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Crl.O.P.(MD) No.18425 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.10.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.18425 of 2022

and

Crl.M.P.(MD) No.12367 of 2022

Ravi Selvan

...Petitioner

vs

1.The Inspector of Police,
CBCID South,
Karur District.
Crime No.1 of 2022

2.Pappathi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying to call for the records pertaining to the FIR in Crime No.1 of 2022
on the file of the first Respondent and quash the same.

For Petitioner : Mr.Ajmal Khan Senior Counsel for
M/S.Ajmal Associates

For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R2 : Mr.S.Meenakshi Sundaram
Senior Counsel



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.1 of 2022 on the file of the first Respondent.

2. It is the submission of the learned Senior Counsel, Thiru.Ajmal Khan for the Petitioner that the Petitioner is arrayed as accused in Crime No.1 of 2022 on the file of the first Respondent. The property is the subject matter of the case. The Petitioner entered into an agreement for sale with his brother, Arjunan. The District Crime Branch, Karur had closed the case as mistake of fact.

3. Suppressing the fact of transferring the civil case as criminal case by preferring the complaint before the CBCID, the Petitioner filed O.S.No.6 of 2009 on the file of the District Court, Karur. After full trial, the learned District Judge had decreed the suit in favour of the Petitioner. Challenging the same, an appeal in A.S.No.17 of 2012 was filed by the defendants in the suit against the decree passed by the learned District Judge, Karur before this Court. After hearing the learned Counsel on either side, this Court, by



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judgment dated 04.02.2022, confirmed the decree passed by the learned District Judge, Karur and dismissed the appeal. The learned Senior Counsel for the Petitioner invited the attention of this Court to the judgment of this Court in paragraph No.11, which reads as under:-

“11.The 1st appellant herein/1st defendant has denied the signature in the sale agreement. So, it was sent for expert opinion. As per the expert opinion, on comparison, the 1st defendant's signature in the sale agreement and the admitted signature are same. This Court can also compares the signature. For the naked eye, this Court has also found that the signatures are same. The 1st appellant/1st defendant has taken steps to send the sale agreement for getting expert opinion. The attessor (P.W.2) and scribe (P.W.3) were also examined on the side of the respondent/plaintiff to prove that the 1st defendant has signed in the sale agreement. So, execution of sale agreement is proved on the side of the respondent/plaintiff.”

4. In the judgment passed in O.S.No.6 of 2009 dated 19.11.2011 by the learned District Judge, Karur, it had been stated as follows:-

“14) This Court carefully perused the pleadings and evidence let in by both plaintiff and the defendants. The first defendant denied the execution of the sale agreement. Further, the first defendant specifically denied that the signatures available in Ex.A1 sale agreement is not that of him. Therefore, this Court has to first decide



whether the signatures available in Ex.A1 is that of the first defendant and whether the sale agreement Ex A1 is true document. This Court perused Ex.A1. Ex.A1 was executed on 16.04.2007 at Karur. The recitals of Ex.A1 traced the origin of the suit property. Further recitals would show that the suit property is a barren land and no income derived out of the land. Therefore, the first defendant agreed to sell the suit property in favour of the plaintiff for a sum of Rs.12.75 lakhs. Ex.A1 also reads that the first defendant had proposed to purchase an extent of Ac.0.74 in S.F.No.685/4/5 at Kangeyam village and was in need of Rs.11,66,100/- immediately. The amount of Rs. 11,66,100/- was received by way of demand draft from the plaintiff and a cash of Rs.85,000/- to purchase stamp papers required. The above said amount i.e. a sum of Rs.12,51,100/- was received from the plaintiff.

15) This Court now perused the written statement filed by the first defendant. The first defendant in para 10 of the written statement has stated as follows:

"This defendant humbly submits that the alleged suit agreement of sale is a rank forged one. This defendant never executed any agreement of sale in favour of the plaintiff much less the one relied by the plaintiff regarding the suit property and be never received any consideration from the plaintiff as advance as relied by him in the plaint. This defendant emphatically denies the truth, validity, execution, attestation and passing of consideration under the



suit agreement of sale dated 16.04.2007 It is submitted that the plaintiff and the defendant are having acquaintance with each other for many long years and the plaintiff is having acquaintance with the signature of this defendant and taking advantage of the same, he had created the suit agreement as if it was executed by this defendant in his favour and has come forward with the false suit. Therefore, the plaintiff is legally not entitled to enforce the agreement in question and he is not entitled to the reliefs sought for in the plaint. It is further reiterated that the plaintiff is a greedy person in order to snatch away the suit property which belong to this defendant and his sisters had concocted, created and forged sale agreement dated 16.04.2007. The alleged agreement is not supported by consideration. Therefore this defendant is not liable to execute the sale deed or to return the advance amount to the plaintiff as alleged by the plaintiff."

16) This Court carefully analysed the pleadings of the first defendant. The first defendant would not state in his pleadings that the plaintiff had access to the particulars of the suit property. The details of the suit property, survey numbers and the origin of the property mentioned in the sale agreement are not denied by the first defendant. The first defendant, who had filed a detailed written statement denying each and every averment in the plaint, would not specifically



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deny that the particulars of origin of the suit property as traced in Ex.A1 is false, This Court now perused the evidence of PW.1 to P.W.3. The reading of the evidence of P.W.1 to P.W3 would show that the first defendant had executed the sale agreement on 16.4.2007. The particulars for preparing the sale agreement was provided by the first defendant. P.W.2 and P.W.3 in their evidence would state that the sale agreement was prepared on the basis of the information provided by the first defendant. P.W.2 in the cross examination would state that the first defendant held the document in his hand. Further evidence is that first defendant had given the details about the properties to P.W.3. The evidence of P.W3 is that the entire recitals of Ex.A1 was prepared only on the basis of the information provided by the first defendant. Whereas the first defendant, while cross examining PW2 and PW3 would suggest to them that the first defendant did not visit P.W.3's office on the date of sale agreement. The first defendant, thus, has not controverted the recitals of Ex.A1 and also the evidence of P.W.1 and P.W.3. Further, there is no contra pleadings or evidence to show that the particulars provided in Ex.A1 are untrue or had been created by the plaintiff, after receiving copies of the document from the first defendant. The first defendant would state that he did not undertake with the plaintiff to sell the property and also the first defendant would not say that she had either shown the copies of the anterior title deeds of the suit property or provide copies of the anterior title deeds to the plaintiff. As such, this Court, after careful analysis of the entire pleadings and oral evidence, comes to the conclusion that the recitals in Ex.A1 would prove that the first defendant had visited the office of P.W.3 and had provided particulars to prepare Ex A1 and further



recitals of Ex.A1 was prepared only on the basis of the information provided by the first defendant.

17) This Court perused the adjudications. The perusal of adjudications would show that the first defendant filed written statement on 17.8.2009. This Court perused the written statement. In the written statement, the first defendant has signed on 6.6.2009. On 6.6.2009, the first defendant had signed the written statement at Lexington Park, MD. in USA. In the written statement as already stated in para 10, the first defendant denied the Ex.A1 as forged One and also denied that the signatures available in Ex.A1 is not that of his signature. That means, on the date of filing written statement, the first defendant had knowledge about the existence of sale agreement. The first defendant without verifying Ex.A1 filed into this Court, had pleaded that Ex A1 is a fraudulent document. The first defendant, through his counsel, filed a memo on 5.7.2010 to inspect Ex.A1. This Court permitted the first defendant and his counsel to inspect the document filed by the plaintiff. Accordingly, the first defendant and his counsel had inspected the document filed by the plaintiff only on 6.7.2010. The first defendant, who had inspected Ex.A1 and other documents on 6.7.2010, would not file any additional written statement. But the first defendant filed an application on 10.8.2010 to send Ex.A1 for comparison by an expert. The application to send the document for an expert opinion was allowed on 7.9.2010. This Court thereby summoned Thiru Kasi, a retired Assistant Director of documents, Forensic sciences Department, Chennai to compare the documents as prayed for by the first defendant. The report from the Expert M.Kasi, former Assistant Director of documents was received



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on 1.11.2010 by this Court. The first defendant herein disputed the expert opinion of Kasi stating that he is only a private expert, therefore prayed this Court to send the document for comparison by a government expert. The application in I.A. 18/2011 was allowed and this Court sent the documents as prayed for by the first defendant to the Regional Director, Forensic Sciences Department, Madurai. The Regional Director of Forensic Sciences Department, after comparison sent a report. The report has been received. The plaintiff examined P.W.4. P.W.4 is the Scientific expert of documents working in the Regional Directorate of Forensic Sciences Department at Madurai. Through PW.4, Ex.XI has been marked. This Court perused Ex XI. Ex.XI is the Expert's report submitted by P.W.4. The perusal of Ex XI would show that the Assistant Director of documents, Regional Sciences laboratory and Scientific Officer and document expert, Regional Sciences laboratory, Madurai compared the documents in the presence of Director of Regional Forensic Sciences Laboratory, Madurai and have come to the conclusion that the signatures available in the documents relied on by the first defendant are one and the same. Thus, the evidence of PW4 is that the signatures available in Ex. A1 is that of the first defendant. The explanation offered by the first defendant is that the plaintiff and the first defendant had 20 years close acquaintance, as such the plaintiff had access to the documents signed by the first defendant. The plaintiff taking " advantage of the same had fraudulently created ExA1 and forged the signatures in Ex.A1. But, the first defendant would not state the particulars of documents in which the first defendant had signed and further particulars of signed documents of the first defendant which could



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have accessed by the plaintiff. Now, this Court perused the evidence of D.W.1. D.W.1 in his evidence, in para 21 of the proof affidavit would state that there were several letter correspondence between the plaintiff and the first defendant and the plaintiff had such signed documents with him. As such, the plaintiff knew the signature of the first defendant Therefore, the plaintiff had forged the signature of the first defendant and created the sale agreement. The plaintiff would not know the signatures of the first defendant's sisters and his daughter. Therefore, the plaintiff could not forge the signatures of the sisters and daughter the first defendant. The relevant portion in the proof affidavit is extracted hereunder.

“எனக்கும் வாதிக்கும் பல வருடங்களாக கடிதப் போக்குவரத்து வரவு செலவு சம்பந்தமாக அனுப்பப்பட்ட ஆவணங்கள் நிறைய உள்ளதால் என்னுடைய கையெழுத்து வாதிக்கு நன்கு தெரியும். எனது மகள் கையெழுத்தோ எனது சகோதரிகளின் கையெழுத்தோ வாதிக்குத் தெரியாததால் அவர்கள் கையெழுத்துக்களை மோசடியாக கிரய உடன்பத்திரத்தில் போட முடியாமல் போனதால் தாவாச் சொத்துக்கள் எனக்கு மட்டுமே பாத்தியப்பட்டது போல் நான் கூறி விற்பனை செய்ய ஏற்பாடு செய்தது போல் எனது கையெழுத்தை மட்டும் மோசடி செய்து மோசடி கிரய உடன்படிக்கை பத்திரத்திரம் வாதி எழுதி உள்ளார்.””

5. Suppressing the judgments, which are in favour of the Petitioner, the complaint was preferred by the second Respondent/defacto complainant. No conflict of interest between the brother and sister. Suppressing the fact



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that the dispute between the Petitioner and the second Respondent had been considered by the civil Court comprehensively and thereby hearing the arguments put forth by the respective Counsels and in the light of the above, had converted the civil dispute after the Petitioner having been granted a decree that was upheld at the appellate stage, the defacto complainant had given the complaint. It is nothing but a second round of litigation to harass the Petitioner only.

6. The learned Additional Public Prosecutor for the first Respondent would submit that the case had been registered recently. The contention of the learned Senior Counsel for the Petitioner cannot at all be accepted as the case had been registered recently. As per the contents of the FIR, the ingredients *prima facie* are made out against the Petitioner. Therefore, this is not a fit case for quashing of the FIR in Crime No.1 of 2022 pending on the file of the first Respondent. Therefore, he sought to dismiss this petition.

7. The learned Senior Counsel for the second Respondent would submit that the second Respondent is the sister of the appellant in A.S.No. 17 of 2012 and she had filed a Review Petition. There error apparent on the



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face of records. The stamp paper for the sale agreement was not issued by the Officer concerned. This Court had directed the Registration Department to hold enquiry about the issue of stamp paper and send a report. The learned Senior Counsel for the second Respondent invited the attention of this Court to the difference between forged and fabricated.

8. The learned Senior Counsel for the second Respondent would further submit that the investigation is absent. The documents were before the Forensic Science Laboratory. The second Respondent had crossed many hurdles. Therefore, the investigation has to be completed and brought to its logical end. No stay may be granted and the FIR is to be taken to its logical conclusion. The genuineness of the stamp paper is to be considered by this Court. It shall be thoroughly examined. The FIR cannot be quashed. All the details had been collected. The document sent to the Hyderabad Forensic Science Laboratory. Therefore, the learned Senior Counsel for the second Respondent seeks to dismiss this petition.

9. Whether by exercising the power under Section 482 Cr.P.C., the High Court can sit over the judgment pronounced by the learned trial Judge



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in O.S.No.6 of 2009; whether this Court exercising the extraordinary powers under Section 482 Cr.P.C. will sit in appeal over the judgment, confirming the decree by the learned civil Judge and whether this Court can exercise the inherent power by sitting over the appeal against the orders passed by the learned single Judge of this Court.

10. On perusal of the materials placed before this Court, the submission of the learned Senior Counsel for the second Respondent that this is not a fit case for quashing of the FIR in Crime No.1 of 2022 pending on the file of the first Respondent cannot at all be accepted. When there is a decree in favour of the Petitioner, the attempt of the second Respondent by filing a Criminal Original Petition seeking conversion of the civil case is found to attract the provisions of the settled law laid down by the Hon'ble Supreme Court in the case of ***State of Haryana vs.Ch.Bhajan Lal*** reported in ***(AIR) 1992 SC 604***). Therefore, the submission made by the learned Senior Counsel for the second Respondent is rejected. The submission of the learned Senior Counsel for the Petitioner is found acceptable and reasonable in the facts and circumstances of the case as gathered from the records.



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11. In the light of the above, when there is civil Court decree confirmed at the highest level, the attempt of the second Respondent in suppressing both the facts and giving the complaint, as though the Petitioner had committed the offence alleged under the provisions of IPC is found unacceptable in the facts and circumstances of the case as gathered from the records.

Accordingly, this Criminal Original Petition is allowed.

The First Information Report in Crime No.1 of 2022 pending on the file of the first Respondent is quashed. Consequently, connected Miscellaneous Petition is closed.

In the result, this Criminal Original Petition is allowed. Consequently, the FIR in Crime No.1 of 2022 on the file of the first Respondent is quashed.

Internet :Yes./No
Index :Yes/No
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SATHI KUMAR SUKUMARA KURUP, J.

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To

- 1.The Inspector of Police,
CBCID South,
Karur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CrI.O.P (MD) No.18425 of 2022

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