



*Crl.O.P.No.22067 of 2016 &
W.P.No.32926 of 2016*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 10.11.2022	Orders Pronounced On 28.07.2023
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Crl.O.P.No.22067 of 2016

&

Crl.M.P.No.10242 of 2016

and

W.P.No.32926 of 2016

&

W.M.P.No.28471 of 2016

Crl.O.P.No.22067 of 2016:-

S.Hariharan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by Deputy Superintendent of Police,
Chengalpattu Road,
Sriperumpudur – 602 105.

2.The Inspector of Police,
Somangalam Police Station,
Kancheepuram District – 602 301.



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3.P.Srikanth

4.S.Sripriya

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the second respondent relating to Crime No.391 of 2016 and quash the same.

For Petitioner	:	Mr.K.Ravi for Mr.R.Natesh Kumar
For R1 and R2	:	Mr.L.Baskaran Government Advocate (Crl. side)
For R3 and R4	:	Mr.R.Nandhakumar Legal Aid Counsel

W.P.No.32926 of 2016:-

S.Hariharan

... Petitioner

Vs.

The Deputy Superintendent of Police,
Sriperumpudur,
Chengalpattu Road,
Sriperumpudur.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of



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the respondent relating to the summons in C.No.C.1/4018/IGP-NZ/201, dated 13.09.2016, issued under Section 160 Cr.P.C. and quash the same.

For Petitioner : Mr.K.Ravi
for Mr.R.Natesh Kumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. side)

COMMON ORDER

Since the issues involved in both the Criminal Original Petition and the Writ Petition are one and same, they are heard together and disposed of by this common order.

2. Crl.O.P.No.22067 of 2016 is filed to quash the proceedings, relating to Crime No.391 of 2016, on the file of the Inspector of Police, Somangalam Police Station, Kancheepuram District.

3. W.P.No.32926 of 2016 is filed to quash the summon issued under Section 160 Cr.P.C. by the Deputy Superintendent of Police, Sriperumpudur, dated 13.09.2016, in C.No.C.1/4018/IGP-NZ/201, directing the petitioner to appear before him on 15.09.2016 at 10.00 a.m. for enquiry.



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4. The case of the prosecution is that, on 17.02.2012 the de-facto complainant/third respondent in Crl.O.P.No.22067 of 2016 viz., Srikanth, purchased lands, to an extent of 2.85 acres, situated at Malaipattu Village, Kanchipuram District, from one Shobana Chandramouli in his wife name, Sripriya, who is the fourth respondent in Crl.O.P.No.22067 of 2016, vide Document No.691/2012. Thereafter, they were in peaceful possession and enjoyment of the said lands. Subsequently, one Sunil Raheja, who is the friend of the de-facto complainant, introduced the petitioner to the de-facto complainant and his wife. On coming to know about the share market business of Sunil Raheja, the de-facto complainant's wife intended to purchase shares from the share market and informed the same to him. For purchase of shares, the said Sunil Raheja asked money from the de-facto complainant's wife, for which, she informed she has no liquid cash. Hence, the said Sunil Raheja informed her to give the documents relating to the above said lands to the petitioner. Thereafter, the petitioner obtained her signatures in stamp papers and blank papers in the Sub-Registrar Office,



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T.Nagar, Chennai and registered a Power of Attorney Deed, dated 16.05.2013, in respect of the above said lands in his favour, to raise money.

Thereafter, the petitioner not bought any share for her. While so, in August, 2016, the de-facto complainant got information that some strangers frequently visiting the lands, on 14.08.2016, the de-facto complainant along with his wife and brother-in-law, Srihari, visited the lands, wherein they saw the petitioner and certain others measuring the land. When they questioned the petitioner about the same, he informed them that he had sold the land to one Bharath, which gave rise to a verbal quarrel between them, the petitioner and others abused the de-facto complainant's group, beat them with hands, and threatened them with dire consequences. Hence, the present complaint.

5. The learned counsel for the petitioner submitted that the de-facto complainant lodged the present complaint against the petitioner in respect of a transaction, which is purely civil in nature and that was concluded more than three years ago. The said civil transaction was between the de-facto complainant and his wife Sripriya and one Sunil Raheja of Mumbai and a Mumbai Company called "Big Nile Ventures Limited".



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6. In order to discharge the de-facto complainant's obligations to Big Nile Ventures Limited, his wife Sripriya executed a registered General Power of Attorney, dated 16.05.2013, in favour of the petitioner, empowering him to sell her lands at Malaipattu Village, Kanchipuram District. Pursuant to the said Power of Attorney, a sale deed was executed on 04.06.2013 in favour of P.Bharath. Thereafter, she filed the Civil Suit in C.S.No.379 of 2013 against the petitioner, P.Bharath [purchaser] and the Sub-Registrar, Sunguvarchattram, Chengalpattu, before this Court and the same was rejected. She filed W.P.No.21183 of 2013 seeking an investigation into the said sale transaction, which also ended in dismissal. P.Bharath, the purchaser filed W.P.No.19495 of 2013 for release of the sale deed withheld by the Sub-Registrar, which was allowed, after filing of a contempt petition, the sale deed was handed over to him.

7. The learned counsel for the petitioner further submitted that though in the F.I.R., the date of occurrence is mentioned as '14.08.2016', the delay of 23 days in registering the F.I.R. not explained. Though the complaint is



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stated to have been given on 06.09.2016, on 01.09.2016 itself the petitioner was called over phone by a personnel in the Office of the first respondent/Deputy Superintendent of Police, Sriperumpudur, asking him to appear and give details in connection with the complaint. The petitioner had promptly sent, entire details with all documents by Mail to the official Mail I.D. of the first respondent and also through his Advocate, all the papers with statement of facts to the Office of the first respondent. Since the respondent Police were insisting the petitioner's presence, he apprehended that they were bent upon arresting him, not with a view to eliciting any fact, but with the sole intention to harass him and help the de-facto complainant. Hence, the petitioner filed Crl.O.P.No.20822 of 2016 for anticipatory bail. Only when the de-facto complainant filed an intervening application in that Anticipatory Bail Petition, the petitioner understood that there is an attempt to suppress real facts and the Police are acting hand in glove with the de-facto complainant calling the petitioner on 01.09.2016, as if there was complaint by the de-facto complainant's wife and thereafter only, the petitioner came to know about the complaint in Crime No.391 of 2016 given subsequently on 06.09.2016 by the de-facto complainant. After seeing the



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statement of the petitioner and the papers submitted by him and understanding that the complaint of the de-facto complainant's wife cannot be sustained in the eye of law, and it was a civil dispute, a time-barred, the de-facto complainant gave another complaint, dated 06.09.2016 to Somangalam Police Station and the same was registered on the same day as Crime No.391 of 2016 and forwarded to Manimangalam Police Station, for further enquiry. In order to give a criminal colour, an allegation under Section 506(ii) I.P.C. was added in that complaint.

8. The learned counsel for the petitioner further submitted that after coming to know about Crime No.391 of 2016, the petitioner filed another Crl.O.P.No.21334 of 2016 for anticipatory bail, in which the de-facto complainant filed another Intervening Petition. Both the intervening petitions are verbatim same, identical. Both the anticipatory bail petitions pending before this Court, got adjourned from time to time at the request of the learned Public Prosecutor and the intervenor. In the meanwhile, the petitioner came to know that the respondent Police pasted a notice at his former residential address, purporting to be a summon under Section 160



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Cr.P.C. The said summons clearly shows that the complaint was given by the de-facto complainant's wife on 02.09.2016 before reregistration of case. Hence, the petitioner filed W.P.No.32926 of 2016 to quash the said summons on the ground that the Deputy Superintendent of Police has no jurisdiction to issue such summons under Section 160 Cr.P.C. The power to issue summons to witnesses under Section 160 Cr.P.C. would become available only after an F.I.R. is registered and investigation is taken up and that too, only by the Investigating Officer concerned. Summons cannot be issued to the accused under Section 160 Cr.P.C. Instead of sending notice under Section 41(A) Cr.P.C. for preliminary enquiry, in which case, the petitioner cannot be arrested, the Deputy Superintendent of Police chose to issue notice under Section 160 Cr.P.C., which established his intention to arrest the petitioner. A reading of the said summon shows that the de-facto complainant's wife Sripriya had given a complaint on 02.09.2016 *i.e.*, prior to the complaint in Crime No.391 of 2016.

9. The learned counsel for the petitioner further submitted that the entire episode is a case of deliberate and gross violation and disobedience of the directions of the Hon'ble Supreme Court in **Arnesh Kumar vs. State of**



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Bihar reported in **AIR 2014 SC 2756**.
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10. The learned counsel for the petitioner further submitted that it is a clear case where the Police Officers acted hand in glove with the de-facto complainants and perpetrated a fraud with the sole view to arrest the petitioner and extract some material from him under threat and coercion to help the de-facto complainants. In terms of the directions given by the Hon'ble Supreme Court, the arrest of the kith and kin of the petitioner amounts to contempt of Court.

11. The learned counsel for the petitioner submitted that the de-facto complainant's wife, unilaterally cancelled the Deed of Power of Attorney on 04.06.2013 by a Deed of Cancellation, after coming to know about the sale deed executed in favour of Bharath. The SEBI already passed several restraint orders against the de-facto complainant and his wife, holding de-facto complainant, his wife Sripriya and Srihari, the Directors of Sthithi Insurance Services Pvt. Ltd. and Zylog Systems Ltd. are all "Persons acting in concert" and all of them together, especially, the de-facto complainant and



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his wife have acted fraudulently, manipulatively and against the interest of the public and acted with a sinister design. The de-facto complainant's wife executed an authorisation letter dated 16.05.2013 to the petitioner, authorising him to pay the sale proceeds to “Big Nile Ventures Limited”.

12. The learned counsel for the petitioner further submitted that the petitioner is innocent. He ascertained the guideline value of the land, which worked out less than the sale price. On the same day of the sale deed, he remitted Rs.1.2 Crores to Big Nile as authorised, which is reflected in his Bank Pass Book. He wrote a letter dated 06.06.2012 immediately to the de-facto complainant's wife requesting her instructions regarding the cheque for Rs.29 Lakhs. The said letter got returned "Unclaimed".

13. In support of his submissions, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in **Vijaya Kumar Ghai vs. The State of West Bengal** [Crl.A.No.463 of 2022], for the principle that, filing of two complaints in respect of the same incident or transaction and failing to disclose the first one in the second complaint



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amounts to *mala fide* suppression of a material fact.

14. The learned counsel for the petitioner further relied on the judgment of the Hon'ble Supreme Court in **Kapil Agarwal and others** vs. **Sanjay Sharma and others** reported in **2021 SCC Online 154**, and submitted that if it is found that the subsequent F.I.R. is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed.

15. The learned counsel for the petitioner further relied on the judgments of the Hon'ble Supreme Court in **Harshendra Kumar D** vs. **Rebatilata Koley** reported in **2011 (3) SCC 351**, and **Rajiv Thapar and others** vs. **Madan Lal Kapoor** reported in **2013 (3) SCC 330** for the proposition that, for quashing a complaint, the High Court may look into and consider documents produced, that are beyond suspicion or doubt.

16. Finally, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in **Oswal Fats and Oils Ltd.,** vs. **Additional Commissioner (Administration), Bareilly Division** reported in **2010 (4) SCC 728**, for the principle that, a litigant, who attempts to pollute



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the stream of justice is not entitled to any relief or indulgence.

17. The learned Government Advocate (Crl. side) submitted that the petitioner induced the de-facto complainant's wife to execute the Deed of Power of Attorney, dated 16.05.2013, promising her to buy shares in the share market for her. After obtaining Power of Attorney, the petitioner did neither had any communication with the de-facto complainant's wife, nor did he procure any shares for her. In August, 2016, the de-facto complainant received information that some strangers were frequently visiting his lands and therefore, on 14.08.2016, the de-facto complainant along with his wife and brother-in-law went to the land, found the petitioner and others measuring the land, when they questioned the petitioner about the same, petitioner informed them he had sold the land to one Bharath, which gave rise to a verbal quarrel and the petitioner and others abused the de-facto complainant's group, beat them with hands and threatened them with dire consequences. Further, the petitioner did not respond to the call of the Police. Hence, summons issued, directing him to appear before the Deputy Superintendent of Police on 15.09.2016 at 10.00 a.m. for enquiry. He



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further submitted that belated registration of F.I.R. is always not fatal to the prosecution in every case, preliminary enquiry is permitted to ascertain certain details, all can be explained at the time of Trial.

18. The learned counsel for the de-facto complainant and his wife reiterated the averments made in the complaint and prayed for dismissal. It is submitted that power of attorney obtained by deceitful manner, with false promise that the land will be held as security for the business venture in the share market, No shares were purchased by “Big Nile Ventures Limited” . No share statements, furnished to the defacto complainant and his wife, further by misusing the power of Attorney, the petitioner usurped, cheated and misappropriated the valuable property of the defacto complaint's wife. The petitioner was not authorised to execute any sale deed. In this case the said Bharath is only a name lender, the petitioner created false documents, Projecting and using the same as genuine had committed the offence, in connivance with the involvement of other persons, money trail, seizure of documents and recovery of ill-gotton money can be made only during investigation. The investigation cannot be short-circuited. Hence prayed for



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dismissal of the quash petition.

19. By way of reply, the learned counsel for the petitioner submitted that the petitioner had promptly submitted all the relevant documents to the respondent Police in response to the complaint of the de-facto complainant's wife. Suppressing the earlier complaint and material facts, the de-facto complainant foisted a false case against the petitioner, so as to give a criminal colour to the civil dispute and therefore, same is liable to be quashed.

20. I have heard the learned counsel appearing for the parties and perused the materials on record.

21. It is seen that the Criminal Original Petition is filed seeking to quash the F.I.R. in Crime No.391 of 2016 and W.P.No.32926 of 2016 seeking to issue a Writ of Certiorari, calling for the records relating to summons in C.No.C.1/4018/GP-NZ/201, dated 13.09.2016, issued under Section 160 of Cr.P.C.



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22. The petitioner is the friend of Sunil Raheja of Mumbai, who is running a business in the name and style of Big Nile Ventures Limited. The de-facto complainant and his wife had some business dealings with the said Big Nile Ventures Limited. In pursuant to the business dealings, the de-facto complainant's wife had executed a Power of Attorney, dated 16.05.2013 in favour of the petitioner, which is a registered document. Thereafter, the property was sold in favour of one Bharath by the petitioner. The de-facto complainant's wife/fourth respondent filed a Civil Suit in C.S.No.379 of 2013 before this Court. Further, she filed W.P.No.21183 of 2013, questioning the act of the Sub-Registrar, to reject the sale deed and also for investigation which got dismissed. Subsequently, the Civil Suit was withdrawn, Later, she filed a suit before the District Munsif Court, Sriperumbudur in O.S. No.261 of 2016. The admitted case of the defacto complaint's wife S. Sripriya is that earlier she filed O.A. NO.422/2013 in CS No. 379/2013, seeking not to create encumbrance to her property, filling of W.P.No.19495/2013 by the said Bharath, got release of Sale Deed



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document to him. She also confirms withdrawal of Civil Suit CS No. 379/2013 filed before the High Court on 09.01.2015. The execution of Power of Attorney Doc. No. 1203 of 2013 on 16/05/2013, letter of undertaking deed dated 16/05/2013 share trading venture are not denied. The defacto complaint questions execution of Sale Deed by the petitioner in favour of Bharath. This is purely a civil dispute, for which, civil suit already filed. The Apex Court in plethora of Judgements held, criminal case cannot be used to settle civil disputes.

23. The gravamen of the complaint is that using the Power of Attorney, without authority of the de-facto complainant's wife/fourth respondent, a sale deed has been executed by the petitioner in favour of Bharath and thereby, he committed the offence of cheating and other offences of abuse and threat.

24. From the sequence of events as discussed above, it is seen that the Power of Attorney was executed in connection with the business transactions and thereafter, the sale deed was executed. The sale



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consideration has been adjusted towards the de-facto complainant's and his wife's business account, which cannot be termed as cheating. Execution of power of Attorney, letter of undertaking are not denied.

25. In view of the above, this Court finds that a civil dispute has been given criminal colour, which is abuse of process of law. Hence, this Court quashes the proceedings in Crime No.391 of 2016 and also the summons in C.No.C.1/4018/GP-NZ/201, dated 13.09.2016, issued under Section 160 of Cr.P.C. Accordingly, both the Criminal Original Petition and the Writ Petition are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
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To

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- 1.The Deputy Superintendent of Police,
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- 2.The Inspector of Police,
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- 3.The Public Prosecutor,
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M.NIRMAL KUMAR, J.

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Pre-delivery common order made in

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