



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.14222 of 2021

and

Crl.M.P(MD)No.7436 of 2021

1. M.Kaliappan
2. V.Krishnakumar
3. V.Veluchamy
4. M.Karuppachamy

... Petitioners

Vs.

1. The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.16 of 2020)

2. K.Manonmani

... Respondents

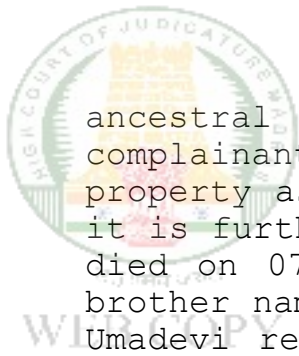
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned First Information Report in Crime No.16 of 2020 on the file of the first respondent and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.C.Gangai Amaran
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl.Side)for R.1
Mr.R.Mathialagan for R.2

ORDER

This Criminal Original Petition has been filed to quash the impugned FIR in Crime No.16 of 2020 on the file of the first respondent.

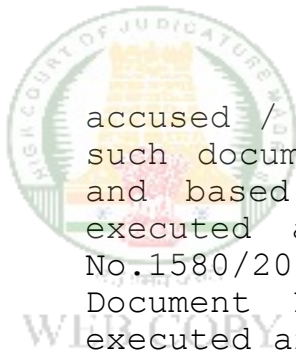
2.The learned counsel appearing for the defacto complainant states that the defacto complainant is a permanent resident of the above said address and she is the eldest daughter of S.K.S.Kalimuthu Pillai and Arunagiri Ammal, who are residents of Sangupillai and Arunagiri Ammal, who are residents of Sangapillai Pudur and that her father was possessing property comprised in S.Nos.42/1C, 42/1D, 42/2 and 43/3B of an extent of 33 cents situated at Oddanchathiram Village and Town, Dindigul District and it is further alleged that she got one brother and two sisters and that the said property is an



ancestral property and that the second respondent / defacto complainant has been in possession and enjoyment of the said property as a joint property along with his brother and sisters and it is further alleged that her father namely, S.K.S.Kalimuthu Pillai died on 07.01.2008 leaving behind her mother Arunagiri Ammal, her brother namely, S.K.S.Sivayogi and two sisters, namely, Sivagami and Umadevi respectively. It is further alleged that during the life time of her father, he sold some extent of properties and remaining properties were maintained by the second respondent / defacto complainant and her mother and brothers and further it is alleged that she along with her sisters requested her brother for partition of the said properties but his brother refused to do so and in view of above refusal, serious differences arose between the sisters and their brother and it is further alleged that she was unable to manage the properties and it is further alleged that since she was staying at Karur, taking advantage of such situation, the brother S.K.S.Sivayogi has sold some extent of properties on various occasions without her knowledge and it is further alleged that they are the properties which are used for agricultural purposes and some extent of lands are lying as dry vacant lands.

3.He would also further alleged that her mother Arunagiri Ammal also died on 01.03.2018 leaving behind her son and the defacto complainant and sisters and after such demise of her mother, she went to the house of her brother S.K.S.Sivayogi and demanded for partition of the properties, but he refused to do so and promising and delaying for partition, and in such circumstances, she made an application before the Sub Registrar for issuance of encumbrance certificate in respect of some portion of the properties and at that time, she noticed that in respect of some portion of the property and at that time she noticed that in respect of some portion of the property belonging to her family as mentioned in the Survey Numbers above, her father S.K.S.Kalimuthu Pillai along with his own brother S.K.S.Somu have executed a General Power of Attorney in favour of M.Kaliappan on 11.11.2005, vide document No.313 /2005, which was having two portions I.e. "A" schedule which was allotted to S.K.S.Kalimuthu Pillai i.e father of the defacto complainant / second respondent and "B" schedule property allotted to S.K.S.Somu, brother of her father and further the said Kaliappan, on the strength of the registered power deed, had executed a sale deed in favour of one Krishnakumar vide document No.1102/2008 and some extent of property in favour of one Veluchamy vie Document No.1103/2008, dated 23.05.2008 and another extent of property was also sold on 23.05.2008 and another extent of property was also sold by Kaliappan in favour of one Karuppuachamy which is mentioned as "A"schedule property.

4.He further stated that her father died on 07.01.2008 and after four months period, the petitioners suppressing death of her father, made a story that once principal is died, the power of



accused / petitioners have created forged documents and registered such documents in the office of the Sub Registrar, Oddanchathiram and based on invalid power of attorney, the Accused No.2 and executed a sale deed in favour of Karuppuchamy vide Document No.1580/2011 and further the said Murugesan on 03.06.2011 vide Document No.1580/2011 and further the said Murugesan in turn executed another sale deed in favour of one Selvi, who is arrayed as seventh accused vide document No.1581/2011 and further the said Karuppuchamy, who is arrayed as Accused No.8 on the strength of the power of attorney and further the said Veluchamy and Krishnakumar have executed various power of attorneys and sale deeds in favour of various persons after knowing the death of father of the defacto complainant / second respondent and thus cheated the defacto complainant / second respondent.

5.The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.16 of 2020 for the offences under Sections 120(b), 294(b), 420, 467, 468 and 506 (ii) IPC as against the petitioners.

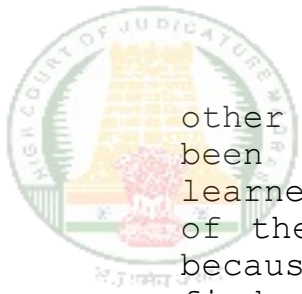
6.The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police are about to file the final report before the concerned court.

7.Heard both sides and perused the materials available on record.

8.It is seen from the First Information Report that there are specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

9. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** - ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in



other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6.....

7.....

8.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

10. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the first respondent police is directed to complete the investigation and file final report before



the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Inspector of Police,
District Crime Branch,
Dindigul District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MATHIYALAGAN, Advocate (SR-9570[F] dated 02/03/2022)

Crl.O.P(MD)No.14222 of 2021
01.03.2022

RS (29.03.2022) 5P-4C