



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.19879 of 2018

and

Crl.MP(MD)Nos.9119 and 9120 of 2018

WEB COPY

- 1.Mariaraj
- 2.Buelamary
- 3.George
- 4.Moses
- 5.Mariammal
- 6.Nesamany

: Petitioners/A1 to A6

Vs.

- 1.State rep. By
The Inspector of Police,
District Crime Branch,
Dindigul.
(In Crime No.77 of 2015)

: R1/Complainant

- 2.A.Sebastian

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.101 of 2018 on the file of the Judicial Magistrate No.II, Dindigul and quash the same in so far as the petitioners concerned.

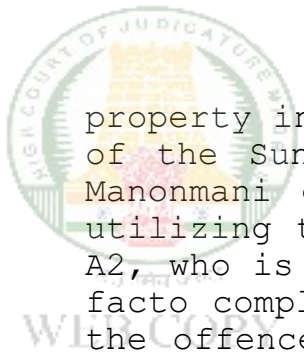
For Petitioners : Mr.N.Ananthapadmanaban
for M/s.PA.P.N Law Associates
For 1st Respondent : Mr.B.Nambi Selvan
Addl. Public Prosecutor
For 2nd Respondent : Mr.Niranjan S Kumar

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.101 of 2018 on the file of the Judicial Magistrate No.II, Dindigul.

2.The case of the prosecution in brief:-

The de-facto complainant purchased the property situated in Survey No.1452/2 measuring about 1.32.00 acres from one Sundaram, on 20/01/1977. The revenue records were standing in his name. Later, the de-facto complainant purchased the property, on 03/06/1988. So during the course of execution of the sale deed, updation has shown that during the course of updating the register, in respect of



property in Survey No.1452/2, the accused 3 to 7 are the legal heirs of the Sundaram. They joined hands with late Bengamin, Essak and Manonmani executed a false power of attorney in favour of A1. By utilizing the above said power of attorney, A1 sold the property to A2, who is his wife. On the basis of the complaint given by the de-facto complainant, a case was registered in Crime No.77 of 2015 for the offences under sections 120(B), 406, 420, 465, 468 and 471 IPC and after completing the formalities of investigation, final report was also filed, which was also taken in CC No.101 of 2018 by the Judicial Magistrate No.II, Dindigul.

3. Seeking quashment of the same, this petition came to be filed.

4. Heard both sides.

5. The allegation against the petitioners, as mentioned in the final report is that the Accused No.3 to 7 by joining hands with Late Benjamin, Essak and Manomani executed a power of attorney in favour of A1, knowing fully well that the de-facto complainant became the owner of the property by way of purchase from the father of the above said accused persons by name Sundaram. Based upon the above said power of attorney, dated 23/03/2000, it was sold to the 2nd accused. Even though the property originally belonged to the above said Sundaram, he executed the power of attorney in favour of Abdul Rahim, on 20/01/1977. From the above said power of attorney, it appears that the de-facto complainant purchased the property, on 03/06/1988. So according to him, suppressing the above said sale, second sale has been effected, in pursuance of the above said power of attorney executed by the above said persons in favour of A1 and the petitioners claim that after executing the power of attorney, Sundaram died intestate, on 04/06/1988. Soon-after the death automatically, the power of attorney came into non-existence. Sundaram was survived by a son and daughters. They filed a suit against the de-facto complainant in O.S No.47 of 1994 on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal and that was decreed on merits in favour of the legal heirs of the above said Sundram, on 29/11/1996. Against which, appeal has also been preferred, which was also came to be dismissed and later, there is no second appeal and now, the title over the property has been confirmed.

6. By suppressing the above said decree and judgment, the de-facto complainant filed a suit in O.S No.72 of 1999 and that was dismissed and after that only, he filed a petition to restore the appeal suit in A.S NO.64 of 1996 and that petition was also dismissed, on 29/07/2015. Another suit was filed in O.S No.43 of 2015 on the file of the Additional District Judge (Fast Track Court), Palani, for permanent injunction. That suit was also dismissed as not pressed. So according to the petitioners, in view of the above said facts and circumstances, the title over the

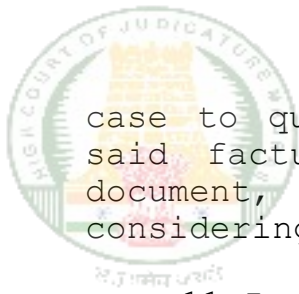


property has been confirmed and the de-facto complainant has no right over the property and so the criminal proceedings, which was lodged on the basis of the complaint given him is also not sustainable.

7. Per contra, the 2nd respondent, who is the de-facto complainant herein would straightway rely upon the statement of one Philomina and her husband namely A. Sebastian with regard to the proceedings in O.S No.161 of 2014. According to their statement, at the time of initiation of the above said suit, they were working in Kuwait and on 10/09/2014, they are not available in India. But the Court Amin namely Elaiya Karuppan at the instance of the Mariaraj and Buelamary made an endorsement in the summon that it was received by them, for which statement, a false particular has also been given. So only in the above said issue, a suit in O.S No.161 of 2014 was filed to declare that the decree passed in O.S No.162 of 2014 is null and void. Based upon the above said complaint given by the de-facto complainant, a case in Crime No.77 of 2015 for the offences under sections 120(B), 419, 420, 465, 468 and 471 IPC was registered against three persons namely Mariaraj, Buelamary and Elaiya Karuppan. After completing the process of investigation, final report was filed against seven persons, viz., deleting the name of the above said Elaiya Karuppan. After investigation, final report was also filed against the above said Elaiya Karuppan, which was also taken cognizance by the Judicial Magistrate No.2, Dindigul stating that the above said Eliaya Karuppan has committed the offence of forgery, cheating, fabrication of false of records and criminal conspiracy.

8. It is also seen that finding that he has committed serious crime, he was removed from service, on 23/01/2017. So on the basis of the above said final report, that has been independently filed against the above said Elaiya Karuppan. This petition has been filed by the petitioners on the ground that absolutely, their involvement is not established during the course of investigation and no materials have also been collected to show their involvement. When there is serious allegation of forgery, fabrication of false court records as alleged, this court is of the considered view that this is not a fittest case to quash the proceedings on the ground that it is a purely civil dispute, which was also settled long back.

9. But however, the learned counsel appearing for the petitioners would submit that absolutely, there is no material on record. But evidence has been collected during the course of investigation to the effect that only on their instigation, the above said Elaiya Karuppan has fabricated court records. But however, it is a matter for trial. When 120(B) IPC is alleged against the accused persons, the petitioners must undergo the trial process and may prove their innocence.



case to quash the criminal proceedings. But in view of the above said factual issue, this court cannot go into details of the document, that has been submitted by the second respondent, for considering at this stage by this court.

11. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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 Judicial Magistrate No.II,
Dindigul.
- 2.The Inspector of Police,
District Crime Branch,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.NIRANJAN.S.KUMAR, Advocate (SR-18197[F] dated
12/04/2022)

Crl.O.P.(MD)No.19879 of 2018
11/04/2022

SR(CO)
KB(26.04.2022) 4P 5C