



CrI.O.P.(MD) No.14100 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.08.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.14100 of 2022

and

CrI.M.P(MD) No. 9069 of 2022

Kavi @ Kavidhasan

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by the Inspector of Police,
Land Grabbing Special Cell,
District Crime Branch,
Thoothukudi.

2. R.Dhanabalan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the Charge Sheet in C.C.No.5 of 2022, on the file of the Judicial Magistrate-cum-Special Court for Land Grabbing Cases, Thoothukudi and quash the same as against the petitioner.

For Petitioner : Mr.R.Aravindan

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



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ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.5 of 2022, on the file of the Judicial Magistrate-cum-Special Court for Land Grabbing Cases, Thoothukudi.

2. The case of the prosecution is that the properties comprised in S.Nos.37/1A, 37/1B, 37/2A & 37/2B of Ettayapuram Village were purchased by one Raja Packiyam i.e., the father of the defacto complainant from the respective original owners. Pursuant to the purchase, the said Raja Packiyam has executed a registered power of attorney deed, dated 05.09.2012, in favour of the petitioner and thereby authorized the petitioner to deal with the properties owned by Raja Packiyam. The said Raja Packiyam died on 19.09.2012. The petitioner, in collusion with the other accused persons, have fabricated certain sale deeds in favour of other accused Nos.2 and 3, on 20.09.2012, by using the power of attorney deed executed in favour of the petitioner and thereby cheated the defacto complainant and his family members. After the death of Raja Packiyam, the



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complaint was lodged by the defacto complainant. The first respondent has registered a criminal case in Crime No.25 of 2014 for the offences under Sections 120(B), 420, 465, 468 & 471 I.P.C. Subsequently, a charge sheet has been filed in C.C.No.5 of 2022 before the Judicial Magistrate – cum-Special Court for Land Grabbing Cases, Thoothukudi. Hence, this present petition is filed.

3. The learned counsel for the petitioner submitted that the petitioner is not having knowledge about the death of Raja Packiyam. He further submitted that there is no allegation in the FIR as well as in the Charge sheet. Therefore, he pleaded to quash the charge sheet against the petitioner.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that admittedly, the power of attorney executed by the deceased Raja Packiyam in favour of the petitioner, on 05.09.2012. Admittedly, the said Raja Packiyam died on 19.09.2012. The alleged sale deed was executed subsequent to the death on 20.09.2012. So, the knowledge about the death of the said Raja Packiyam and the intention on the part of the accused No.1/petitioner with regard to the execution of sale



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deed has to be decided by the trial Court after letting in evidence. Hence, the petition is liable to be dismissed.

5. I have considered the submissions of the learned counsel on either side.

6. On perusal of the records, it reveals that the petitioner is the first accused in C.C.No.5 of 2022, on the file of the Judicial Magistrate-cum-Special Court for Land Grabbing Cases, Thoothukudi. The petitioner was prosecuted by the respondent police along with others for having offences under Sections 120(B), 420, 465, 468 & 471 I.P.C. The contention of the petitioner is that the death of Raja Packiyam is not known to him and the alleged power of attorney executed in Survey No.4287 of 2012, on 05.09.2012, which was registered before the Sub Register Office, Ettayapuram. Subsequently the said Raja Packiyam/ defacto complainant's father died on 19.09.2012. Further, the records reveals that the petitioner in collusion with the other accused persons, have fabricated certain sale deeds in favour of accused Nos.2 and 3, on 20.09.2012, by using the power of attorney deed executed in favour of the petitioner, which was registered at



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Ettayapuram Sub Registrar Office, as per the document Nos.4286/2012, 4287/2012 , 4288/2012, 4289/2012, 4290/2012 and 4291/2012. It *Prima facie* discloses that all the documents were executed after the death of Raja Packiyam. Therefore, *prima facie* case is made out for trial. Therefore, this case is not proper to go in to the parameters laid down by the Hon'ble Supreme Court of in the case of *Neeharika Infrastructure Pvt.Ltd vs State of Maharashtra and others* reported in **2021 SCC On line SC 315**.

7. Since *prima facie* case is made out, it is not proper to quash the criminal proceedings, before the commencement of trial by letting in evidence. The Trial Court has to conduct the trial. Therefore, I find no merit in this petition. The observation of this Court will not be barred to decide the case on merits. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

24.08.2022

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

1. The Inspector of Police,
Land Grabbing Special Cell,
District Crime Branch,
Thoothukudi.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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