



Crl.O.P.No.1914 & 2235 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.1914 & 2235 of 2021

and

Crl.M.P.Nos.1102 & 1226 of 2021

[CRL.OP.No.1914/2021]

B.Miruthula

... Petitioner

Vs.

1. The Inspector of Police,
Land Grabbing Cell,
Erode District
(Crime No.2/2018)

2.R.Ramachandran

3.K.C.Nachimuthu

4.S.Kuppusamy

5.K.M.Palanisamy

... Respondents

[CRL.OP.No.2235/2021]

B.Miruthula

... Petitioner



Crl.O.P.No.1914 & 2235 of 2021

Vs.

1. The Inspector of Police,
Land Grabbing Cell,
Erode District
(Crime No.3/2018)

2.P.Arumugam

... Respondents

PRAYER [CRL.OP.No.1914/2021]: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in CC.No.597 of 2019 on the file of the Judicial Magistrate No.II, Erode and quash the same.

For Petitioner : Mr.S.Jayakumar

For Respondents : Mr.A.Damodaran, Additional Public
Prosecutor [R.1]
: Mr.John Sathyam, Senior Advocate
for M.Guruprasad [R.2 to R.5]

PRAYER [CRL.OP.No.2235/2021]: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in CC.No.596 of 2019 on the file of the Judicial Magistrate No.II, Erode and quash the proceedings as against the petitioner/Accused No.3.

For Petitioner : Mr.S.Jayakumar

For Respondents : Mr.A.Damodaran, Additional Public
Prosecutor [R.1]
: Mr.John Sathyam, Senior Advocate
for M.Guruprasad [R.2 to R.5]



Crl.O.P.No.1914 & 2235 of 2021

ORDER

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The above petitions are to quash the final report filed under Sections 120 B, 420, 467, 468, 471, 109 and 447 IPC.

2. It is alleged in the final reports that the petitioner's father, one Balasumbramani had acquired 81.5 cents by virtue of a partition deed in the year 1997; that he had sold 31.38 cents of land to the de facto complainant in Crl.O.P.No.1914 of 2021 and sold 17.58 cents to the de facto complainant in Crl.OP.No.2235 of 2021; that thereafter, in a conspiracy with the other accused, he had executed a sale deed in favour of his wife A.4. In the said sale deed, the petitioner and her father are shown as vendors; that the petitioner and others had forged the Adangal Register where they had added the name of the petitioner's father in the column, showing the name of the owner, along with the name of one Chinnaswamy making it appear that they both were the owners of the lands in the said Survey Number; and that the petitioner therefore executed these documents in conspiracy with the other accused and hence, guilty of the offences alleged.



3. The learned counsel for the petitioner would submit that the petitioner has a right by birth in the property that was allotted in favour of her father in the partition deed. Her father had executed the sale deed by unlawfully selling her share in favour of the de facto complainants. Since the petitioner's father had not obtained permission from the Court to sell the property belonging to the petitioner, in the year 2004, who was then a minor, the said sale deed is voidable at the instance of the petitioner. Hence, the petitioner had filed a suit in OS.No.449 of 2017 on the file of the Principal Sub-Judge, Erode, to set aside the sale deeds executed in the favour of the de facto complainants. The learned counsel, therefore, submitted that the dispute of a civil nature has been given a criminal colour. Since the sale deed executed by her father in the year 2004 was voidable, she had a right to execute a sale deed and hence, the sale deeds executed in favour of her mother, A.4 and the other accused cannot be said to be a criminal act. The learned counsel relied upon the judgement of the Hon'ble Apex Court in *Mohammed Ibrahim and Others Vs. State of Bihar and Another* reported in **(2009) 8 SCC 751** and submitted that even if the petitioner had sold the property by making a false claim of title, she cannot be held liable for the offence under Section 420 IPC. Hence, the learned



counsel prayed that the impugned final reports may be quashed.

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5. The learned Additional Public Prosecutor would submit that the allegations in the impugned final report attract the offences alleged. The points raised by the petitioners are matters for trial and hence, the quash petitions deserve to be dismissed.

6. The learned senior counsel for the de facto complainants would submit that it is not just a false claim of title by the petitioner, the petitioner was fully aware of the fact that she had to file a suit to set aside the sale deed. In spite of this, she did not wait for the conclusion of the said suit and executed sale deeds in favour of A.4 and other third parties. The petitioner was therefore aware of the acts committed by her father and she had participated in the conspiracy. Since this is a case of conspiracy, the learned senior counsel submitted that this has to be adjudicated only before the Trial Court and hence prayed for dismissal of the quash petitions.

7. This Court finds from a reading of the impugned final report that as



against the petitioner, the offence under Section 420 IPC may not be made out. Her acts of executing sale deeds in favour of third parties by making a false claim of title in favour of the accused would not amount to cheating as per the dictum of the Hon'ble Apex Court in ***Mohammed Ibrahim and Others Vs. State of Bihar and Another reported in (2009) 8 SCC 751.***

"20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused."

8. However, this Court finds that the allegation prima facie discloses the petitioner's role in the conspiracy to commit the other offences. The submissions made by the learned counsel for the petitioner that the petitioner was not aware of the earlier sale deeds executed by her father in



the year 2004 and hence she had mistakenly sold the property to third parties cannot be decided in the instant quash petitions. It is for the petitioner to establish that she had no role in the conspiracy alleged by the prosecution.

9. Therefore, this Court is not inclined to quash the impugned final reports except for observing that the offence under Section 420 is not made out as against the petitioner. The Trial Court shall proceed with the case against the other accused and against the petitioner in respect of other offences in accordance with law without being influenced by any of the observations made in this order.

10. However, since the petitioner is a lady, aged about 25 years and a student her appearance before the learned Magistrate is dispensed with unless the Magistrate deems her presence necessary for the progress of the trial.



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11. With these observations, the above Criminal Original Petitions are partly allowed. Consequently, the connected Miscellaneous Petitions are closed.

31.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The The Inspector of Police,
Land Grabbing Cell,
Erode District.

2. The Judicial Magistrate-II, Erode.



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CrI.O.P.No.1914 & 2235 of 2021

SUNDER MOHAN. J,

shr

CrI.O.P.Nos.1914 & 2235 of 2021
and
CrI.M.P.Nos.1102 & 1226 of 2021

31.03.2023