



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.15304 of 2018

and

Crl.MP(MD)Nos.6774 and 7378 of 2018

1.Jothi Anandha Vadivel
2.Shanmuganandha Vadivel
3.Lakshmi Narayanan : Petitioners/A1 to A3

Vs.

1.The State rep by
The Inspector of Police,
Central Crime Branch,
Tiruppur City,
Tiruppur. : 1st Respondent/ Complainant

2.M.Hariharan : 2nd Respondent/ Defacto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.151 of 2018 on the file of the Judicial Magistrate No.II, Madurai and quash the same.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for Mrs.AL.Gandhimathi

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

For 2nd Respondent : Mr.E.Somasundaram

O R D E R

This petition has been filed seeking quashment of the case in CC No.151 of 2018 on the file of the Judicial Magistrate No.II, Madurai.



2.The case of the prosecution in brief:-

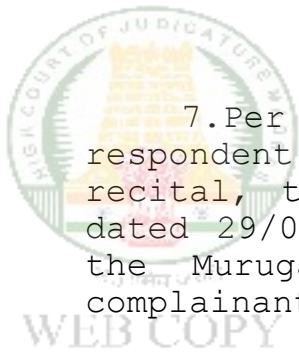
The father of the de-facto complainant by name Murugananda Vadivel and A1 to A3 are brothers. Murugananda Vadivel expired, on 16/11/2011. The de-facto complainant filed a suit in O.S No.89 of 2011 seeking partition of the property, which belonged to his grand mother. During the pendency of the above suit, the father died. Thereafter, on 22/12/2015, the petitioner grand father also died. After the death of Kalimuthu, the de-facto complainant was pressurising division of the property. At that time, the petitioners 1 and 3 stated that the property can be divided after three months. Thereafter, there was a request. At that time, it was told that the property left behind Saraswathi Ammal and the property standing in the name of the above said father of the de-facto complainant and the property stood in the name of the petitioners namely the accused persons may first be divided and thereafter, the property belonged to Kalimuthu can be divided. On that ground, the suit in O.S No.89 of 2011 was withdrawn and a Deed of Partition was effected, on 23/06/2016.

3.Later the de-facto complainant entertained doubt with regard to the promise, that was made by the accused persons and when a search was made, it was noticed that the 3rd petitioner conspired with the other petitioners and created a partition deed, dated 29/03/2016 without the knowledge of the de-facto complainant and the other legal heirs. In the partition deed, they have made some defamatory allegations against his father. It is also stated that Murugananda Vadivel left the family and married some other girl and thereafter, there was no relationship between him and the family. His whereabouts were not known. The Registering Authority has not properly verified the documents, while registering the above said deed. On the basis of the above said allegation, a complaint was filed, which was registered in Crime No.12 of 2017 for the offences under sections 120B, 406 and 109 IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No. 16 of 2017 by the Judicial Magistrate, No.1, Tirupur and thereafter, it was transferred to Judicial Magistrate No.II, Madurai and renumbered as CC No.151 of 2018.

4.Seeking quashment of the same, the accused 1 to 3 have filed this petition.

5.Heard both sides.

6.The learned Senior counsel appearing for the petitioners would submit that there is no entrustment of the property in the hands of the petitioners to attract the offence under section 406 IPC. Apart from that, he would also submit that the allegation mentioned, either in the complaint or in the final report does not attract the penal provision of sections 109 and 120-B IPC.

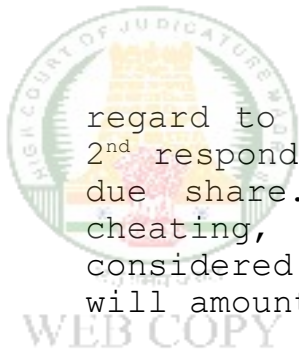


7.Per contra, the learned counsel appearing for the second respondent would submit that root cause for the issue is the recital, that was made by the petitioners in the partition deed, dated 29/03/2016 making some sort of defamatory allegation against the Murugananda Vadivel, who is the father of the de-facto complainant over his conduct in marrying some other girl.

8.Now whatever it may be, the fact remains that the suit filed in O.S No.89 of 2011 was withdrawn as settled out of court. The reason for withdrawing the case, as has been stated by the petitioners is promise made by the above said accused persons to effect partition will be made in respect of properties behind left by the grand father namely Kalimuthu. Believing his words only the above said suit was withdrawn and the partition deed was also effected in respect of the properties and other things left by Kalimuthu. But later, it came to the notice that suppressing the true facts, that the property was also divided among the accused persons namely A1 to A3. So according to the de-facto complainant, this amount to cheating and criminal misappropriation, etc.

9.The learned counsel appearing for the second respondent would further rely upon the recitals in the partition deed, dated 29/03/2016, wherein it has been stated that whereabouts of the second respondent's father was not known for a long time and later, it came to know that he died and the family members of him was also not known. This, according to the de-facto complainant, shows the criminal intention and the conduct on the part of the petitioners in suppressing the true and real facts. No doubt that this is the suppression of facts and misleading information. But the question, which arises for consideration is that whether any criminality can be attached to this sort of the recitals. If the 2nd respondent is aggrieved by such sort of the recitals in the partition deed, remedy is always available on the civil and criminal side. But, certainly section 406 IPC may not be attracted. Because, as rightly contended by the learned Senior counsel appearing for the petitioners, there was no entrustment of the property left behind Kalimuthu in the hands of these petitioners. It is a ancestral property, as contended by the petitioners. So the second respondent can very well maintain a suit for partition without minding the partition deed, that was entered into between the petitioners. It is not at all going to bind him and right. But instead of resorting to such sort of civil remedy, the criminal complaint has been given.

10.The learned counsel appearing for the second respondent would vehemently submit that the conduct of the petitioners clearly shows the intention of cheating. Because, according to him, they went against the promise made by him at the time of entering into the partition. Based upon which only, the suit in O.S No.89 of 2011 was withdrawn. Here also, the civil remedy is also available. So the further recitals in the partition deed, dated 29/03/2016 says



regard to the availability of the legal heirs of the father of the 2nd respondent came to their notice, then they are ready to give the due share. This shows that there is no criminal intention and cheating, as contended by the petitioners. So, I am of the considered view that criminal proceedings against the petitioners will amount to clear abuse of process of the court and law.

11. Even at the time of hearing, this court expressed a view that the matter can be referred to Mediation, so that settlement can be arrived between the parties. But that was not acceptable to the second respondent stating that when the petitioners made such sort of defamatory statement in the partition deed, the question of compromise may not arise. Because, the earlier mediation process also failed. So there is no circumstance for second reference to mediation. No doubt, the petitioners have touched the sentiment of the second respondent. But as mentioned earlier, the criminal proceedings is not the remedy and the second respondent has chosen the wrong forum to vindicate his grievance. So this petition is liable to be allowed.

12. In the result, this criminal original petition is **allowed**. The impugned CC No.151 of 2018 on the file of the Judicial Magistrate No.II, Madurai, is quashed as against these petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C-I)

// True Copy //

/06/2022

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,
Madurai.

2. The Inspector of Police,
Central Crime Branch,
Tiruppur City,
Tiruppur.

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



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

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RD(27.06.2022) 5P 4C