



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

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

Crl.O.P.Nos.3736, 4382 & 4497 of 2020

Crl.O.P.No.3736 of 2020

1. S.Kudiyarasu Devi
2. Shubha
3. S.Sajan
4. Shanthi Ravi
5. Nishitha

..... Petitioners

Vs

1. State rep by Inspector of Police,
Central Crime Branch,
Team XVI,
Vepery, Chennai.

2. S.Natarajan (Died)
3. Geetha Natarajan
(R3-brought on record as LR
of the deceased 2nd respondent
vide Court order made in Crl.M.P.
No.12129 of 2022 in Crl.O.P.No.
3736 of 2020 dated 24.11.2023)

..... Respondents

Crl.O.P.No.4382 of 2020

S.Magesh

..... Petitioner

Vs



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

1. State rep by Inspector of Police,
Central Crime Branch,
Team 16A
Vepery, Chennai-7.

2. S.Natarajan (died)

3. Geetha Natarajan
(R3-brought on record as LRs
of the deceased 2nd respondent
vide Court order made in Crl.M.P.
No.12126 of 2022 in Crl.O.P.No.
4382 of 2020 dated 24.11.2023)

..... Respondents

Crl.O.P.No.4497 of 2020

1. S.Suresh Kumar
2. S.Ravirathinam
3. S.Rajarathinam

..... Petitioners

Vs

1. State rep by Inspector of Police,
Central Crime Branch,
Team 16A,
Vepery, Chennai.

2. S.Natarajan (Died)
3. Geetha Natarajan
(R3-brought on record as LRs
of the deceased 2nd respondent
vide Court order made in Crl.M.P.
No.12131 of 2022 in Crl.O.P.No.
4497 of 2020 dated 24.11.2023)

..... Respondents

Common Prayer: Criminal Original Petitions filed under Section 482 of



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

Code of Criminal Procedure, to call for the records in C.C.No.7490 of 2019 on the file of the XI Metropolitan Magistrate (Exclusive Trial of CCB Cases) at Egmore and quash the same.

In Crl.O.P.Nos.3736 & 4497 of 2020

For Petitioners	: Mr.Isaac Mohanlal Senior Counsel for M/s.Isaac Chambers
For R1	: Mr.L.Baskaran Government Advocate (Crl.Side)
For R2	: Died (Steps taken)
For R3	: Mr.C.S.Dhanasekaran

In Crl.O.P.No.4382 of 2020

For Petitioner	: Mr.S.P.Harikrishnan
For R1	: Mr.L.Baskaran Government Advocate (Crl.Side)
For R2	: Died (Steps taken)
For R3	: Mr.C.S.Dhanasekaran

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.7490 of 2019 pending on the file of the XI Metropolitan Magistrate (Exclusive Trial of Central Crime Branch Cases), Egmore.

2. The petitioners in Crl.O.P.No.3736 of 2020 are arrayed as A1, A5 to A8. The petitioner in Crl.O.P.No.4382 of 2020 is arrayed as A9 and the petitioners in Crl.O.P.No.4497 of 2020 are arrayed as A2,



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

A3 & A4. Therefore, this Court is inclined to pass common order.

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3. The case of the prosecution is that the defacto complainant along with his brothers and sisters inherited the property comprised in Survey No.84/1A in 134, Neelankarai Village, Door No.3/545, East Coast Road, Neelankarai, Chennai – 115, to an extent of 1 acre 50 cents under old patta No.159, new patta No.5510 from G.Subramaniya Iyer. On his demise, the second respondent, his brothers and sisters, being legal heirs, inherited the said property. A1 to A4 also claimed the title of the property by a registered sale deed vide Document No.2626 of 2000. They filed a suit for injunction in O.S.No.6992 of 2001 on the file of VII Assistant City Civil Court, Chennai. The said suit was dismissed by a Judgment and Decree dated 21.07.2006. Aggrieved by the same, they preferred an appeal suit in A.S.No.707 of 2006 on the file of the V Additional Judge, City Civil Court, Chennai. It was held that the sale deed is found to be sham, nominal and bogus. Therefore, it does not pass any title in their favour.

4. Aggrieved by the same, they also preferred an appeal in S.A.No.1458 of 2007 before this Court and this Court, by a Judgment dated 01.10.2012, concluded that the accused miserably failed to prove the very aspects regarding the sale transaction involved for valuable



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

consideration and also possession of the property. When the cloud is cast over their title on the suit property, they ought to have filed a suit for declaration. Aggrieved by the same, they also preferred Special Leave Petition before the Hon'ble Supreme Court of India in SLP (Civil) No.33689 & 33690 of 2012 and the same was also dismissed by an order dated 23.11.2012. Thus, they have no title over the subject property and they have no right to alienate the same in any manner for what so ever. The said decree was registered on 04.02.2013 vide Document No.720 of 2013. Despite their knowledge about the decree passed against them in O.S.No.6992 of 2001, they had executed a partnership deed and shared the subject property by A1 to A4. Thereafter, they had executed a Lease Deed dated 30.03.2015 in favour of A9 and registered vide Document No.2551 of 2015. Thereafter, A3 had executed a Settlement Deed on 29.04.2015 in favour of his daughters and thereby appointed their mother as natural guardian vide Document No.3323 of 2015. A2 also executed a Settlement Deed on 29.04.2015 in favour of his sons and appointed their mother as natural guardian vide Document No.3324 of 2015. The wives of A2 and A3 are arrayed as A5 and A6. The settlees are arrayed as A7 & A8. The lessee is arrayed as A9. Hence, the complaint.

5. On receipt of the complaint, the first respondent



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

registered an FIR in Crime No.434 of 2015 for the offences under Sections 420, 465, 467, 468, 471 and 120B of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.7490 of 2019 on the file of the XI Metropolitan Magistrate (Exclusive Trial of Central Crime Branch) at Egmore.

6. The learned Senior Counsel appearing for the accused 1 to 8 and the counsel appearing for the 9th accused submitted that though they failed before the Civil Court, they filed only a suit for injunction. The title in question is not declared in any favour. The accused 1 to 4 are claiming title over the property by a registered sale deed dated 15.09.2000 vide Document No.2626 of 2001 in respect of the land comprised in Survey No.84/1A admeasuring 1 acre 50 cents situated at Neelankarai Village at Door No.3/545, East Coast Road, Neelankarai, Chennai – 115. The said property originally belonged to one Santhanalakshmi. She purchased the said property along with the vast extent of lands in Paimash No.165 admeasuring 1 acre and 90 cents of land by a registered Sale Deed dated 17.10.1962 vide Document No.2851 of 1962 from one Gomathi Srinivasan.

7. Pimash Nos.165, 166, 167 and 168A are forming one



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

part and the same was classified as S.No.84 admeasuring 20.75 cents of

land. The complainant's father G.S.Subramania Iyer had purchased the

land in the year 1943 in Paimash Nos.166, 167 and 168A admeasuring

18.95 acres. However, they were issued patta for the land admeasuring

20.85 acres. That apart, the said G.S.Subramania Iyer sold his property,

which he had purchased in the year 1943, in Pimash Nos.166, 167, 168,

170D and 171 in favour of one RMC Traders, by two registered sale

deeds vide Documents No.1003 of 1794 and 4845 of 1975. Therefore,

no property is available to inherit by the second respondent and other

legal heirs of the deceased G.S.Subramania Iyer. One of the purchaser,

viz., Srinivasa Naicker obtained patta and the same was sub divided as

S.No.84/1A admeasuring 1.50 acres of land. The said land was

purchased by one Santhanalakshmi Ammal by a registered sale deed

dated 08.08.1975, since the said property was sold to one Krishnarathi

Ammal. The said Santhanalakshmi Ammal filed a suit in O.S.No.904 of

1976 on the file of the District Munsif, Poonamallee and the same was

decreed on 30.03.1982. In the Appeal Suit in A.S.No.29 of 1984, the

decree was set aside and in the Second Appeal in S.A.No.870 of 1994,

there was compromise entered between them. Accordingly, the said

Santhanalakshmi Ammal agreed to pay a sum of Rs.2,00,000/- from the



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

said Krishnarathi Ammal and it was recorded by this Court on 04.03.1998.

8. Thereafter, the husband of the first accused had purchased the said property by a registered Sale Deed dated 15.09.2000. When the defacto complainant and others disturbed their possession of the subject property, the accused filed a suit for permanent injunction in O.S.No.6992 of 2001. However, it was dismissed and confirmed the order of the Hon'ble Supreme Court of India. Simultaneously the cancellation of patta and mutation of revenue records are also under challenge. Therefore, without even deciding the title, the said complaint has been filed as against the petitioner as if they have fabricated the documents. They never forged any signature and had not fabricated any documents. They also never induced and deceived any property from the accused in order to attract the offence under Section 420 of IPC.

9. Even assuming that A1 to A4 executed Partnership Deed and had executed Settlement Deed in favour of their sons and further, they executed a Lease Deed in favour of the 9th accused, the wives, viz., A5 and A6, and Settlees, viz., A7 and A8, are not liable to be punished for any of the offence. The 9th accused is only a lessee and he had got



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

leasehold right and he entered into a Lease Deed. Therefore, no offence is made out as against A9.

10. The learned counsel appearing for the second respondent relied upon the Judgment and Decree passed by this Court in the Second Appeal and pointed out that the substantial question of law were categorically answered against the accused. Further, this Court concluded that the accused did not have a good case as there was a strong question hanging on the factum of purchase itself and their continuous possession in the subject property. Therefore, when a cloud is cast over the subject property, they should have amended the prayer for larger relief of declaration of title and consequential relief of possession. The vendors of the accused had no title and they were never in possession of the subject property and they were termed as stranger. They failed to prove their own case for grant of injunction by substantiating that from the date of purchase of the suit property till the date of filing of the suit, they have been in possession of the subject property. This Court dismissed the Second Appeal by a Judgment dated 01.10.2012. Aggrieved by the same, the accused 1 to 4 along with their father, preferred Special Leave Petition in SLP Nos. 33689 & 33690 before the Hon'ble Supreme Court of India and the same was also dismissed by an



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

order dated 23.11.2012. Thereafter, the accused 1 to 4 created

Partnership Deed among themselves as there are owners of the property.

Thereafter, in respect of the share owned by the 3rd accused, he had executed a Lease Deed dated 30.03.2015 in favour of A9 registered vide Document No.2551 of 2015. Once again the 3rd accused had also executed a Settlement Deed in favour of the 8th accused in respect of his share vide Document No.3323 of 2015 dated 29.04.2015.

11. On the strength of the Partnership Deed, the 2nd accused had also executed a Settlement Deed in favour of the 5th accused registered vide Document No.334 of 2015. Therefore, the accused 1 to 4 kept on creating encumbrance over the subject property by executing Partnership Deed, Settlement Deed and Lease Deed. On the strength of the said deed when the beneficiaries attempted to take possession of the subject property, the complainant and others filed a petition seeking police protection before this Court in Crl.O.P.No.4989 of 2015, this Court, after considering the entire facts and circumstances and also had taken into consideration of the order passed by this Court in S.A.No.1458 of 2007 dated 01.10.2012, concluded that the accused 1 to 4 were not in possession of the subject property and they cannot claim any right over the property. Even assuming that they were found in possession of the



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

subject property, the law will only assist the true owner to enjoy the property and the possession of the accused as claimed by them can only be illegal possession and they cannot be allowed to perpetuate by resisting the petition seeking police protection.

12. Finally, this Court concluded that there is no dispute regarding the possession of the property and it is the accused who claim to be in possession of the property but as per the decree they are not in possession of the property. The 2nd respondent and others are in possession of the property. The accused cannot be permitted to sustain their illegal possession and the Court cannot shut its eyes to help the decree holder or help a person in whose favour findings were given. Therefore, this Court ordered police protection to the second respondent and other family members to enjoy the subject property.

13. In fact, the said order was also challenged before the Hon'ble Supreme Court of India in SLP No.5063 of 2016 and the same was dismissed by an order dated 22.04.2016. Thereafter, the second respondent lodged a complaint and the same has been registered in Crime No.434 of 2015. The said FIR also was challenged before this Court in Crl.O.P.No.531 of 2019 and the same was dismissed by an order dated 12.04.2019. Once again, aggrieved by the said order, they preferred an



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

appeal before the Hon'ble Supreme Court of India in SLP No.6977 of 2019 and the same was also dismissed by an order dated 11.02.2020.

14. Insofar as the accused 5 to 9 are concerned, they are no way connected with the execution of any document. A5 and A6 are wives of A2 and A3. A7 and A8 are children of A2 and A3. A9 is the lessee. Though A7 and A8 are settlee and beneficiary as per the Settlement Deed, they are no parties to the earlier proceedings initiated by A1 to A4. Therefore, they had no role, while execution of the Sale Deed, Partnership Deed and Settlement Deed. Likewise, the 9th accused had no role to play in the above documents executed by A1 to A4. He is only a lessee under the Lease Deed executed by A3 dated 30.03.2015. therefore, no offence is made out as against the accused 5 to 9 herein. Hence, this Court is inclined to quash the entire proceedings as against the petitioners 2 to 5 in Crl.O.P.No.3736 of 2020 and the petitioner in Crl.O.P.No.4382 of 2020. Accordingly, the entire proceedings as against the petitioners 2 to 5 in Crl.O.P.No.3736 of 2020 and the petitioner in Crl.O.P.No.4382 of 2020 is hereby quashed.

15. 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:-

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" 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 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.

16. Recently, the Hon'ble Supreme Court of India dealing



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated

17.10.2019 in the case of ***Central Bureau of Invstigation Vs. Arvind***

Khanna, wherein, it has been 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.”

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17. 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 appellant would show that the appellant had



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Crl.O.P.Nos.3736, 4382 & 4497 of 2020

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 petitioner cannot be considered by this Court under Section 482 Cr.P.C.

18. Insofar the other petitioners are concerned, there are specific allegations to bring the charges for the offence under Sections 420, 465, 467, 468, 471 and 120B of IPC and therefore, this Court is not inclined to quash the proceedings as against the petitioners in Crl.O.P.No.4497 of 2020 and the first petitioner in Crl.O.P.No.3736 of 2020.

19. In the result, Crl.O.P.No.3736 of 2020 is partly allowed, Crl.M.P.No.4382 of 2020 is allowed and Crl.M.P.No.4497 of 2020 is dismissed. The Trial Court is directed to proceed with the Trial as against A1 to A4 in C.C.No.7490 of 2019 and complete the same within a period of six months from the date of receipt of a copy of this order. Considering the age of the petitioner in Crl.O.P.No.3736 of 2020,



Crl.O.P.Nos.3736, 4382 & 4497 of 2020

the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application.

However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

24.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To
1. The Inspector of Police,
Central Crime Branch,
Team XVI,
Vepery, Chennai.

2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.3736, 4382 & 4497 of 2020



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CrI.O.P.Nos.3736, 4382 & 4497 of 2020

24.11.2023