the petitioner. All the allegations are against A1 to A8. Since the FIR fails to disclose a *prima facie* case against the petitioner, the same is liable to quashed and reiterated the other grounds and pleaded to quash the impugned FIR against the petitioner.



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6. The learned Government Advocate (Criminal Side) appearing for the first respondent submitted that the allegations in the complaint are as against all the accused, A1 to A9. According to the allegations, in order to grab the land of the defacto complainant, A1 to A8 colluded with A9 fabricated the sale deed in favour of A9. The investigation is in progress and the quashing the FIR in exercise of the inherent powers of the High Court should be limited to very extreme exception. Merely because the petitioner is a purchaser from A1 to A8, is not sufficient to exclude him without investigating his connivance and collusion with A1 to A8 for creating the sale deed for grabbing the lands belonging to the defacto complainant and the same cannot be allowed. He further pleaded that now the property was sold to (MMPL) Mercanus Mercantile Private Limited, which is in possession and therefore, the question as to whether the accused persons intentionally involved in grabbing the land belongs to the defacto complainant, has to be thoroughly investigated, and thus, prayed to dismiss this petition.



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7. I have considered the matter in the light of the submissions made by the learned counsel for both parties and perused the records.

8. This is the case of land grabbing of village man to the extent of 51.33.00 acres 126 cents 78.5 by powerful elements, viz., A1 to A8 and powerful Companies of 9th accused and subsequent purchaser, namely, Mercanus Mercantile Private Limited (MMPL).

9. A perusal of the available records reveals the fact that the defacto complainant/M.Madasamy filed a private complaint before the Judicial Magistrate No.II, Kovilpatti under Section 156(3) Cr.P.C. The learned Judicial Magistrate has taken on file in Cr.M.P.No.4067 of 2019 and forwarded to the first respondent police to register the case and investigate and file the final report. Thereafter, the first respondent police registered the case in Crime No.23 of 2022 for the offences Sections 465, 468, 471 and 420 I.P.C and now, it is under investigation.



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10. The records further reveal that the defacto complainant filed the Crl.O.P(MD) No.136 of 2022 before this Court for issuing a direction to the first respondent police to register the petitioner's complaint as per order passed in Cr.M.P.No.4067 of 2019, dated 15.04.2019 on the file of the Judicial Magistrate No.II, Kovilpatti. In that Criminal Original Petition, the Mercanus Mercantile Private Limited was added as the third respondent before this Court. The third respondent submitted that the present purchaser i.e., Mercanus Mercantile Private Limited is ready to undo whatever wrong that has been committed by the named accused. Recording the same, this Court directed the officials not to make Mercanus Mercantile Private Limited as an accused in this case, which has been registered pursuant to the order passed in Cr.M.P No.4067 of 2019, dated 15.04.2019, on the file of the Judicial Magistrate No.II, Kovilpatti. For better appreciation, the relevant portion of the order of this Court is extracted as follows:

....“3. Be that as it may, the subject matter appears to have been purchased by one Mercanus Mercantile Private Limited, Kolkatta. They have been impleaded as the third respondent. An



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affidavit was also filed in support of the impleading petition. It has been set out therein that the present purchaser is ready to undo whatever wrong that has been committed by the named accused. I therefore, direct that Mercanus Mercantile Private Limited, Kolkatta or their Associates/ Officials shall not be made an accused in the case that has to be registered pursuant to the order, dated 15.04.2019 passed by the jurisdictional Magistrate. This is all the more so, because Mercanus Mercantile Private Limited, Kolkatta is only a subsequent purchaser. However, the Inspector of Police, Naraikinaru Police Station is directed to register an FIR forthwith pursuant to the direction given by the jurisdictional Magistrate and act as per law. This Criminal Original Petition is disposed of, accordingly.

11. A perusal of records further reveals that the third respondent in Crl.O.P(MD) No.136 of 2022, i.e., Mercanus Mercantile Private Limited filed a suit against the defacto complainant and Accused Nos.1 to 8 and also against NEPL and NSTN with prayer for declaration of title over the disputed property in O.S.No.127 of 2021, before the Sub-Court, Kovilpatti



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and for a consequential injunction restraining the 13th defendant i.e., defacto complainant and his men from interfering with the peaceful possession and enjoyment of the suit properties. For better appreciation, the relevant portion of the suit prayer is extracted as follows:

“ Prayer

“The plaintiff therefore prays that this Honorable Court may be pleased to:

1. Pass a decree and judgment declaring that the plaintiff is the lawful owner of the suit properties comprised in survey Nos.37/3, 37/5, 37/8, 227/4, 228/3 and 228/4 totally admeasuring 10.40 acres and situated at Kalappaipatti Village, Kayathar Taluk, Thoothukudi District having purchased the same vide a registered sale deed, dated 18th October 2019 bearing Doc.No.2732/2019 SRO Gangai Kondan, for a valuable consideration from the twelfth defendant – Narbheram Solar TN Private Limited, Kolkatta, and for a consequential injunction restraining the 13th defendant and his men from interfering with the peaceful possession and enjoyment of the suit properties.

2. Pass an order awarding the cost of the suit and direction the 13th defendant to bear the same, and

3. Pass any other order or orders and any other



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relief or reliefs as may be deemed fit and appropriate in the circumstances of the case and thus render justice.

12. A reading of the plaint in O.S.No.127 of 2021, on the file of the Sub Court, Kovilapatti indicates that the plaintiff/Mercanus Mercantile Private Limited did not seek any relief against the Accused Nos.1 to 8 and the petitioner's Company and others and they are mentioned as defendants 1 to 12 and they are added as formal parties. For better appreciation, paragraph 31 in the plaint is extracted as follows:

“31. The plaintiff submits that defendants 1 to 12 have been arrayed as formal parties and no relief or reliefs is/are sought for against them”.

13. The plaintiff in the suit pleaded that he is a *bona fide* purchaser for value and denied the defacto complainant's title over the property. For better appreciation, paragraphs 29 and 30 in the plaint are extracted as follows:

“29. The plaintiff submits before this Honorable Court that it has purchased the suit properties for a valuable consideration from the 12th defendant and



thus has got a good title and it a bona fide purchaser for value and the 13th defendant without having any title or right over the suit properties or without asserting his title or right over the suit properties before a competent civil court, is brazenly trespassing into the suit properties on the pretext that the defendants 1 to 8 have agreed before the Naraikinaru police station that the sale effected by them in favour of the 11th defendant – NVR Energy Private Limited, Kolkata is void.

30. The plaintiff submits that it has no other option except to approach this Honorable Court praying to this Honorable Court to declare that the plaintiff is the lawful owner of the suit properties having purchased the same for a valuable consideration from the twelfth defendant and also to injunct the 13th defendant and his men from trespassing into the suit properties”.

14. The plaint pleadings in paragraphs 29 and 30 are totally contrary to the statement in Crl.O.P(MD) No.136 of 2022 before this Court that the plaintiff is ready to undo whatever wrong that has been committed by the named accused. But in the plaint, he asserted his title and denied the defacto



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complainant's title over the property and prayed for declaration of his title. It exposes the fact that as if he is really intended and ready to undo whatever wrong that has been committed by the named accused, placed a false statement before this Court by suppressing the filing of civil suit for declaration of title against the defacto complainant and obtained the favorable order as not to make him as an accused in this case registered against other accused. Thus, Mercanus Mercantile Private Limited had obtained a favorable order not including him as an accused in this case and thereby, played fraud before this Court.

15. Further, the records reveal that the petitioner in the Criminal Original Petition and the another companies NSTN and MMPL are related companies. They are one and the same and the petitioner's company and NEPL, NSTN and MMPL are related companies. Therefore, this petitioner cannot deny the fact that he is not liable as he had sold the subject property to MMPL. In paragraph 6 of the affidavit, the petitioner admitted the fact that the NEPL., the petitioner company NSTN and MMPL related companies. For better appreciation, paragraph 6 of the affidavit is extracted



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as follows:

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.... *“The petitioner submits that it is pertinent to note that NEPL., NSTN and MMPL are related companies as defined under the Companies Act, 2013 as they have common members. Hence, NEPL being an “Associate” of MMPL, the order dated 20.01.2022 of this Hon'ble Court would extend to NEPL and NSTN as well”.*

16. Thus, he pleaded the benefit given to MMPL, by this Court, vide order dated 20.01.2022 to extend to the petitioner company NEPL and NSTN as well. It exposes the fact that the petitioner's Company as well as MMPL by giving false statement before this Court by saying that he is ready to undo whatever wrong that has been committed by the named accused and by filing the suit in O.S.No.127 of 2021. It clearly exposes the collusion of the petitioner company and NSTN, MMPL company for grabbing the disputed property that belongs to the defacto complainant.

17. In this connection, it will be appropriate to remember the legal principle and observations made by the Hon'ble Supreme Court in the ***State of Haryana and Ors. Vs.Ch.Bhajan Lal and Ors.*** Paragraph 105 of the



decision the Honorable Supreme Court and some other principles to be taken into consideration, for better appreciation, will be reproduced which reads as follows:-

“ 105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.



2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the F.I.R or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5 Where the allegations made in the F.I.R or complaint are so absurd and inherently improbable on the basis of which no prudent



person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and /or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. Therefore, it is clear that if the allegations made in the F.I.R *prima facie* disclose a cognizable offence, interference with the investigation is not proper, because that amount to interfering with the statutory power of the police to investigate a cognizable offence in



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accordance with the provisions of Code of Criminal Procedure, without thorough investigation, it is not possible or proper to hold whether allegations made by the complainant are true or not. Hence, the investigation should have been allowed to continue so that on filing of the report under Section 173 Cr.P.C the affected party could pursue its remedy against the report in accordance with law.

19. Therefore, the police will proceed to complete the investigation fairly with some expedition and submit the required report to the learned Judicial Magistrate No.II, Kovilpatti, who shall act in accordance with law.

20. Now it is to be noted that the plea and argument of the learned counsel for the petitioner that MMPL Company is ready to reconvey the subject matter of the land to the defacto complainant is dubious one because the question of reconveyance of subject matter of the land does not arise, when the right of title over the subject matter of the property is not legally extinguished but illegally grabbed by the accused persons. Further filed the civil suit against the defacto complainant with prayer for declaring title



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coupled with permanent injunction against the defacto complainant exposes the real face of the accused persons against the defacto complainant.

Further, it is to be recorded that in Crl.O.P(MD) No.136 of 2022, the third respondent/MMPL by suppressing the factum of filing of civil Suit in O.S.No.127 of 2021 against the defacto complainant and others with prayer for declaration of title and permanent injunction, falsely represented that they are ready to undo whatever wrong that has been committed by the named accused, obtained the relief of not to register the case against the MMPL, is a fraud played upon the Court. It is settled principle that any order obtained by playing fraud upon the Court is non-est in the eye of law. Therefore, liberty is given to the first respondent police to investigate against the Mercanus Mercantile Private Limited (MMPL), Kolkatta, about its involvement in grabbing of lands.

21. In this case, the defacto complainant is a village man and his lands were grabbed by the accused persons illegally and he is now coming to Court for getting justice. But, the accused and rich companies are fighting against the village man by filing one case after another case.

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Therefore, I am inclined to dismiss the Criminal Original Petition with a cost of Rs.1,00,000/- (Rupees One Lakh only) payable to the defacto complainant by the petitioner's Company, who have purchased the property from the Accused Nos.1 to 8. Consequently, the connected Miscellaneous Petition is closed.

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

1. The Inspector of Police,
Naraikinaru Police Station,
Thoothukudi District.
2. 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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