



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

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Crl.O.P.(MD)Nos.3522 and 19490 of 2018
and
Crl.MP(MD)Nos.1664, 1665, 8861 and 8862 of 2018

(1)Crl.OP(MD)No.3522 of 2018:-

Mr.M.Veeranan : Petitioner/A1

Vs.

1.The Inspector of Police,
District Crime Branch,
Madurai.
(Crime No.109 of 2012)

: R1/Complainant

2.Mrs.S.Vijayakumari

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in CC No.605 of 2014 on the file of the Additional Mahila Court, Madurai, in Crime No.109 of 2012 dated 01.07.2012 on the file of the 1st respondent and quash the same as illegal as against the petitioner alone.

For Petitioner : M/S.R.Paul Sukumar

For 1st Respondent : Mr.SS.Madhavan
Government Advocate (Crl.side)

For 2nd Respondent : Mr.C.Muthu Saravanan

(2)Crl.OP(MD)No.19490 of 2018:-

1.Kasiammal

2.Chandran @ Chandrasekar

3.Loganathan : Petitioners/A2, A3 and A6

Vs.

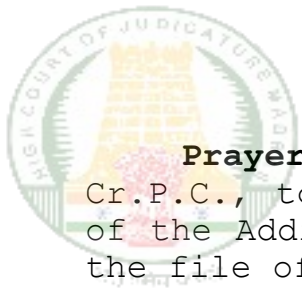
1.State rep. By
The Inspector of Police,
District Crime Branch,
Madurai District.
(Crime No.109 of 2012)

: R1/Complainant

2.S.Vijayakumari

: R2/De-facto complainant

<https://hcservices.ecourts.gov.in/hcservices/>



Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.605 of 2014 on the file of the Additional Mahila Court, Madurai, in Crime No.109 of 2012 on the file of the 1st respondent and quash the same as illegal.

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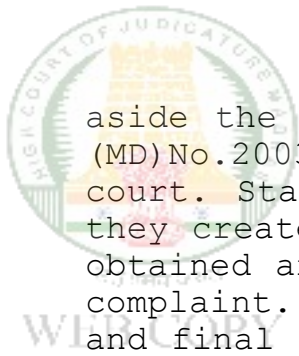
For Petitioner : Mr.T.Balakrishnan
For 1st Respondent : Mr.SS.Madhavan
Government Advocate (CrI.side)
For 2nd Respondent : Mr.C.Muthu Saravanan

COMMON ORDER

These petitions have been filed seeking quashment of the case in CC No.605 of 2014 on the file of the Additional Mahila Court, Madurai, respectively.

2.The case of the prosecution in brief:-

The de-facto complainant is one S.Vijayakumari and her husband name is Senthilathipan and her husband was having properties situated in Nakkalapatti village, Matharai, Usilampatti Taluk, as found in the complaint. Because of the difference of opinion between the husband and wife, they were living separately for sometime. The first accused namely M.Veeranan is the brother-in-law of her husband and his sister was one Kasiammal. Kasiammal is the wife of the first accused. After the marriage, they were living in Trichy. After retirement from the Police Department, the first accused is living in Usilampatti. Right from the beginning, taking advantage of the difference of opinion between the husband and wife, the first accused was aiming to grab the property. In 1999, Senthilathipan died. After the death of the above said Senthilathipan, the creditors of her husband, demanded return of money. So for that, they made some arrangement to lease the property of 2 acres and 67 cents in favour of Kasiammal. Later, they also sold 26 cents to him. On knowing the above said sale, the accused persons and her wife and children were making trouble. The house property was also soled to one Mekkaraj. Again they made a trouble. One Mayandi was later became the mortgagee of the above said 2 acres 56 cents. The accused persons also made trouble to the above said Mayandi. They hatched conspiracy, by which they created a sale deed as if Senthilathipan executed a sale agreement in favour of A1 dated 07/04/1998 for Rs.80,000/-. It was an unregistered sale agreement. Based upon which, a suit in O.S No.12 of 2005 has been filed. After the death of the above said Senthilathipan, they also managed to obtain the ex-parte decree. In pursuance of the above said ex-parte decree, the sale deed was also got to be obtained in EP No.9 of 2008. So, trouble arose between them. In the above said circumstances, on 18/03/2012, they have also criminally intimidated by the above said accused persons. When the above said decree was brought to their notice, they have also filed a petition to set

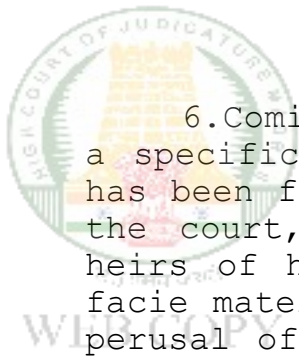


aside the ex-parte decree. That was dismissed. Against which, CRP (MD)No.2003 of 2011 was filed and it is also pending before this court. Stating that all the accused persons conspired together and they created a forged sale agreement and upon which, they have also obtained an ex-parte decree, the de-facto complainant has filed the complaint. Based upon which, the investigation has also undertaken and final report has also been filed making allegations against all the accused persons.

3. Seeking quashment of the criminal case, A1, A2, A3 and A6 have filed these criminal original petitions.

4. Heard both sides.

5. It is contended on the part of the petitioners that now the suit has been restored to file and is pending before the District Munsif-cum-Judicial Magistrate, Usilampatti. In pursuance of the order passed by this court in C.R.P(MD)No.2003 of 2011, dated 25/09/2019, unless the requirement of section 195(1)(b)(ii) Cr.P.C is complied, the police has no jurisdiction to entertain the complaint, investigate the matter and file a final report. For that purpose, they would rely upon the judgment of this court reported in the case of R.Ganesan Vs. Manipillai @ Govindassamy (2020(3) MWN (Cr.) 341). But I am afraid that this judgment will support the case of the petitioner. Even though, it has been stated that section 340 Cr.P.C is to be complied before lodging the prosecution for the offence under section 193 IPC, the facts are entirely different. In that case, there was a collusive decree between the parties to the suit in O.S No.52 of 2009. Finding that it was a collusive decree by making enquiry under section 340 Cr.P.C, this court has directed the Deputy Registrar to lodge the complaint. Here, it is the case of the de-facto complainant that the dispute Will was forged even before it was presented before the concerned Court namely District Munsif-cum-Judicial Magistrate, Usilampatti. So according to the 2nd respondent, this point has clarified by the Hon'ble Constitution Bench of Supreme Court in the case of Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another [2005 SCC (Cri) 1101], wherein it has been specifically clarified that when a particular document is produced to the court and if forger is committed, when the document lies in the custody of the court, then only bar under section 195(1)(b)(ii) will be attracted. If the document was forged before it is presented to the court, then the bar will not be attracted and this judgment has also been clarified by subsequent judgments. So the petitioner cannot be permitted to argue that since the document lies in the hands of the concerned civil court, unless and until a finding has been recorded by the civil court by exercising the jurisdiction under section 340 Cr.P.C no police complaint can be entertained, investigated the matter, is not at all acceptable. So the legal ground which has been raised by the petitioner falls to the ground as not maintainable.



6.Coming to the facts of the case, as mentioned earlier, it is a specific case of the 2nd respondent that her husband's signature has been forged in the sale agreement and has been presented before the court, by suppressing true and correct address of the legal heirs of her husband, an ex-parte decree has been obtained. Prima facie material has been collected by the Investigating Officer. But perusal of the entire investigation file shows that materials have been collected and the disputed signature of the above said Senthilathipan was sent to the forensic science lab for handwriting expert opinion. From the opinion of the handwriting expert, it is seen that the disputed document was not signed by the above said Senthilathipan. When such a prima facie material is available, quashment of the proceedings is not permissible under law.

7.Even though, it is the contention on the part of the accused 1, 2, 3 and 6 that only bald allegation has been made against them, the main allegation is only against A1, for which the petitioners are not involved cannot be taken into account. Whether there was a conspiracy between the accused persons, is a matter for trial. Since sufficient materials have been collected, I am of the considered view that this is not the fittest case to quash the proceedings not only in respect of 2,3 and 6, but against A1 also.

8.In the result, these criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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 Additional Mahila Court,
Madurai.

2.The Inspector of Police,
District Crime Branch, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



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

+2 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-10870[F] dated
09/03/2022)

Crl.O.P.(MD)Nos.3522 and 19490 of 2018
07/03/2022

RK(30/03/2022) 5P 6C