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Crl.O.P.Nos.4356, 5406, 6241 & 6296 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.Nos.4356, 5408, 6241 & 6296 of 2021

and

Crl.M.P.Nos.2795, 2796, 3493, 3494, 4117, 4118, 4168 & 4169 of 2018

Kumar	...	Petitioner in Crl.O.P.4356 of 2021
Dharmi Chand	...	Petitioner in Crl.O.P.5408 of 2021
Deepak	...	Petitioner in Crl.O.P.6241 of 2021
Ajay	...	Petitioner in Crl.O.P.6296 of 2021

/vs/

1. The State rep. By
The Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Special Cell),
Vellore, Vellore District.

2. Sujatha ... Respondents in all Crl.O.Ps.



Common Prayer : All the Criminal Original Petitions have been filed under section 482 of Cr.P.C. to call for the records pending on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore District in C.C.No.78 of 2020 and quash the same.

For petitioner ... Mr. E. Kannadasan
in Crl.O.P.Nos.
4356 & 5408 of 2021

For petitioner in ... Mr. D.Dayalan
Crl.O.P.6241 of 2021

For petitioner in ... Mr. V. Parthiban
Crl.O.P.6296 of 2021

For Respondents ... Mr.L.Baskaran,
in all Crl.O.Ps Gov. Advocate (crl.side)
(for R1)

For Respondents ... Mr. V.Manohar,
in all Crl.O.Ps (for R2)

COMMON ORDER

All the Criminal Original Petitions have been filed to call for the records in C.C.No.78 of 2020 pending on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore District.



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2. Since the issue involved in all the Criminal Original Petitions are one and the same, all the Criminal Original Petitions are disposed of by way of a common order.

3. The petitioner(Kumar) in Crl.O.P.No.4356 of 2021 is arrayed as A4, petitioner(Dharmi Chand) in Crl.O.P.No.5408 of 2021 is arrayed as A3, petitioner(Deepak) in Crl.O.P.No.6241 of 2021 is arrayed as A2 and petitioner(Ajay) in Crl.O.P.No.6296 of 2021 is arrayed as A1 in C.C.No.78 of 2020 on the file of the District Munsif cum Judicial Magistrate, Arcot, Vellore District.

4. The learned counsel for the petitioner in all the petitions submitted that it is not in dispute that the defacto complainant executed a power of attorney in favour of Ajay(A1) on 14.07.2009 vide document No.433 of 2009 for selling her property. In pursuance of that power, the Ajay(A1) had executed a sale deed in favour of his brother Deepak(A2) vide Document No.3401 of 2012, dated 13.03.2012 and the said fact is also not in dispute. The only allegation pointed out by the prosecution is that Ajay(A1) had prepared a false receipt as it was given by the defacto complainant for



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receiving a sum of Rs.4 lakhs, for which, a xerox copy of the receipt alone is filed and no evidence on record has been produced by the prosecution to show that Ajay(A1) had committed forgery of the defacto complainant's signature in the alleged receipt dated 30.03.2012.

5. He further submitted that no offence had been made out as against the petitioners/accused. It is purely civil in nature for non payment of consideration or not submitting the account and the defacto complainant has to file a civil suit for not honouring the power of attorney. After the lapse of four years, the complaint has been given on 16.08.2016, which is barred by limitation. Hence, the criminal proceedings in C.C.No.78 of 2020 pending before the District Munsif cum Judicial Magistrate, Arcot, Vellore has to be quashed as it is misusing the criminal process by the defacto complainant with the help of the police.

6. The learned Government Advocate (crl.side) appearing for the first respondent submitted that now the case in C.C.No.78 of 2020 has been transferred from the District Munsif cum Judicial Magistrate, Arcot to the Judicial Magistrate No.II, Vellore, and the same has been taken on file as C.C. No.429 of 221.



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7. The learned counsel appearing for the defacto complainant/second respondent submitted that the alleged receipt in the name of the defacto complainant is a forged one and the same has been prepared by the accused persons and hence, the offence is made out against them and they have to face the trial. Therefore, seeks to dismiss all the criminal original petitions.

8. I have considered the matters in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

9. On perusal of the records, it reveals that the defacto complainant executed a power of attorney in favour of the Ajay(A1) on 14.07.2009 as per the document No.433 of 2009 for selling her property, which is not in dispute. The fact that the first accused sold the property to his brother, Deepak(A2) as per document no.3401 of 2022, on 30.03..2012 is also not in dispute. According to the prosecution, the allegation is that the first accused had not given account for sale to the principal as well as not paid the sale consideration received by him by selling the property in pursuance of the power given by the defacto complainant. Hence, it is purely civil in nature



and there is no criminal element for non furnishing the account in accordance with the power of attorney.

10. Further, it is seen that the allegation against the Ajay(A1) is that he had created a receipt dated 30.03.2012. To prove the same, the original receipt was not produced by the prosecution and only the xerox copy of the same is filed. Apart from that, the complaint has been given only on 16.08.2016. In the absence of the original receipt of alleged forged receipt, the Ajay(A1) cannot be prosecuted. Under these circumstances, no criminal element is involved in the case and no offence has been made out as against the petitioners as stated by the prosecution under Sections 120B, 420, 423, 468, 471, 294(b), 506(i) of IPC and Section 82 of the Registration Act 1908 for continuing the prosecution. Take the allegation as it is true, no material is available against the petitioners/accused for the offences under Sections 120B, 420, 423, 468, 471, 294(b), 506(i) of IPC and Section 82 of the Registration Act 1908 for continuing the prosecution. Hence, continuing the criminal proceeding against the petitioners/accused persons is misusing the criminal process. Therefore, it is liable to be quashed.



11. Accordingly, all the Criminal Original Petitions are allowed and the case pending in C.C.No.429 of 2021 on the file of the Judicial Magistrate II Vellore (earlier C.C.No.78 of 2020 on the file of District Munsif cum Judicial Magistrate, Arcot, Vellore District) is hereby quashed. Consequently connected miscellaneous petitions are closed.

Index : Yes/No

Internet: Yes/No

mrp

10.07.2023

Note : Issue order copy on 21.07.2023

To

1. The Judicial Magistrate,
District Munsif cum Judicial Magistrate,
Arcot, Vellore District.
2. The Judicial Magistrate,
Judicial Magistrate No.II,
Vellore.



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V.SIVAGNANAM, J.

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