



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)Nos.20139 of 2021 & 12538 of 2020
and

Crl.M.P(MD)Nos.11348 & 11351 of 2021, 5686 & 5687 of 2020

Crl.O.P(MD)No.20139 of 2021:

A.Dhandapani ... Petitioner/Accused No.1

Vs.

1. The State represented by
The Inspector of Police,
ALGSC- District Crime Branch,
Dindigul. ... 1st Respondent/Complainant

2. V.Raju ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the C.C.No.44 of 2019 on the file of the learned Special Judicial Magistrate for Land Grabbing Cases, Madurai District and quash the same.

For Petitioner : Mr.S.Arunnithy
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)
for R.1

Mr.M.Prem Kumar for R.2

Crl.O.P(MD)No.12538 of 2020:

1. M.Kirubakaran
2. Mazilsamy
3. P.Balakrishnan ... Petitioners/Accused Nos.2 to 4

Vs.



1. The State represented by
The Inspector of Police,
ALGSC-District Crime Branch,
Dindigul. ... 1st Respondent/Complainant

2. V.Raju ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the C.C.No.44 of 2019 on the file of the learned Special Judicial Magistrate for Land grabbing cases, Madurai District and quash the same.

For Petitioners : Mr.S.Arunnithy
For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)
for R1
Mr.M.Prem Kumar for R2

COMMON ORDER

These Criminal Original Petition has been filed to quash the proceedings in C.C.No.44 of 2019, on the file of the learned Special Judicial Magistrate for Land Grabbing cases, Madurai District.

2. The case of the prosecution is that the second respondent purchased the subject property from the first accused, who is the power of attorney 5 nos of principal. After registration of the document in favour of the second respondent, when the value of the land was increased, the accused insisted the second respondent to sell the property to the second accused. Since the said offer has refused, in order to grab the said property on 17.02.2015, the first accused preferred a police complaint as if he lost his power of attorney document, dated 12.10.2009. On the basis of CSR No.26 of 2015 again the first accused executed a sale deed in favour of the second accused in respect of the very same property which was already sold out in favour of the second respondent herein. The said document was registered vide Document No.4397 of 2015, dated 10.09.2015. Therefore, the second respondent lodged a complaint before the District Registrar, Dindigul and after conducting a detailed enquiry, the District Registrar by his order, dated 18.04.2016 directed to join with the said document in criminal proceedings as against the first and the second accused herein. To escape from the clutches of the present complaint, the first accused had also lodged a complaint as against the second respondent before the ALGSC-District Crime Branch, Dindigul and the same was registered in Crime No.43 of 2015. After investigation, it was found that no such occurrence was happened and the same was closed as "action dropped".

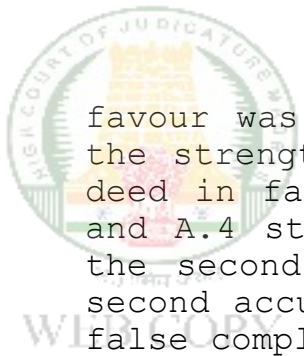


3. In pursuant to the complaint lodged by the second respondent, a case has been registered and after completion of investigation, filed a final report and the same has been taken cognizance of in C.C.No.44 of 2019 for the offences under Sections 120(b), 420, 423, 465, 468, 294(b) and 506(i) IPC.

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4. The learned counsel for the petitioner would submit that the entire transactions are civil in nature and as such, the entire proceedings are initiated as against the petitioners. The second respondent now by filing the complaint has try to give a criminal colour for the civil dispute. According to the case of the prosecution, the first accused executed a sale deed in favour of the second, third and fourth accused who are the witnesses to the said document. In fact, the first accused executed a sale deed in favour of the second respondent and the same was not completed, since the second respondent failed to pay the entire sale consideration as agreed by him. In fact, after presenting the document for registration it was kept pending for the reason that entire sale consideration was not paid and no patta by the second respondent. While the document was kept pending the second respondent impersonated the first accused herein and executed sale deed in his favour. Therefore, he lodged a complaint before the District Registrar. The sale deed which was registered vide document No.5873 of 2009 and 5874 of 2009. It was not considered and as such the petitioners were constrained to approach this Court in W.P(MD) No.12911 of 2015 and this Court has directed the District Registrar to conduct the enquiry and pass orders on merits and in accordance with law as directed by this Court. The District Registrar, Dindigul, conducted an enquiry and cancelled the document which were registered in favour of the second respondent and another by Document Nos.5873 of 2009 and 5874 of 2009. Therefore, the petitioners never committed any offence as alleged by the second respondent and no ingredients are made out to attract any of the offences as alleged by the prosecution.

5. Per contra, the learned counsel for the second respondent submitted that the petitioner is the power holder and executed a sale deed in favour of the second respondent for the property comprised in Survey Nos.526/1, 526/2, 526/3, 526/4, 526/5 and 526/6 to an extent of one acre and 33 cents by the sale deed dated 15.10.2009. It was duly executed by the first accused and the same was registered vide Document No.5874 of 2009 in the office of the Sub Registrar, Dindigul, after receipt of entire sale consideration. However, due to certain real estate business market value of the subject property has been escalated considerably and as such, the first accused only to extract more money from the second respondent, lodged a false complaint alleging that the second respondent failed to pay the balance sale consideration. The complaint was registered in Crime No.43 of 2015 after completion of investigation and the same was closed as action dropped. Thereafter, the petitioner



favour was lost and he was issued with C.S.R.No.26 of 2015 and on the strength of the C.S.R, the first accused again executed a sale deed in favour of the A.2 for the very same property in which A.3 and A.4 stood as witnesses. In fact, the first accused compelled the second respondent to register the sale deed in favour of the second accused, when the second respondent refused to do so, on the false complaint he executed above alleged sale deed in favour of the second accused in respect of the very same property.

6. Therefore, the second respondent lodged a complaint before the District Registrar, Dindigul. By order, dated, 18.12.2016 on the District Registrar Dindigul concluded that the first accused after having been executed the sale deed in favour of the second respondent registered vide Document No.5874 of 2009 again he executed a sale deed in respect of the very same property in favour of the second accused registered a Document No.4397 of 2015 and it is fraudulent one. Thereby, directed the Sub Registrar to record the same encumbrance as a sale deed by Document No.4397 of 2015 and subsequent documents executed by the first accused in pursuant to the said sale deed are fraudulent one. Further directed the Sub Registrar to register the case as against the petitioners and proceed with the trial in accordance with law. Accordingly, the present complaint has been registered as against the petitioners and now it is pending for trial.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Invstigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences



alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

10. The above judgments are squarely applicable to the facts of this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

11. There are specific overtact and allegations as against the petitioner to attract the offences alleged here.

12. Accordingly, both the petitions are dismissed. Consequently, connected miscellaneous petitioners are closed.

Sd/-

Assistant Registrar(CO)

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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 Special Judicial Magistrate for Land Grabbing Cases, Madurai District.
2. The Inspector of Police, ALGSC- District Crime Branch, Dindigul.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.M.PREMKUMAR, Advocate (SR-12574 & 12575[F] dated 16/03/2022)

+1 CC to Mr.S.Arunnithy, Advocate SR.No. 2132

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KMV(CO)

TR(11.04.2022) 6P 7C