



CrI.O.P(MD)No.17057 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P(MD).No.17057 of 2022

and

CrI.M.P(MD).Nos.11460 and 11461 of 2022

Manoharan

: Petitioner

Vs

1. The State represented by
The Inspector of Police,
District Crime Branch,
(Special Cell For Land Grabbing),
Theni District.
Crime No.27 of 2013

2. Navroji Ponmani Balammal,

: Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to impugned Charge Sheet in CC.No.2 of 2015, pending on the file of the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Theni and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Senthil M.P

For R1 : Mr.B.Nambiselvan
Additional Public Prosecutor

For R2 : Mr.J.Selvin Rajesh



ORDER

WEB COPY This Criminal Original Petition has been filed seeking to quash the C.C.No.2 of 2015, pending on the file of the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Theni.

2. The learned Counsel for the petitioner stated that the Presiding Judge of the Court of the learned Judicial Magistrate, Special Court for Land Grabbing Cases, Theni, had instructed the petitioner herein to move this Court to quash the charge sheet. Accordingly, this petition was filed only on such representation. This Court had sought remarks from the learned Judicial Magistrate.

3. The learned Additional Public Prosecutor objected to this stating that this is the second petition filed by the petitioner. Earlier petition was dismissed by this Court. Another petition was filed by another accused Rajeshwaran in Crl.O.P(MD) No.18088 of 2019, which was dismissed by the learned Single Judge of this Court on 29.04.2022, by observing that I.A.No.487 of 2014 in O.S No.152 of 2014 in favour of the petitioner cannot be taken into consideration for supporting the case of the petitioner, when serious allegation of forgery and impersonation are stated. The attempt of the petitioner in filing Crl.M.P before



the learned Judicial Magistrate, Land Grabbing Cases, Theni and at the same time filing this petition before this Court and also on earlier occasion stating that earlier petition was allowed by this Court, is misleading the Court, which is not acceptable. Even if the contention of the learned Counsel for the Petitioner is accepted, the Hon'ble Supreme Court had laid down rules that there is no bar for the citizen of the Country to approach this Court with limited prayer and at any time, he can approach this Court repeatedly. The contention or attitude of the accused before two fora before the trial Court and High Court cannot be accepted. It amounts to misleading the Court and any Court of law will not appreciate the principles of fair trial.

4. The learned Judicial Magistrate, Special Court for Land Grabbing Cases, Theni, had offered his explanation in D.No.305 of 2022, dated 02.11.2022. He had denied the statement that he directed or insisted the petitioner or his counsel to move before the Hon'ble Madurai Bench of Madras High Court or any other higher forum to quash the charge sheet in C.C.No.2 of 2015, against the petitioner/second accused. Further, he had submitted that he is serving as District Munsif, Theni and holding full additional charge of the Court of the learned Judicial Magistrate, Special Court for Land Grabbing Cases, Theni, from 05.05.2022. In the case in Crime No.27 of 2013, on the file



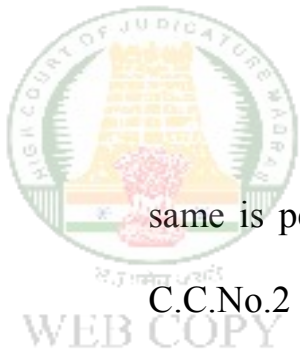
of the Inspector of Police, Special Cell for Land Grabbing cases. There are six accused persons, namely, 1.Rajeshwaran, 2.Manoharan, 3.V.R.Gopal, 4.Ramakrishnan, 5.Bhagavathi Vadivel and 6.Jayakumar. The charge sheet was also filed against the six accused persons. It was taken on file as C.C.No.2 of 2015. Meanwhile, the accused Nos.3 to 6 filed a petition in Crl.O.P(MD)No. 20918 of 2016, seeking to quash the C.C.No.2 of 2015 against them, which was allowed by this Hon'ble Madurai Bench of Madras High Court, by order dated 24.11.2020. The second accused also preferred a petition under Section 239 Cr.P.C, seeking to discharge him from the case in C.C.No.2 of 2015 before the Special Court, Land Grabbing Cases, Theni. The said petition was numbered as Cr.M.P.No.324 of 2022 and the same is pending for enquiry against the second accused, who is the petitioner herein.

5. On a perusal of the Court records before the learned Judicial Magistrate, Special Court for Land Grabbing Cases, Theni, the learned Judicial Magistrate had found that earlier, the very same petitioner moved a petition in Crl.O.P.(MD)No.14065 of 2017, which was dismissed as withdrawn on endorsement made by the learned counsel appearing for the petitioner/Manoharan. Now, when this petition is pending, the learned counsel appearing for the petitioner sought for interim stay. At that stage, the learned



Additional Public Prosecutor vehemently objected and stated that this is the second petition filed by the very same accused and at the same time, the discharge petition was also filed and the same is pending before the trial Court.

6. It is to be noted that in criminal cases, the accused has liberty to engage counsels and also to change a counsel frequently under the principle of fair trial. The very same provision is misused by the accused invariably in the Courts. There is no responsibility on the counsels as Court Officer to assist the Court. The different counsel appears for the accused before the trial Court and another counsel appears for the accused before the High Court. Therefore, the accused misused this provision to engage two different counsels for two different forum. Therefore, the counsels cannot be blamed. At the same time, the counsels has a duty towards the Court as Court Officers to assist the Court in arriving at a just conclusion fairly. Here, on the instructions of the second accused, the learned counsel appearing for the petitioner/second accused had filed this petition. He ought to have obtained proper instruction and also clarified with him, whether he had filed similar petition either for discharge or any other petition before the trial Court. The second accused/Manoharan, before the trial Court has played hide and seek with two forum, having filed a petition in Cr.M.P.No.324 of 2022, for discharge, before the trial Court and the



same is pending for enquiry. He had filed this petition seeking to quash the C.C.No.2 of 2015. The conduct of the second accused in seeking to quash the proceedings before the trial Court cannot be accepted in the light of the criminal original petition, which had already been filed by him and dismissed by this Court as withdrawn in the light of the judgment of the Hon'ble Supreme Court in the case of ***Sarguja Transport Service Vs. State Transport Appellate Tribunal & Others*** reported in ***1987 (1) SCC 5***.

7. The learned Counsel appearing for the petitioner objected to the submission of the learned Additional Public Prosecutor, objecting to the second petition filed by the petitioner and also filing petition under Section 482 Cr.P.C., when the petition for discharge is pending before the Trial Court stating that there are no rulings of the Court against the petitioner, seeking simultaneous relief from both the Courts. The said submission of the learned Counsel appearing for the petitioner cannot at all be accepted.

8. Considering the unfair practice engaged by the petitioner, this Criminal Original Petition is dismissed with a direction to the petitioner to co-operate with the pending trial proceedings before the learned Judicial Magistrate, Special Court for land Grabbing Cases, Theni. The learned Judicial



Magistrate, Special Court for land Grabbing Cases, Theni, is directed to proceed with the trial and dispose of the case within a period of two months after framing of charges and hearing the discharge petition. The Discharge Petition can be heard along with framing of charges and disposed of after framing charges. The learned Judicial Magistrate, Special Court for land Grabbing Cases, Theni, can proceed with the trial, if there are sufficient materials to discharge the petitioner accused. The learned Judicial Magistrate, Special Court for land Grabbing Cases, Theni, can exercise his discretion and pass appropriate orders. If the petitioner/second accused fails to co-operate with the Court, it is open to the learned Judicial Magistrate to issue Non Bailable Warrant and if the accused is produced, the learned Judicial Magistrate, Special Court for land Grabbing Cases, Theni, shall cancel the bail granted to the petitioner/second accused as per the reported ruling of the Hon'ble High Court in the case of ***P.K.Shaji Vs. State of Kerala*** and detain him in prison till the case is disposed of. Consequently, connected miscellaneous petitions are closed.

10.11.2022

Index : Yes/No
Internet : Yes/No
LR



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To

1.The Inspector of Police,
District Crime Branch,
(Special Cell For Land Grabbing),
Theni District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

LR

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