



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.O.P. (MD)Nos.17368 and 15579 of 2018

WEB COPY

Jenifer : Petitioner in
Cr1.OP (MD)No.17368 of 2018/A4

P.Selvamagesh : Petitioner in
Cr1.OP (MD)No.15579 of 2018/A3

Vs.

1.The Inspector of Police,
District Crime Branch,
Kanyakumari District.
(Crime No.3 of 2017) : R1/Respondent

2.I.David Chandra Bose : R2/De-facto complainant

COMMON Prayer: Criminal Original Petitions have been filed under Section 482 Cr.P.C., to quash the FIR in Crime No.3 of 2017 on the file of the 1st respondent.

For Petitioner : Mr.S.R.Anbarasu
(in both cases)
For 1st Respondent : Mr.SS.Madhavan
(in both cases) Government Advocate (Cr1. Side)
For 2nd Respondent : Mr.M.Murugan
(in both cases)

COMMON ORDER

These petitions have been filed seeking quashment of the FIR in Crime No.3 of 2017 on the file of the 1st respondent, respectively.

2.The case of the prosecution in brief:-

The de-facto complainant is working as a Special Sub Inspector of Police at Vadasery Police Station. A1 is his elder brother. When they were minors, their father purchased 32-1/2 cents of land, which was registered on 19/10/1978 in the Kottaram Sub Registrar Office in their name. The said land was administered by their father as a guardian of the minors. After attaining majority, the said land was partitioned equally 16-1/4 cents respectively based on the mutual



agreement. In the meantime, A1 and A2 with the aid of A4 and A5 registered 16-1/4 cents of the lands belongs to the de-facto complainant in the name of A2. So, based upon the complaint given by the de-facto complainant, a case in Crime No.3 of 2017 has been registered for the offences under sections 120(b), 420, 467 and 468 IPC.

3. Seeking quashment of the same, the petitioners/A3 and A4 are before this court.

4. Heard both sides.

5. The de-facto complainant as well as the A1 namely I. Jerold Davidson are brothers. As found out in the preamble portion of the complaint, it is seen that they are having properties in Survey No.422/3, at Thammaraikulam Village, Kottaram Taluk, Kanyakumari District. According to the de-facto complainant, the total extent of the above said survey Number is 32-1/2 cents and they divided the property orally and in that oral partition, the northern 16-3/4 cents was allotted to him. Southern 16-3/4 cents was allotted to A1 and this specific issue has been clearly admitted by the petitioners in the rectification deed, dated 07/06/2016, wherein it has been wrongly mentioned as 33-1/2 cents. So finding that it is a mistake, the above said rectification deed has been executed and registered and it has been corrected and mentioned as 16-1/4 cents in the southern portion.

6. As mentioned earlier, The rectification deed is dated 07/06/2016. But however, the complaint has been given on 06/03/2017, after the registration of the above said rectification deed. But not stopping with that, he has also filed a suit in O.S No.123 of 2017 on the file of the Principal District Court, Nagercoil against A1 and A2 for declaration and for permanent injunction in respect of the suit property in Survey No.422/3, south-north 16-1/4 cents. Even in the plaint, in-stead of 16-1/4 cents, it has been wrongly mentioned as 16-3/4. Now whatever may be, the suit was filed on 19/07/2017, much after registration of the complaint. Similarly against the de-facto complainant, A1 and A2 filed a suit in O.S No.23 of 2017 on the file of the Principal District Munsif, Nagercoil, mentioning the total extent of 32-1/2 cents in Survey No.422/3 and that was filed on 27/01/2017, much before the registration of the FIR, that suit has been filed. The rectification deed has been executed on 07/06/2016, then how the above said suit has been filed for permanent injunction is not properly explained.

7. Now whatever it may be, mistake has been committed and the same has been rectified. Now during the course of argument also, it is submitted that they are not going to claim right over the property, which was allotted to the de-facto complainant in the above said oral partition.



8. So in view of the subsequent developments and also filing of the suit by the de-facto complainant, no useful purpose is going to be served by subjecting the petitioners to undergo the process of investigation and trial. In the factual circumstances of this case and the allegation of forgery, cheating as well as the falsification of records, may not be attracted in view of the judgment in the case of **Mohammed Ibrahim Vs. State of Bihar and another [(2009) 8 SCC 751]**.

9. In view of the above facts, these criminal original petitions are **allowed**. The FIR in Crime No.3 of 2017 on the file of the 1st respondent police is hereby quashed as against the petitioners.

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 Inspector of Police,
District Crime Branch,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/S.S.SURESHKUMAR, Advocate, SR-8544, dated 24/02/2022

Cr1.O.P. (MD) Nos.17368 and 15579 of 2018
22/02/2022

RK(23/03/2022) 3P 4C