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Crl.O.P.No.5415 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON : 19.12.2023

CORAM:

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

Crl.O.P.No.5415 of 2021
and Crl.M.P.Nos.3505 & 3506 of 2021

1. Devaraj
2. Malar

...Petitioners

-Vs-

1. The State Rep. by
The Inspector of Police,
District Crime Branch,
Tiruppur District.

2. K.Malarvizhi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating in C.C.No.97 of 2019 on the file of the learned Judicial Magistrate No.II, Palladam and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.R.Elango, Senior Counsel
For Mr.M.Guruprasad

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate (Crl. Side)

For R2 : Mr.V.Karthik, Senior Counsel
For Mr.P.Navaneetha Krishnan



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.97 of 2019 on the file of the learned Judicial Magistrate No.II, Palladam, thereby taken cognizance for the offences under Sections 120(b), 419, 420, 423, 467, 438, 471, 294(b) & 506(ii) of IPC, as against the petitioners.

2. The case of the prosecution is that the petitioners are arrayed as A1 & A2. The defacto complainant had purchased the subject land ad measuring 20.97 acres by the registered sale deed vide document No.2639/2006 for the valid sale consideration, on 25.09.2006. Thereafter, she also entered into agreement for sale in order to purchase another property comprise in survey No.468, ad measuring 5 acres from the second accused through her power of attorney on 12.03.2008, by the registered sale deed vide document No.1679/2008. Thereafter, the power holder of the second accused and the defacto complainant executed sale deed in favour of the defacto complainant's husband dated 03.12.2008, vide document No.5956/2008.



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3. Thereafter, the accused 1 & 2 had borrowed a sum of Rs.80,00,000/- from the husband of the defacto complainant in the year 2009 on various occasions by instalment. In the year 2010, when the defacto complainant's husband demanded to repay the loan borrowed by the accused 1 & 2, they refused to repay the amount borrowed by them for the reason that the property which was sold out in favour of the husband of the defacto complainant by the registered sale deed dated 03.12.2008, later valued for higher price. Therefore, they refused to repay the amount borrowed by them.

4. That apart, in order to grab the property purchased by the second respondent ad measuring 20.97 acres vide document No.2639/2006, all the accused persons conspired together and purchased Rs.10/- two stamp papers, in the house of the first and second accused and thereafter all the accused persons fabricated an agreement in favour of the third and fourth accused as if the second respondent had executed an agreement for sale for the said property and also received a sum of Rs.5,00,000/- as advance on 17.12.2008.



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5. Further on the strength of the said agreement for sale, the third and fourth accused also filed suit in O.S.No.409 of 2011 for specific performance on the file of the Sub Court, Thirupur, and it is pending. When it was questioned by the second respondent, they threatened her and also her husband with dire consequences. They also scolded them with filthy language. Hence the complaint.

6. On receipt of the said complaint, the first respondent registered the FIR in Crime No.17 of 2012 for the offences under Sections 420, 467, 468, 471, 294(b), 506(ii) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.97 of 2019.

7. The learned Senior Counsel appearing for the petitioners submitted that even according to the case of the prosecution, the petitioners are nothing to do with the alleged criminal act. The third and fourth accused had entered into an agreement for sale for the total sale consideration of Rs.7,00,000/- for the subject land ad measuring 20.97 acres comprised in S.F.No.545/2 and also received a sum of Rs.5,00,000/-. The time for execution of sale deed was two years. Even



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after the period of two years, the second respondent failed to execute the sale deed after receipt of the balance sale consideration. Therefore, the third and fourth accused were constrained to file suit in O.S.No.409 of 2011. However, the said suit was subsequently dismissed for default.

7.1. He further submitted that in fact, the agreement for sale was sent for expert opinion. The Deputy Director of document division, Forensic Sciences department, Chennai, had sent a report that it is not possible to offer any reliable opinion on the red enclosed signature stamped and marked D1 to D5 on a comparison with the red enclosed signatures similarly stamped and marked A1 to Q50. Therefore, there is no *prima facie* case made out to implead the petitioners as accused. They are husband and wife and they are nothing to do with the alleged transactions between the other accused and the second respondent. When there is no *prima facie* case made out, there is no material available on record to get the accused convicted even at the end of the criminal proceedings, they need not to undergo ordeal of trial.

8. Per contra, the learned Senior Counsel appearing for the second respondent submitted that earlier transactions are very clear to



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attract the offence under Section 120B of IPC. In fact, the stamp papers, which were used for fabrication of agreement for sale, were purchased only by the petitioners. The entire fabrication of agreement for sale performed in the house of the petitioners. Therefore, all the accused persons conspired together, in order to grab the property belongs to the second respondent. In fact, they also impersonate the second respondent and forged her signature, thereby fabricated the agreement for sale. On the strength of the agreement for sale, they filed suit and after complaint the said suit was dismissed for default. Therefore, he prayed for dismissal of the quash petition.

9. The learned Government Advocate (Crl. Side) appearing for the first respondent police submitted that there are totally seven accused in which the petitioners are arrayed as A1 and A2. All the accused persons conspired together and impersonated the second respondent and forged her signature while fabricating the agreement for sale. Already there was a loan transactions between the husband of the second respondent and the petitioners herein. Therefore, in order to grab the property, they indulged in the criminal activity and there are materials available to bring the charges to home.



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WEB COPY 10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

11. There are totally seven accused in which, the petitioners are arrayed as A1 and A2. On 08.01.2001, the husband of the second respondent had purchased the land comprised in survey No.545/2 ad measuring 8.96 acres and the land comprised in survey No.535 ad measuring 1.11 acres by the registered sale deed dated 08.01.2001 vide document No.09 of 2001. He also obtained power of attorney for the extent of 10.07 acres in the same survey number. Further he obtained power of attorney for another land ad measuring 1 acres, vide document No.6 of 2006 situated in the same survey number. Finally, he executed sale deed in favour of the second respondent vide document number 2639 of 2006 for the entire extent of land ad measuring 20.97 acres.

12. Further the second petitioner herein had executed power of attorney dated 01.02.2006, in respect of the land ad measuring 5 acres comprised in S.No.468, in favour of one Sukumar vide document number 339 of 2006. In turn, the said Sukumar executed agreement for sale in



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favour of the second respondent vide registered agreement No.1679 of 2008, dated 12.03.2008. Subsequently, the power of attorney viz., the said Sukumar and the second respondent herein had executed sale deed in favour of the husband of the second respondent on 03.12.2008, vide registered document No.5956 of 2008. Therefore, the petitioners had acquittance with the second respondent and her husband.

13. Utilizing the said circumstances, the petitioners had borrowed a sum of Rs.80,00,000/- from the husband of the second respondent. However, they refused to repay the said amount, since the property which was purchased by the husband of the second respondent increased value being time. Therefore, they requested to adjust the escalation price in selling the land from the loan borrowed by them. It was not agreed by the second respondent and her husband. Therefore in order to grab the property, which was purchased by the second respondent from her husband, they purchased stamp papers and fabricated agreement for sale as if the second respondent had executed agreement for sale in favour of the third and fourth accused.



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14. That apart, they impersonate the second respondent and forged her signature in the agreement for sale. They allegedly stated that the clause as if the time for execution for sale deed for two years and also received a sum of Rs.5,00,000/- as advance. It is also curious to note that the sale consideration was fixed at Rs.7,00,000/- for the entire extent of property ad measuring 20.97 acres. As against each accused, there are specific allegations and also there are material to attract the offence under Section 120B of IPC. Therefore, it is premature to quash the entire proceedings, since the grounds raised by the petitioners are mixed question of facts and it can be considered only before the trial Court during trial.

15. It is also noticed that the Forensic Lab sent report to the Civil Court in O.S.No.409 of 2011, on the file of the learned Sub Court, Tiruppur, that it is not possible to offer any reliable opinion on the red enclosed signature. However, the said suit was filed on the strength of the alleged agreement for sale by the third and fourth accused for specific performance. The said suit was filed in the year 2011 and thereafter, the second respondent filed complaint. After the complaint, the third and fourth accused cleverly left the case without attending and it was



dismissed for default. It shows the conspiracy between all the accused persons to grab the property of the second respondent. Therefore, it cannot be said that there are no allegations as against the accused and there is no possibility for conviction.

16. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India dated **10.04.2023** made in ***Criminal Appeal Nos.1025-1026 of 2023*** in the case of ***Central Bureau of Investigation Vs. Aryan Singh Etc.***, as follows :-

“4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of Criminal Appeal Nos. 1025-1026 of 2023 Page 5 of 8 discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the



prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

17. Though specific ground raised by the petitioners is that the entire proceedings are malicious, it is not required to be considered before this Court that too under Section 482 of Cr.P.C., and the same must be considered at the conclusion of trial. In any case, at this stage, what is required to be considered is a *prima facie* case and the material collected during the course of the investigation, which warranted the petitioners to be tried. As stated supra, there are materials *prima facie* available to constitute the offence under Sections 120(b), 419, 420, 423, 467, 438, 471, 294(b) & 506(ii) of IPC, as against the accused persons.



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WEB COPY 18. In view of the above discussions, this Court is not inclined to quash the proceedings and the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

19.12.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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- To
1. The Judicial Magistrate No.II,
Palladam.
 2. The Inspector of Police,
District Crime Branch,
Tiruppur District.
 3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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ORDER IN
Crl.O.P.No.5415 of 2021 and
Crl.M.P.Nos.3505 & 3506 of 2021

19.12.2023