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Crl.O.P.No.1183 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM:

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

Crl.O.P.No.1183 of 2021

and

Crl.M.P.No.724 of 2021

1. S.Thaiagarajan
 2. S.Vijayalakshmi
- ... Petitioners

-Vs-

1. State represented by its
The Inspector of Police,
CCB-I,
Chennai.
 2. Parasmal H Jain
 3. Vijayraj
 4. K.Anitha Devi
 5. Madanlal H.Jain
(R3 to R5 impleaded as per order
dated 27.06.2023 in
Crl.M.P.No.8960 of 2023
in Crl.O.P.No.1183 of 2021)
- ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records relating in C.C.No.5066 of 2020 pending on the file of Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.



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For Petitioners : Mr.K.Balasubramaniam
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)
For R3 to R5 : Mr.G.Shivasurya

ORDER

This Criminal Original Petition has been filed calling for the records relating in C.C.No.5066 of 2020 pending on the file of Chief Metropolitan Magistrate Court, Egmore, Chennai and to quash the same.

2. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) for the first respondent and the learned counsel for the respondents 3 to 5 and perused the materials available on record.

3. The case of the prosecution is that the property situated at Door No.4/22, Ayya Mudali Street, Sowcarpet, Chennai-79 to an extent of 1400 sq.ft belong to the Natesamudaliar. Thereafter, he settled the property in favour of his wife Kanniammal. Subsequently, she mortgaged the said property to M/s.P.S.S.Nithi Limited. After her demise, the legal heirs viz., one of the accused and 7 others transferred the mortgage from M/s.P.S.S.Nithi Limited to one Krishnaveniammal. Thereafter, the said



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Krishnaveniammal attempted to bring the subject property for auction as a mortgagee to recover the mortgage amount. However, she was unable to auction the property. In the meanwhile, by an order dated 30.09.2004 in C.M.P.No.14681 of 2004 in A.S.No.266 of 2004 had settled the entire mortgage amount. Thereafter, the second accused auctioned the said property on 09.09.2020, in which the defacto complainant became a successful bidder for a sale consideration of Rs.60,21,000/-. Accordingly, the sale deed was executed in favour of the defacto complainant on 03.02.2011 registered vide Document No.163 of 2011. The defacto complainant, his brothers and sister are residing in the said property. The total sale consideration was fixed at Rs.1,20,00,000/- (One Crore and Twenty lakhs only) and the accused assured that they will take their share in respect of the property and after paying the remaining amount, the other co-sharers will deliver the vacant possession. However, the petitioners failed to handover the vacant possession of the subject property. Hence, the complaint.

4. On receipt of the complaint, registered an FIR in Crime No.343 of 2011, on the file of the Inspector of Police, C-2, Elephant Gate Police



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Station. Thereafter, FIR has been transferred to the file of the first respondent and after completion of investigation filed final report and the same has been taken cognizance in C.C.No.5066 of 2020 on the file of Chief Metropolitan Magistrate Court, Egmore, Chennai.

5. The learned counsel for the petitioners would submit that the petitioners had no knowledge about the complaint. In fact, on 07.02.2020, the Sub-Inspector of Police, C-2 Elephant Gate Police Station came to their house and directed the petitioners to accompany him to the Police Station for enquiry. At that juncture, the Inspector of Police of the very same Police Station went to the petitioners' house and assaulted the first petitioner in the presence of his family members. Thereafter, he was dragged to the Police Station. The entire allegation made in the FIR are civil in nature and even then the Inspector and Sub-Inspector of Police, C-2 Elephant Gate Police Station dragged him to the Police Station and demanded them to pay a sum of Rs.60,00,000/- based on the false complaint lodged against them. Therefore, the petitioners lodged complaint against the police officials, but there was no response and as such, they lodged a complaint before the National Human Rights Commission, thereby a detailed enquiry was conducted and submitted a



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report. As per the report and the subsequent complaint, FIR has been registered as against the Inspector and Sub-Inspector of Police in Crime No.04 of 2014 for the offences under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w Section 109 of IPC. After completion of investigation, final report has been filed and they are facing trial before the Trial Court. In fact, the petitioners filed a suit in C.S.No.227 of 2016 challenging the sale deed executed in favour of the defacto complainant.

6. He further submitted that the Sub-Inspector of Police prepared a Memorandum of Compromise between the defacto complainant and the petitioners. It was enquired deeply by the National Human Rights Commission and opined to take appropriate departmental action as against the Inspector of Police and Sub-Inspector of Police of C-2 Elephant Gate Police Station. Therefore, it is a false case and it is liable to be quashed.

7. A perusal of records revealed that already the petitioners filed a quash petition to quash the FIR registered in Crime No.175 of 2012 before this Court in Crl.O.P.No.30576 of 2015. This Court refused to quash the FIR and transferred the FIR from the file of C-2 Elephant Gate Police Station to the first respondent. On registration of FIR as against



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the Police officials, the petitioners challenged the FIR before this Court in

Crl.O.P.Nos.31447 and 26757 of 2014. This Court by an order

21.09.2015 observed as follows:-

“18. There is no quarrel with the proposition that fraud vitiates all solemn acts. As I have indicated in the previous portion of my order, the mother-son duo indulged in a multi pronged attack. The mother first filed a petition in Crl.O.P.No.23207 of 2012 seeking a direction to the Commissioner of Police and the Director General of Police to register a complaint given by her on 22.3.2012. For reasons, which I am not able to decipher, the said petition was withdrawn and consequently dismissed on 28.09.2012.

19. In a second attempt, the mother filed the writ petition in W.P.No.26387 of 2012, but withdrew the same, on 30.11.2012.

20. The third attempt was made by the son in Crl.O.P.No.30683 of 2012, but the same was dismissed by an order dated 24.1.2013, directing the son Thiyagarajan to take recourse to the procedure under Section 200 of the Code. Thereafter, the mother came up with her third petition (which is the fourth in succession), in Crl.O.P.No.30354 of 2013. The only difference between the two earlier petitions filed by her and one earlier petition filed by her son was that in Crl.O.P.No.30354 of 2013, the mother was armed with a communication sent by the Special Rapporteur of the National Human Rights Commission. But unfortunately for her, the said petition was also dismissed by this Court by an order dated 18.2.2014. But at last, in her untiring effort, the mother came up with her fourth petition (really the fifth petition in succession) in Crl.O.P.No.16108 of 2014. The small difference that the mother did in this petition is that she did not implead either the Director General of Police or the Commissioner of Police or the concerned local police. She chose to implead only the Director of Vigilance and Anti Corruption, the Deputy Superintendent of Police (V & AC) and the Inspector of police (V & AC). Therefore, when a status report was called for by this Court in Crl.O.P.No.16108 of 2014, it really reflected only two things, namely, the communication of the Special Rapporteur of the National Human Rights Commission and the registration of a preliminary enquiry by the Vigilance and Anti Corruption. Therefore, the learned Judge, thought fit to follow the dictum in Lalita Kumari's case (2013 (4) MLJ (Crl) 579 SC) and



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allowed the Criminal Original Petition No.16108 of 2014, by order dated 3.7.2014.

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21. In the petition in Crl.O.P.No.16108 of 2014, the defacto complainant did not even make a whisper about the filing of three previous criminal original petitions and one writ petition by her and the filing of one Criminal Original Petition by her son. Therefore, there is no doubt in my mind that the defacto complainant was guilty of suppression of material facts. If it were a civil case, I would certainly throw out the claim of the defacto complainant on this one ground, namely, that a person, who came to Court without clean hands will not be entitled to any relief at the hands of this Court. Suppressing material facts, especially relating to previous proceedings and snatching away an order from this Court are really condemnable. But unfortunately, when a criminal complaint of this nature is made by a common man, the same dictum cannot be allowed to throw the complaint out of the register. In complaints of this nature, the defacto complainants play only one part of the role. It is the state, which is the prosecuting agency and the interest of the state lies in ensuring the integrity of the officers, who constitute the State. Therefore, if on the basis of the principle that fraud vitiates all solemn acts I quash this First Information Report, it is not merely the interest of defacto complainant, but the interest of the State that I would be making to suffer. Therefore, the principle that fraud vitiates all solemn acts cannot be of universal application in cases where there is some person other than the person, who perpetrated a fraud, whose interest will also be in jeopardy. Therefore, despite my finding that the defacto complainant is clearly guilty of suppression of material facts and snatched an order from Court, I cannot go solely on that basis to quash the First Information Report."

8. Further, a perusal of the statement recorded under Section 161 Cr.P.C revealed that the petitioners received amount from the defacto complainant in order to vacate the tenants and also to settle the share of other co-owners of the property to the tune of Rs.60,00,000/-. It was acknowledged by the petitioners by the letter dated 03.02.2011.

Therefore, the grounds raised by the petitioners are mixed question of



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facts and law. Therefore, it cannot be considered by way of this quash petition under Section 482 of Cr.P.C

9. 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.***, 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.



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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.

10. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, 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



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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.”

11. 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



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*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....."*

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

12. That apart, the provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to be meet out the ends of justice and to prevent the abuse of process of law.

13. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.5066 of 2020 pending on the file of Chief



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Metropolitan Magistrate Court, Egmore, Chennai. Accordingly, this

Criminal Original Petition is dismissed. Consequently, connected

Miscellaneous petition is closed.

30.10.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Chief Metropolitan Magistrate Court, Egmore, Chennai.



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2. The Inspector of Police,
CCB-I,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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