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Crl.O.P.No.17323, 23556 of 2016 and 28966 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.17323, 23556 of 2016 and 28966 of 2015

Crl.O.P.No. 17323 of 2016

1.R.Emavathy
2.S.Suganya
3.K.Saraswathi
4.R.Malathy
5.M.Josephine Nirmala
6.V.Dhanalakshmi
7.R.Malarvizhi

... Petitioners

Vs.

Gowdhaman

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the prosecution pending in C.C.No.129/2016 on the file of the Judicial Magistrate No.I, Pondicherry for offences under Sections 425, 426, 427, 441 of IPC.

For Petitioner : Mr.B.Balaji Vijayan

For Respondent : No appearance



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CrI.O.P.No. 23556 of 2016

- 1.Mark @ Murugesan
- 2.Chandra Prabha
- 3.Morris Paul
- 4.Kamaraj @Yonathan
- 5.T.Devaraj

... Petitioners/Accused 1 to 5

Vs.

1. The Station House Officer,
Danvanthri Nagar Police Station,
Gorimedu, Puducherry.

....1st Respondent/Defacto complainant

2. Eamavathy

....2nd Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No. 167 of 2015 on the file of the learned Judicial Magistrate No. 1, Puducherry and quash the same.

For Petitioner : Mr.R.Sunil Kumar

For Respondent 1 : Mr.K.S.Mohan Das
Public Prosecutor (Pondicherry)

For Respondent 2 : Mr.B.Balavijayan



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- 1.P.Jayachandran
- 2.Murugaraj
- 3.P.Gouthaman
- 4.Balaraman
- 5.James
- 6.John

... Petitioners/accused 6 to 11

Vs.

1. The Station House Officer,
Danvanthri Nagar Police Station,
Gorimedu, Puducherry,
(in Crime No. 66 of 2014)

...Respondent/Complainant

2. Eamavathy

... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the charge sheet in C.C.No. 167 of 2015 on the file of Judicial Magistrate No.I, Puducherry and quash the charge sheet in C.C. as against the petitioners/ accused.

For Petitioner : Mr.R.Sunil Kumar

For Respondent 1 : Mr.K.S.Mohan Das
Public Prosecutor (Pondicherry)

For Respondent 2 : Mr.B.Balavijayan



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COMMON ORDER

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The Criminal Original Petition Nos.28966 of 2015 and 23556 of 2016 have been filed challenging the proceedings in C.C.No. 167 of 2015 on the file of Judicial Magistrate No.I, Puducherry.

2. The Criminal Original Petition No. 17323 of 2016 has been filed challenging the proceedings in C.C.No. 129 of 2016 on the file of Judicial Magistrate No.I, Pondicherry for offences under Section 425, 426, 427, 441 of IPC.

3. The petitioners in Crl.O.P.No. 23566 of 2016 are arrayed as A1 to A5 and the petitioners in Crl.O.P. No. 28966 of 2015 are arrayed as A6 to A11. The second respondent in both the criminal original petitions is arrayed as second accused in a private complaint filed by the eighth accused in C.C.No. 167 of 2015 on the file of Judicial Magistrate No.I, Puducherry. In both the Criminal Original Petitions, proceedings are pending on the file of the Judicial Magistrate No.I, Puducherry and also both the parties are rival complainant in both the proceedings and as such, this Court propose to dispose of the petitions by way of this common order.



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4. The case of the prosecution in C.C.No.167 of 2015 is that the property comprised in R.S.No. 96/1 Pt. (Cadastre No. 2357) in Gorimedu Village, Puducherry measuring 02K.08Ku.15V, belongs to Loganathan and Kandasamy. Both are brothers and they sold jointly the property to Ramaraja by copy of Registered Sale Deed dated 15.05.1981. In turn, Ramaraja executed a Registered Will dated 12.12.1984 in favour of his wife Kasthuri. After the demise of the said Ramaraja, his wife Kasthuri divided a portion of the land admeasuring 01K.06Ku.15V and converted the same into residential plots by way of layout in the name and style of “Ramaraja Nagar”. Thereafter, the house plots were sold out to various persons. Out of the remaining extent of 01K.51Ku.00V, she also sold a portion, to an extent of 00K.51Ku.00V, by the registered sale deed dated 16.03.2005, in favour of one Umarani Banumathi.

5. In turn, the said Umarani Banumathi had sold the entire extent of property to different persons by way of seven different registered sale deeds dated 01.10.2007. Therefore, the said Loganathan and Kandasamy had no title. In respect of subject property, since they had already sold the entire extent of the property in the year 1981 itself.



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6. While being so, the second accused in C.C.No. 167 of 2015 filed a suit in the year 1998, in O.S.No. 311 of 1998, as against the said Loganathan and Kandasamy and others for partition, and obtained a decree in her favour by judgment and decree dated 27.01.2000. Based on the said decree, she sold the property by way of six different registered sale deeds to the other accused persons. One of the accused, namely eighth accused, had filed a suit in O.S.No. 1260 of 2013 on the file of Principal District Munsif Court, Puducherry for injunction as against the defacto-complainant/second respondent and others.

7. Based on the complaint lodged by the second respondent, no First Information Report was registered and as such, she filed a direction petition and on the direction issued by this Court, First Information Report was registered in Crime No. 457 of 2014 for the offences under Sections 120(b), 420, 468, 471, 447 and 506 read with Section 34 of I.P.C.

8. After the completion of investigation, the first respondent filed a final report and the same was taken cognizance in C.C.No. 167 of 2015. After taking cognizance, the eighth accused filed a private complaint as against the



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second respondent and others for offenses punishable under Sections 425, 426, 427, 441 and 447 of IPC and the same has been taken on file by the Judicial Magistrate No-I, Puduchery in C.C.No. 129 of 2016.

9. The learned counsel for the accused persons A1 to A11 submitted that originally, the subject property belonged to Kandasamy and Latchumi, both are brother and sister and they had executed an unregistered agreement for sale in favour of the first accused. Subsequently, they had also executed Power of Attorney dated 25.06.1990, registered vide document No. 482 of 1990. Thereafter, the first accused had executed an agreement for sale in favour of the second accused namely his wife Chandra Prabha on 28.08.1997, registered vide document No. 3249 of 2015. In turn, sale deed was executed in favour of second accused and other accused persons in the year 1997; whereas sale in respect of the second respondent was made only in the year 2007. That apart, they are in the possession and enjoyment of the subject property. In fact, the eighth accused filed a suit for injunction as against the second respondent and others. Even assuming that the Power of Attorney which was executed in favour of the first accused was cancelled, the second accused filed a suit in O.S.No. 311 of 1998, for partition, after execution of sale deed in her favour and subsequently in others favour. In the said suit, the said Loganathan and



Kandasamy were also parties, as defendants 1 and 2. After contesting the said suit, the suit was decreed in favour of the second accused and other defendants as per their sale deed. The entire property was purchased by the second accused and other accused and as such, she had withdrawn the final decree application. Since they themselves partitioned the properties as per their respective sale deed, therefore, no offense is made out as against the petitioners.

10. In support of his contentions, the learned counsel for the petitioners relied upon the judgment of the ***Hon'ble High Court of Delhi*** in the case of ***Gurcharan Singh Vs Suresh Kumar Jain and others*** dated ***12.02.1987***. The relevant portion is extracted as under:-

“8. I have given my careful consideration to the rival contentions of the parties. In order to bring the case within the four corners of S.420, I.P.C., the complaint is required to prima facie cross the hurdle of 'cheating' as defined in S.415, I.P.C. It has to be shown by the prosecution that there was some inducement on the part of the accused persons and that the said inducement was made fraudulently or dishonestly with a view to deceive the complainant. It has also to be shown by the prosecution that due to deception practiced by the accused person, the person so deceived had delivered the



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property to the accused person or had given consent that the accused person shall retain that property. The learned lower Court after due deliberation has come to the conclusion that none of the ingredients of cheating are applicable to the facts of the case with which I fully concur. There is no material on record to show that the accused persons had induced the complainant with a fraudulent or dishonest intention in accepting the rent. The mode of payment of rent agreed to between the parties was by means of deposit of cheques in the account of the complainant. This mode has always been adhered to.”

11. The learned counsel also relied upon the judgment of the Hon'ble High Court of Gujarat in the case of ***Bipinbhai Dahyabhai Soni Vs. State of Gujarat dated 27.12.2018*** reported in ***ABC 2019 (I) 95GUJ***, in which it was held as follows:

“10. It is not disputed by Mr.Unwala for the respondent that though the alleged agreement was executed by the said Purshottambhai in favour of Giribalaben in the year 2004, the said Giribalaben had not bothered to file any suit for specific performance of the agreement till this date. From the allegations made in the complaint, it clearly transpires that the entire dispute was of civil nature, which has been sought to be



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converted into criminal litigation involving the present applicant, who was the subsequent purchaser of the land in question. Though it is true that the FIR need not contain all the facts and events and it should not be treated as an encyclopedia of facts as submitted by Mr.Unwala, nonetheless it is equally settled legal position that the FIR must contain basic facts constituting the alleged offence against the accused named in the FIR. The information given by the informant to the police must disclose the commission of a cognizable offence and such information must provide a basis for the police officer to suspect the commission of cognizable offence. There cannot be also any disagreement to the proposition canvassed by Mr.Unwala that the powers under Section 482 must be exercised in a rare case and only where there appears to be clear abuse of process of law, however, as stated herein above, it is equally settled legal position that the complaint could be quashed, under Section 482, when the allegations, even if they are taken on their face value and accepted in their entirety do not constitute any offence or make out any case alleged against a particular accused. From the facts set out in the complaint also it appears that there was no privity of contract between Giribalaben and the applicant, nor Giribalaben has filed any suit for specific



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performance in respect of the alleged agreement with Purshottambhai. There is no allegation made in the complaint that the applicant had any knowledge about the said alleged agreement before he purchased the land from Purshottambhai. It is needless to say that the criminal machinery should not be misused to pressurize the accused to settle their civil dispute.”

12. Per contra, the learned counsel for the second respondent submitted that though the accused persons had purchased the property prior to the purchase of the second respondent, the person who had executed the power of attorney in favour of the first accused had no title over the property. Since already sale deed was executed in favour of one Ramaraja, who in turn had executed Will in favour of his wife, and she executed the sale deed. In so far as the portion of the property in favour of the Umarani Banumanthi is concerned, in fact, after the demise of the Ramaraja, Kasthuri, wife of Ramaraja formed a layout in the name of “Ramaraja Nagar” and sold out the house plots in favour of various persons. That apart, the suit filed by the second accused is nothing but a collusive suit. The persons who sold out the subject property without any title had been arrayed as first and second defendant. The other persons who purchased the property were arrayed as other defendants. Therefore, all the



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persons colluded together and obtained a decree. In fact, the second accused filed an application during final decree stage I.A.No. 754 of 2000 in O.S.No. 311 of 1998 and subsequently, it was dismissed as withdrawn.

13. That apart, already the power of attorney executed in favour of the first accused was cancelled by Kandasamy and his sister. In fact, the sister of Kandasamy had no title over the property since, she had already executed release deed in favour of her brother, namely Kandasamy. Even assuming that the sister of Kandasamy had title over the property and both cancelled the Power of Attorney executed in favour of the first accused, the first accused had no power while executing the agreement for sale in favour of his wife. Subsequently, he also executed sale deed in favour of his wife. Therefore, all the accused persons conspired together and encumbered the property. Therefore, no one is in possession and enjoyment of the subject property. In fact, half of the property was already formed as a layout, and the properties were sold out to various persons as house plots. In order to escape from the clutches of law, one of the accused, namely eighth accused, filed a private complaint as against the defacto-complainant in C.C.No. 167 of 2015, on the allegation that they had entered the property, trespassed into the same and caused damage to the electricity and water line to the tune of Rs.3,50,000/-.



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The accused persons were not in possession of the property at any point of

time. Based on the collusive decree and sale deeds, they are claiming title over

the property. A perusal of the counter filed by the first respondent also revealed

that after the registration of First Information Report, they recorded the

statements under Section 161 of Cr.P.C and from so many persons. A perusal of

the statements would reveal that the persons who had executed Power of

Attorney had no title over the property since already they had executed sale

deed in favour of one Ramaraja in the year 1981 itself. Further, the eighth

accused filed a suit for injunction and the same was dismissed for default. It

shows that no one is in possession of the subject property and they are claiming

title by fabricating the sale deeds and documents, and also filed a false

complaint as against the second respondent. On a perusal of the records, it is

revealed that originally, the property belonged to one Kuppusamy Gounder. He

had two sons namely Adhikesava Gounder and Ilayaperumal Gounder. Both

had partitioned the property by way of partition deed in the year 1945. The

said property was allotted to Ilayaperumal Gounder and he died intestate

leaving behind his wife, two sons and two daughters. The wife and two

daughters namely Irisammal, Latchumi and Dhanalatchumi had executed

release deed in favour of two brothers namely Kandasamy and Loganathan by

relinquishing their rights, by the deeds dated 23.02.1981 and 28.04.1981.



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14. Therefore, the said Kandasamy and Loganathan became absolute owner of the entire extent of the property. After execution of the release deed, they both jointly had executed sale deed in favour of one Ramaraja, dated 15.05.1981 registered vide Doc. No. 269/1981. In turn, he had executed Will in favour of his wife Kasthuri dated 12.12.1994 which was registered by document No. 77 of 1996. After the demise of Ramaraja, his wife Kasthuri had formed a layout in respect of some of the extent for house plots and sold the same to the various persons. The remaining extent of land was sold in favour of seven persons including the second respondent/defacto-complainant by the registered sale deed dated 16.03.2005. From the date of sale, the second respondent is in possession and enjoyment of her share as per the sale deed. Likewise, other purchasers are also in possession and enjoyment of their share as per their respective sale deeds.

15. As far as A1 to A11 are concerned, they are claiming title over the property belonging to Kandasamy and Latchumi, namely brother and sister born to Ilayaperumal Gounder. They had executed unregistered agreement for sale dated 04.06.1990 in favour of the first accused namely Mark @ Murugesan. Again, they had also executed Power of Attorney dated



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25.06.1990 registered vide document No. 482 of 1990. Subsequently, they had also cancelled Power of Attorney dated 28.08.1997, vide document No. 785/1997.

16. As stated supra, Latchumi had no title over the property, since she had executed release deed in favour of her brothers, namely Kandasamy and Loganathan on 23.02.1981 itself. Thereafter, the said Kandasamy and another brother Loganathan had executed sale deed in favour of Ramaraja dated 15.05.1981 registered vide document No. 269 of 1981. Therefore, both Kandasamy and Loganathan had no title over the property to execute any Power of Attorney or agreement for sale. After the cancellation of the said Power of Attorney on 28.08.1997 and after knowing the fact that the Power of Attorney was cancelled vide document No.785/1997, on the very same day, the first accused had executed an agreement for sale in favour of his wife, namely the second accused, and registered it vide document No. 3249 of 2015 in some other registration office. The first accused is the husband of the second accused. Therefore, if at all, it is a genuine transaction, he would have registered the sale deed directly in favour of his wife. Subsequently, the first accused had executed the sale deed in favour of the second accused in the year 1997 and in favour of the third and fourth accused. Thereafter, the second accused had executed a sale deed in respect of part of the land in favour of



other accused. Therefore, their vendor had no title over the property. That

apart, even assuming that they had title and Power of Attorney in favour of the

first accused. The same was cancelled as early as 28.08.1997 itself. The

second accused filed suit in the year 1998 in O.S.No. 311 of 1998, on the file

of the Additional Sub Judge, Puducherry for partition. On a perusal of the

judgment, it is revealed that the second accused filed a suit arraying the

vendors namely Kandasamy and his brother Loganathan, as first and second

defendants. The other defendants are two sisters of Loganathan and

Kandasamy who had no title over the property. The other defendants namely

defendants 5 to 7 are purchasers from the second accused. Therefore, all the

parties have colluded together to obtain a decree of partition, vide judgement

and decree dated 27.10.2000. Thereafter, the second accused filed an

application for final decree in I.A.No. 754/2000. While it was pending, the

another persons claiming title over the property, filed an Application in I.A.No.

678 of 2005 to implead themselves as party in final decree. Thereafter, the

second accused had withdrawn the said application and the same was

dismissed as withdrawn. The preliminary decree was not at all acted upon and

there was no division of properties as per the preliminary decree. Therefore, it

raises all suspicion that the accused persons had created sale deed in their

favour from the person who had no title over the property. In order to escape



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from the clutches of law, one of the accused, namely eighth accused, lodged a false complaint as against the defacto-complainant and others. Therefore, there are specific allegations against accused persons.

17. In this regard, 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.**, The relevant portion is extracted as under:-

" 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



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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.

18. The Hon'ble Supreme Court of India, dealing with a similar issue in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 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.”

19. 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



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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....."

20. The above judgments are squarely applicable to case on hand and as such, the points raised by the petitioners in CrI.O.P.Nos 28966 of 2015 and 23556 of 2016 cannot be considered by this Court under Section 482 Cr.P.C.

21. Therefore, in view of the above, this Court is inclined to quash proceedings in C.C.No. 129 of 2016 on the file of the Judicial Magistrate No.I, Pondicherry as no offences are made out against the petitioners in order to attract the charges under Section 425, 426, 427, 441 and 447 of IPC. Criminal O.P.No. 17323 of 2016 is accordingly allowed.

22. However, the Trial Court is directed to complete the trial in C.C.No. 167 of 2015 pending on the file of Judicial Magistrate No.I, Puducherry, within a period of six months from the date of receipt of a copy of this order. Accordingly, the Criminal Original Petition No. 17323 of 2016 is allowed and other Criminal Original Petition Nos. 23556 of 2016 and 28966 of 2015 are



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dismissed. Consequently, connected miscellaneous petitions are closed.

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Speaking / Non Speaking order
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To

1. Judicial Magistrate No.I, Puducherry.
2. The Station House Officer,
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Gorimedu, Puducherry.
3. The Public Prosecutor,
High Court, Madras.



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