



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 30.01.2023**

**PRONOUNCED ON : 20.03.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Crl.O.P.Nos.10612, 4353 & 4903 of 2021**  
**and Crl.M.P.Nos.2785 & 3132 of 2021**  
**and 19505 & 19506 of 2022**

N.Arumuga Gounder ... Petitioner / A-1  
[in Crl.O.P.No.10612 / 2021]

Sundarraaj ... Petitioner / A-2  
[in Crl.O.P.No.4903 / 2021]

Vanjiyappa Gounder ... Petitioner / A-3  
[in Crl.O.P.No.4353 / 2021]

***versus***

1.The State,  
Rep. by the Inspector of Police,  
District Crime Branch,  
Coimbatore, Coimbatore District. ... 1<sup>st</sup> Respondent /  
State

2.Venkada Subramanian ... 2<sup>nd</sup> Respondent /  
*De facto* Complainant  
[in all Crl.OPs]



**PRAAYER:** Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, praying to call for the records in FR.No.31 of 2017 in C.C.No.46 of 2020 dated 25.05.2017 on the file of the learned Judicial Magistrate No.II, Pollachi and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghavachari  
[in Crl.O.P.No.10612 / 2021] Senior Advocate  
for M/s.V.Srimathi

For Petitioner : Mr.R.Krishna Prasad  
[in Crl.O.P.Nos.4353 & 4903 / 2021] for M/s.Sarvabhauman Associates

For Respondent No.1 : Mr.A.Gopinath  
[in all Crl.O.Ps] Government Advocate (Crl.Side)

For Respondent No.2 : Mr.H.Manivannan  
[in all Crl.O.Ps.]

### **COMMON ORDER**

These Criminal Original Petitions have been preferred to call for the records pertaining to C.C.No.46 of 2020 dated 25.05.2017 on the file of the learned Judicial Magistrate No.II, Pollachi and quash the same.

2. Heard the learned counsels for the petitioners; learned Government Advocate (Crl. Side) for the first respondent; learned counsel for the second respondent and perused the materials available on record.



**3.** The petitioners are the accused 1 to 3 and each one of the accused has filed a separate petition to quash the proceedings. The case of the prosecution is that the properties comprising to an extent of 96 acres 33 cents originally belonged to the second respondent's ancestor by name Subbulakshmi Ammal; the said Subbulakshmi Ammal was the paternal aunt of the second respondent's father; since her husband died long back she was staying with the second respondent's family and the second respondent's father Ayyasamy was maintaining the said Subbulakshmi Ammal and after having sold a portion of the property, she had 47 acres and 97 cents in Survey Nos.1/1 and 1/2 along with 4 acres 47 cents in Survey No.15 of A.Sangampalayam Village.

**3.1.** During the life time of Subbulakshmi Ammal, she had executed a registered Will dated 17.12.1995 in respect of the above properties and bequeathed the same in favour of the second respondent, his mother Jayalakshmi and his aunt Thilagavathy; Subbulakshmi died on 08.03.1996; as the second respondent and his family members were not able to maintain



the properties, they had appointed the first accused as their power agent through a registered Power of Attorney dated 26.08.1996.

**3.2.** The first accused had sold a portion of the property by dividing it into house plots and the sale proceeds were not handed over to the second respondent and his family members; he also entered into a sale agreement with one Vadivel Gounder on 22.11.2007 in respect of 21 acres of land after obtaining Rs.1,52,09,600/- from him; the second respondent came to know about the said fact from Vadivel Gounder and thereafter, the second respondent asked the first accused about the transactions and to hand over the sale amount; but the first accused with an intention to cheat the second respondent and other owners of the property gave evasive answers; hence on 03.12.2007, the power granted in favour of the first accused was cancelled and the same was informed to him; in the meanwhile, the Hindu Religious and Charitable Endowments Department claimed the subject property as the property belongs to Subramania Swamy Temple, Pollachi; the second respondent contested the suit up to the Hon'ble Supreme Court and got a decree in his favour on 18.07.2016.



**3.3.** Thereafter, the first accused caused notice through an advocate by name M.Venkatesh on 28.02.2017 that he had entered into a sale agreement in respect of the said property in favour of one Vanjiyappa Gounder (A-3) and a sale deed has been executed in his favour; yet another notice was sent by another advocate in respect of the sale agreement dated 23.05.2006 which is said to have been entered in favour of Sundarraaj (A-2).

**3.4.** On enquiry, the second respondent came to know that those sale agreements have been created just for the purpose of grabbing the said properties; in this regard, the second respondent has given a complaint and on the basis of which, a case has been registered on 14.03.2017 in F.I.R. No.7 of 2017 on the file of the District Crime Branch, Coimbatore for the offences under Sections 409 and 420 IPC.

**4.** The learned counsel for the petitioner / A-1 submitted that the first accused being the power agent of the second respondent and his family members had executed sale deeds in favour of the third parties and subsequently they are in possession of their respective properties. The



second accused has filed a suit for specific performance in O.S.No.243 of 2017 on the file of the District Court, Coimbatore and in which the first accused has also been shown as the fourth defendant. The said matter pertains to the said sale agreement dated 23.05.2006. In this regard, a complaint has been given by manipulating the facts and a civil dispute has been given with criminal colour. The materials available on record does not constitute any criminal case.

5. The learned counsel for the petitioners / A-2 and A-3 has also submitted that the matter is civil in nature and a criminal complaint has been given just to defraud the advance amount given by them in respect of the sale agreements entered into between themselves and the power agent of the second respondent. The second respondent, who is aware of the sale agreement, and the transactions done by the first accused on behalf of the second respondent and others had given the complaint by exaggerating the civil dispute. The complaint has been given belatedly after ten years of issuing the legal notice to the first accused.



6. The learned Government Advocate (Crl. Side) appearing on behalf of the first respondent submitted that the first accused had cheated one Vadivel Gounder, who is one of the witness to the tune of Rs.1,52,09,600/-. After a decree was passed in favour of the second respondent by the Hon'ble Supreme Court, the first accused had changed his attitude and he colluded with the other accused and created the said sale agreements. The charge sheet witnesses by name Mayilsamy, Selvakumar, Marimuthu and Anandhakumar are the witnesses of the forged sale agreements and they have stated that they did not sign the sale agreements in the year 2003 or 2006 respectively, but they had signed it only six months before filing of the F.I.R. The District Sub-Registrar (Admin), Tirupur, has given statement that there were some malpractices in selling the stamp papers used for creating the sale agreements. Hence, the case cannot be considered as civil in nature. The materials and the statement of witnesses would prove the guilt of the accused and hence, the process of trial should not be affected. In fact, some of the witnesses have given Section 164 Cr.P.C. statements and hence, the matter in every aspects requires a fair trial.



WEB COPY

7. The learned counsel for the second respondent submitted that the first accused collected huge money by misusing the power given to him and he did not hand over the money to the land owners. Hence, a legal notice was given to the first accused on 10.12.2007 and he was also informed about the fact that the power given to him was cancelled. The first accused with the help of his close relatives (A-2 and A-3) had sent a reply notice by claiming false right in favour of A-2 and A-3.

8. A-2 [Sundarraaj] is the brother-in-law of the son-in-law of the first accused. The third accused is the brother-in-law of the first accused brother Nanjiyappa Gounder. The stamp papers of the year 2007 have been misused by ante dating agreements after the disposal of the litigation between the land owners and Subramania Swamy Temple, Pollachi. The land owners have fought the litigation brought by the H.R.&C.E. on behalf of Subramania Swamy Temple, Pollachi up to the Hon'ble Supreme Court and got a decree in their favour.



**9.** On the face of it, the sale agreements in favour of A-2 and A-3 would show that they were created with the connivance of the first accused and the first accused has conspired with A-2 and A-3 to defraud the land owners by creating false documents. The witnesses have clearly stated about the entitlement of the property for the family of the second respondent and how the impugned agreements have been made subsequent to the verdict of the Hon'ble Supreme Court. So the above overt acts on the part of the petitioners are the facts fit to be tested in a trial.

**10.** The statement of L.W.4 [Vadivel Gounder] is very important and that might make out the criminal intention on the part of the first accused. L.W.5 and L.W.6 would show that the ante dated documents have been created for the purpose of making a false claim over the subject property. L.W.4 has given statement that with the connivance of A-3, the agreements have been created subsequent to the cancellation of the power given in favour of the first accused. The second and third accused had filed suits for specific performance in O.S.No.243 of 2017 and O.S.No.244 of 2017 and that were already dismissed for default on 20.09.2021 and



12.03.2021 respectively. The real land owners were kept out of their enjoyment of the property for several years. So there are sufficient materials available on record to subject the petitioners to undergo the process of trial.

**11.** The specific case of the second respondent is that the subject property which was originally belonged to one Subbulakshmi Ammal and she bequeathed the property by virtue of a registered Will executed by her in favour of the second respondent, his mother and his aunt and that has been misused by the accused 1 to 3 by creating various documents. The allegations against the first accused is that he misappropriated the sale proceeds of the property sold by him in pursuant to the power executed in his favour. Immediately after coming to know the fraudulent acts of the first accused, the second respondent and other land owners have cancelled the power given to him.

**12.** The learned counsel for the petitioner submitted that the first accused was the power agent of the second respondent and a dispute between the second respondent and his power agent has been resolved in the



WEB COPY

civil suit and there is no basis for the criminal case. It is further submitted that the second and third accused have filed civil suits for specific performance on the basis of the sale agreements executed by the first accused in his capacity as power agent at the time when the power granted in his favour was in force. But the witnesses have given statements to the effect that the stamp papers in which the sale agreements were engrossed were actually sold in the year 2007 but the contents of the sale agreements shown that it is executed in the year 2006. The above allegations are serious in nature and creating such documents by putting ante dates would show *prima facie* criminal intention. The second and third accused are the relatives of the first accused and the suits filed by them before the District Court, Coimbatore, were also dismissed for default.

**13.** Admittedly, there was some civil litigation pending between the family of the second respondent and Subramania Swamy Temple, Pollachi, in respect of the suit property. The second respondent fought the suit at the Hon'ble Supreme Court and got a decree in his favour. Even though the suits were filed by the second and the third accused for specific



performance on the strength of the alleged sale agreements in their favour, those suits were not contested by them. The witnesses have given statements about the date of sale of the non-judicial stamp papers. The sale agreements engrossed on stamp papers of the year 2007 and the sale agreement is executed in the year 2006. These materials in all probabilities would make out a criminal case. It was submitted on behalf of the petitioners that the second respondent who had issued legal notice to the first accused in the year 2007 had not given any criminal complaint immediately, but he had chosen to give criminal complaint after ten years.

**14.** The Subramania Swamy Temple, Pollachi, had claimed the property as the temple property and in this regard, litigation was pending between H.R&C.E. and the second respondent's family till the year 2016. From the year 2007 when the second respondent issued the legal notice to the first accused and the pendency of the litigation between the temple and the second respondent, no claim was made by anyone including the first and second accused in respect of the subject matter. Immediately, after the



disposal of the said litigation between the land owners and the Temple, legal notices have been sent on behalf of the second and third accused.

**15.** Normally, a suit for specific performance basing upon the sale agreement can be a matter civil in nature. However, if the stamp papers on which the sale agreements engrossed were sold during a period not relevant to the date of the sale agreements and for which the concerned authorities have given statements, that can would serve as basis for criminal action also. The witnesses of the sale agreements have given statements that they have been called upon to attest the signatures only at a later date and not on the alleged date of the sale agreements. Since all these facts and materials available on record are found sufficient to make out a criminal case, charge sheet has been laid against the petitioners for the offences under Sections 420, 120B, 423, 465, 471 and 467 of IPC.

**16.** Since the learned trial Judge have found the materials sufficient for taking cognizance and framing charges against the accused, the process of trial can not be avoided. This is a case which has been filed without



sufficient materials or materials irrelevant to the case. The relationship between the petitioners / A-1 to A-3 and the manner in which the sale agreements have been executed and the time during which the legal notices have been sent along with the statement of the witnesses are sufficient enough to frame charges against the accused and to conduct the trial. In such circumstances, no pre-closure can be given by quashing the charge sheet.

17. Resultantly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. In view of the long pendency of the case in C.C.No.46 of 2020, the learned trial Judge shall dispose the case as expeditiously as possible.

**20.03.2023**

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



WEB COPY

To

- 1.The Judicial Magistrate No.II, Pollachi.
- 2.The Inspector of Police,  
Government of Tamil Nadu,  
District Crime Branch,  
Coimbatore, Coimbatore District.
- 3.The Public Prosecutor,  
Madras High Court,  
Chennai.



WEB COPY

Crl.O.P.Nos.10612, 4353 & 4903 of 2021



**R.N.MANJULA, J.**

sri

**Pre-Delivery Common Order made in**  
**Crl.O.P.Nos.10612, 4353 & 4903 of 2021**  
**and Crl.M.P.Nos.2785 & 3132 of 2021**  
**and 19505 & 19506 of 2022**

**20.03.2023**