



Crl.O.P.Nos.4043 & 22029 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2023

Pronounced on :29.11.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition Nos.4043 & 22029 of 2023

Crl.O.P.No.4043 of 2023:

A.Radhakrishnan

... Petitioner

/versus/

1.The Deputy Superintendent of Police,
Crime Branch CID,
Kanchipuram District.

2.Anwar R.P.M.Adam
[R2 impleaded as per order dated 27.03.2023
in Crl.M.P.No.4351/2023 in Crl.O.P.No.4043
/2023 and Crl.M.P.No.2547/2023]

... Respondents

Crl.O.P.No.22029 of 2023:

Anwar R.P.M.Adam

... Petitioner

/versus/

1.State rep by the Superintendent of Police,
Kanchipuram District,
Kanchipuram.
Now Chengalpet District.



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2. Deputy Superintendent of Police,
Crime Branch CID,
Kanchipuram.
(now Chengalpet District)

3. A. Radhakrishnan

... Respondents

Prayer in Crl.O.P.No.4043 of 2023: Criminal Original Petition has been filed under Section 482 Cr.P.C., to direct the respondent to investigate further and file report in Cr.No.13 of 2010 in C.C.No.07 of 2015 pending on the file of the Judicial Magistrate-I, Chengalpet in accordance with law.

Prayer in Crl.O.P.No.22029 of 2023: Criminal Original Petition has been filed under Section 482 Cr.P.C., pleaded to call for the records pertaining to the C.C.No.07 of 2015 on the file of the Judicial Magistrate-I, Chengalpet and quash the charge sheet dated 24.07.2014 and consequently quash the Calender Case.

For petitioner in
Crl.O.P.No.4043/2023

:Mr.M.Vimal Bobby Crimson

For R1 in
Crl.O.P.No.4043/2023

:Mr.Leonard Arul Joseph Selvam
Govt.Advocate (Crl.Side)

For Petitioner in
Crl.O.P.No.22029/2023

:Mr.P.L.Narayanan, Senior Counsel
for Mr.E.Hariharan

For R1 & R2 in
Crl.O.P.No.22029/23

:Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)



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COMMON ORDER

A.Radhakrishnan the petitioner in Crl.O.P.No:4043 of 2023 is the defacto complainant in a case registered by the District Crime Branch, Kancheepuram, in Crime No.13 of 2010, dated 16/02/2010. His complaint, on completion of investigation, culminated in filing of Final Report before the Judicial Magistrate No:1, Chengalpattu. The Learned Judicial Magistrate had taken the report on file and the trial is pending in C.C.No:7 of 2015 for offences under Sections 465, 466, 468, 471, 474 and 120B of IPC against Anwar R.P.M.Adam as sole accused.

2. The complaint given by the petitioner indicates that land measuring 8.57 ½ acres at Thaiyur Village belongs to Mrs.Bhuvaneswari and Mrs.Sarala. They both gave power of attorney in favour of one Aishwarya on 26/09/1994. The deed of Power of Attorney was duly registered at Sub Registrar Office, Mylapore. Through Aishwarya, he purchased the said property and got the sale deed registered on 27/07/2007. The document was kept pending and on verification, he came to know that the accused Anwar RPM Adam with malicious intention to grab the property had created a sale



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deed in his favour and got it registered at Sub Registrar Office, Thiruporur on 27/07/2007 with the aid of an unknown lady impersonating as Aishwarya, D/o Shanmugam. The photo, address and Election ID card are false and fake. By impersonation, forgery and fabrication, the land which he purchased from the real Power of Attorney has been grabbed.

3. According to the petitioner/defacto complainant, his complaint against one Anwar R.P.M.Adam and Aishwarya alleging that they misappropriated his property by forgery, fabrication of documents and impersonation was investigated in Cr.No:13/2010 by the respondent police. However, on completion of the investigation, the respondent police had chosen to prosecute only Anwar R.P.M. Adam and had deleted the impersonator Aishwarya in the Final Report. While sufficient material available to prosecute the impersonator Aishwarya and the witnesses Raaj and Sekar to the forged document giving fake addresses, the Final report excluding the second accused S.Aishwarya (impersonator) and the witnesses, who aided to get the sale deed registered by impersonation, is taken on file by the Judicial Magistrate and the trial is proceeding. Though from the evidence of the witnesses so far recorded necessitate to included Aishwarya (impersonator), Raaj and Sekar (witnesses to



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the false document) as accused Nos:2 to 4 in the case invoking power under Section 319 of Cr.P.C, the trial Court has so far not exercised its power to include the impersonator and the witnesses to the false document. Hence, he is contemplating to file a petition under Section 319 of Cr.P.C for appropriate remedy.

4. In the petition Crl.O.P.No:4043/2023, he prays for direction to the respondent to investigate further and file report in C.C.No.7/2015 which is pending before the Judicial Magistrate No.1, Chengalpattu for trial.

5. Crl.O.No.22029 of 2023:

Accused Anwar RPM Adam in C.C.No.7 of 2015 is the petitioner.

6. In this petition, the accused seeks for quash of the case pending against him in C.C.No.07/ 2015 for the reason that the complaint is taken for investigation in the year 2010 and it took 5 years to complete the investigation and file final report. For nearly 8 years, the case is pending and inspite of the direction by the High Court in Criminal O.P.No. 5816 of 2023, dated 15/03/2023 to complete the trial within three months, the prosecution is unable



to secure the prime witness LW2 Aishwarya, who according to the complainant sold the property to him. The petitioner is the purchaser of the property prior to the defacto complainant. There is no two Aishwarya, one real and one fake as claimed by the complainant. That is the reason why the prosecution dropped action against the alleged fake Aishwarya and unable to secure the real Aishwarya (LW-2). The petitioner having purchased the property from the power agent of the property is put to hardship by the false allegation made by Radhakrishnan, which is not supported by evidence.

7. Referring the case status, the learned Senior Counsel for the petitioner/accused submitted that, after framing of charges on 24th May 2016, the examination of the defacto complainant in chief and cross got completed on 18/10/2016. Summon to LW-2 (Aishwarya) was caused on 17/11/2016. Till date, summon cannot be served to LW2. The Court therefore proceeded with examining the other listed witnesses. Out of thirty two witnesses, so far only 17 witnesses were examined. Since the prime witness LW2 could not be served to appear and give evidence, despite offering opportunity to the prosecution. Since 2016, continuation of the prosecution is a clear abuse of process of law and seek for quash of the case.



WEB COPY 8. The learned Government Advocate(Crl.Side) for the State submitted that investigation revealed that the sale deed in favour of the accused, who is the petitioner in Crl.O.P.No.22029 of 2023 is not executed by the real Aishwarya. By impersonation and fabrication of documents such as Photo ID issued by Election Commission and using forged document as genuine, the accused had got the property registered in his name. However, the investigation had revealed that the person, who had gone to the Registrar Office and posed as Aishwarya, is not the Aishwarya, who was suspected as second accused. Hence, her name was dropped from the final report. As far as the witnesses to the forged document, for the same reason, they were not arrayed as accused.

9. The defacto complainant Mr. Radhakrishnan, who claims that he purchased the property from Aishwarya, (the power agent of Sarla Devi and Bhuvaneswari) examined as PW-2 on 20/06/2017. The executant of the sale deed is Aishwarya LW2. Till date she is not examined. The prosecution is not able to serve witness summon to the said Aishwarya, who is reported to be in foreign. It is also the responsibility of the defacto complainant to assist the



prosecution by informing the address of Aishwarya from whom he purchased

the property so that the trial in the case against Anwar will reach its logical end.

Instead, the defacto complainant had belatedly filed a petition for further investigation much after the commencement of trial. His intention does not appear to be a genuine intention. Unless the prosecution could serve summon to LW2 and subject her to chief and cross examination, the contention of the defacto complainant will not get corroborated.

10. On the face of the record, the defacto complainant is the subsequent purchaser. Whereas the accused is the earlier purchaser. The prosecution case is that the defacto complainant purchased the property from real Aishwarya, whereas the accused purchased the property from the impersonated Aishwarya. The principals Sarla Devi and Bhuvaneswari had identified LW-2 as Aishwarya who sold the property to the defacto complainant as their power agent. Police had recorded statement of Aishwarya under Section 161 of Cr.P.C., wherein she has stated that the photographs found in the sale deed of the accused Anwar RPM Adam is not her photograph. This fact found in the previous statement of Aishwarya has to be established by examining her on oath. If said Aishwarya is not able to be secured for giving



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evidence even after issuing summon then the trial Court should opt for other means to serve the witness for appearance and complete the trial. This is not a fit case to quash for the reason stated in the petition filed by the accused. It is pertinent to note more than 17 witnesses already examined by the prosecution and necessary steps taken by the respondent to produce Aishwarya LW2 before the trial Court for her examination.

11. The defacto complainant shall render necessary assistance to the respondent police to bring Aishwarya LW-2 to the Court on the date of hearing to examine her. If the said Aishwarya fails to appear before the Court either on someone or on warrant, the trial Court shall proceed further with the available evidence and complete the trial, preferably within a period of four months from the date of receipt of a copy of this order.

12. With the above directions, these Criminal Original Petitions are disposed of.

29.11.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
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To:-

1.The Judicial Magistrate-I, Chengalpet

2.The Superintendent of Police,
Kanchipuram District,
Kanchipuram.
Now Chengalpet District.

3.The Deputy Superintendent of Police,
Crime Branch CID,
Kanchipuram.
(now Chengalpet District)

4.The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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delivery Common Order made in
Crl.O.P.Nos.4043 & 22029 of 2023

29.11.2023