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Crl.O.P.Nos.7148, 7479 & 21178 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2023

PRONOUNCED ON : 17.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.7148, 7479 & 21178 of 2022

and

Crl.M.P.Nos.4065, 4063, 4286, 4287 & 13808 of 2022

Crl.O.P.No.7148 of 2022

E.Suchitra

...

Petitioner

Vs.

1.State by: Inspector of Police,
Central Crime Branch, Team -XV,
Anti Land Grabbing Special Cell – I,
Vepery, Chennai – 600 007.

2.H.Zakir Hussain

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.10 of 2021 on the file of Special Court for Exclusive Trial of Land Grabbing Cases – I, Egmore, Allikulam, Chennai – 600 003 and quash the charge sheet as abuse process of law.



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Crl.O.P.No.7479 of 2022

M.Chezhieyan

...

Petitioner

Vs.

1.The Inspector of Police,
City Crime Branch, Team 15,
Land Grabbing Division – I,
Vepery, Chennai – 600 007.
Crime No.159 of 2014.

2.H.Zakir Hussain

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.10 of 2021 on the file of Metropolitan Magistrate, Special Court for Land Grabbing Cases – II, Allikulam, Chennai and quash the same.

Crl.O.P.No.21178 of 2022

Paramasivam

...

Petitioner

Vs.

1.State rep by Inspector of Police,
CCB Team XV,
Vepery, Chennai – 600 007.

2.Zakir Hussain

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Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.10 of 2021 on the file of Metropolitan Magistrate, Special Court for Land Grabbing Cases – II, Allikulam, Chennai and quash the same.



Crl.O.P.Nos.7148, 7479 & 21178 of 2022

For Petitioner in : Mr.E.Senthil Kumar for
Crl.O.P.No.7148 of 2022 M/s. Sampathkumaar and
associates

For Petitioner in : Mr.V.Raghavachari, Senior Counsel
Crl.O.P.No.7479 of 2022 for Mr.R.Rajarajan

For Petitioner in : Mr.N.R.Elango, Senior Counsel
Crl.O.P.No.21178 of 2022 for Mr.A.S.Aswin Prasanna

For 1st Respondent : Mr.S.Santhosh
in all three Crl.O.P.s Government Advocate (Crl. Side)

For 2nd Respondent : M/s. T.M.Naidu and Co
in all three Crl.O.P.s

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in C.C.No.10 of 2021, on the file of the Metropolitan Magistrate, Special Court for Land Grabbing Cases – II, Allikulam, Chennai and quash the same.

2.The case of the petitioner in Crl.O.P.No.7479 of 2022, in brief, is as follows:

The second respondent/defacto complainant attempted to take possession of the property purchased by him in the auction. It is alleged that the accused 1 to 4 prevented the second respondent/defacto complainant from taking possession of the property and threatened the second respondent/



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defacto complainant with dire consequences. Second respondent/defacto complainant alleged to have purchased the property bearing Door No.12, Big street, Kilpauk Garden, Chennai 600 010, in the bank auction, by virtue of a sale deed dated 22.05.2006 for Rs.30,10,000/- This property was originally allotted to Chezhiyan by the Tamil Nadu Housing Board in the year 1986. It is alleged that Chezhiyan entered into a family arrangement with his brother Arachelvan. Suppressing the said arrangement, Chezhiyan, his brother Arachelvan and Ezhilan conspired and obtained a loan from M/s.Perfect Benefit Fund Limited by deposit of title deeds. After knowing the purchase of property by the second respondent/defacto complainant, it is alleged that Chezhiyan and other accused filed O.S.No.4695 of 2007 claiming that the power of attorney given by Chezhiyan to Arachelvan was forged. It was also alleged that Ezhilan died on 15.07.2011 and his wife Suchitra raised illegal structures and created encumbrances. With the help of the accused Paramasivam, it is alleged that second respondent/defacto complainant was abused and threatened.

3.The truth of the matter is that Chezhiyan/ petitioner in Crl.O.P.No.7479 of 2022 and his brother Arachelvan were the sons of late



Sathiyavani Muthu, a prominent political leader and also a former Central Minister. The property bearing Door No.12, Big street, Kilpauk Garden, Chennai 600 010 was allotted to Chezhiyan. However, entire contribution for the purchase was made by late Sathyavani Muthu. The elder son Arachelvan coveted for the entire properties of late Sathyavani Muthu and filed a suit in C.S.No.369 of 1986 in this Court. At the instance of well wishers, a family arrangement was mooted. Arachelvan agreed for family arrangement and that was entered on 07.07.1988. As per the said family arrangement, the property standing in the name of Chezhiyan, namely, the Kilpauk Garden property was given to Ezhilan son of Arachelvan subject to the life interest of late Sathiyavani Muthu and Arachelvan. Similarly, the property at Anna Nagar in the name of Sathiyavani Muthu has been allotted to Chezhiyan subject to the life interest of Sathiyavani Muthu. The other properties have to be divided in three equal shares among late Sathiyavani Muthu, Chezhiyan and Arachelvan. The family arrangement was given effect by virtue of the decree and judgment dated 25.10.1988, in C.S.No.1309 of 1988. Late Sathiyavani Muthu executed a Will dated 03.03.1994 and later died on 11.11.1999. The Will was probated. Chezhiyan is residing in Anna Nagar property for more than three decades and he has nothing to do with the



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Kilpauk Garden property. Arachelvan started to encumber the Kilpauk Garden property by misusing the original documents in his custody. Taking advantage of the fact that allotment order stands in the name of Chezhieyan, created many fraudulent documents by forging the signature of Chezhieyan and by impersonating Chezhieyan with help of Sureshkumar. In C.S.No.576 of 2000, it was brought to light that photo of Chezhieyan was not there in the account details, but the photo of one Suresh Kumar was affixed in the pass book and the signature of Chezhieyan was forged. Then, this Court directed the arrest of Suresh Kumar. However, no further action was taken by the police. Arachelvan impersonated Chezhieyan, forged his signature and created power of attorney deed, dated 29.12.1995 and also a cancellation deed. He entered into a series of fraudulent transactions with several developers and financial institutions. A simple mortgage, dated 29.04.1997 alleged to be the basis for the title of the second respondent/defacto complainant is a fraudulent and forged document. Chezhieyan himself is a victim of fraud played by Arachelvan in collusion with his associates and M/s.Perfect Benefit Fund Limited, therefore, petitioner in Crl.O.P.No.7479 of 2022 cannot be prosecuted in this case.



4.The petitioner in Crl. OP. No. 7148 of 2022 is arrayed as A3 in Crime No. 159 of 2014 and has been chargesheeted for offences u/s. 448, 341, 294(b), 506(ii) r/w. 34 IPC. It is the case of the petitioner herein, that she is the wife of the deceased Ezhilan, who is the absolute owner of the “complaint property”. However due to various fraudulent transactions entered into, in the name of this property, civil dispute is pending. Even the title of the defacto complainant is not proper as there is another pending suit for declaration of title in his favour. Hence, this is a case which is purely civil in nature and chargesheeting a case of such nature is improper in the eyes of law. Even then, the alleged offence of house trespass wouldn’t get attracted when the petitioner and her children are in the occupation of alleged property for more than three decades. Further, no element to attract offence of criminal breach of trust exists in this case, as there was no entrustment of property to the petitioner by the defacto complainant. Therefore, for all the reasons mentioned above prayed for quash.

5.The petitioner in Crl.O.P. No. 21178 of 2022 is arrayed as A4 in Crime No. 159 of 2014 and has been chargesheeted for offences u/s. 448, 341, 294(b), 506(1) r/w. 34 IPC. The specific allegation against the petitioner in the



complaint is that petitioner had threatened to cancel the sale deed of the defacto complainant, in the defacto complainant's quest to stop the accused from encumbering the property. Further it is alleged that the petitioner along with other accused, threatened and abused the defacto complainant in filthy language when sought to cease the illegal activities. It is the case of the petitioner herein, that he is in no way connected to the alleged transaction. There is no mention in the complaint as to any words spoke out or any specific overtact made by the petitioner. Even in the statement of the defacto complainant, he has not mentioned any place as to where the criminal intimidation took place. The complaint has been lodged after four months from the date of alleged incident. The defacto complainant has made contrary assertions, that he had filed a suit to fix a monthly rent in 2010 and now in complaint stating that the accused are illegally occupying his property. Therefore for all the reasons above mentioned, prayed for quash.

6.The learned Senior Counsel for the petitioner in Crl.O.P.No.7479 of 2022, Mr.V.Raghavachari, submitted that the property bearing Door No.82/114, A Block, 3rd Avenue, Anna Nagar was allotted to Sathiyavani Muthu by the Government. The property bearing Door No.12, Big street,



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Kilpauk Garden, Chennai 600 010 was allotted to Chezhiyan by the Government. In a family arrangement entered among Sathiyavani Muthu and her children, property bearing Door No.82/114, A Block, 3rd Avenue, Anna Nagar was allotted to Chezhiyan subject to the life interest of Sathiyavani Muthu. The property bearing Door No.12, Big street, Kilpauk Garden, Chennai 600 010 which was allotted to Chezhiyan was allotted to Ezhilan son of second accused and husband of the third accused Suchitra. Sathiyavani Muthu had also executed a Will in respect of the property allotted to her in respect of her life interest in Anna Nagar property in favour of Chezhiyan. The second accused Arachelvan forged the signature of Chezhiyan and created mortgage debt in favour of M/s.Perfect Benefit Fund Limited. He had also made other encumbrances over the property by impersonating Chezhiyan and fabricating documents. There were civil and criminal proceedings pending between the parties. When the mortgage deed by Arachelvan itself is not valid, the sale of the property covered under the mortgage deed and its purchase by the second respondent/defacto complainant in the auction sale, claiming right in the property and giving complaint against the accused are not correct. Even the second respondent/defacto complainant filed a suit claiming title and possession in respect of the property. When he



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had not taken the possession legally, the claim that the accused are hindering him in taking possession and other allegations are totally false and unfounded.

7.The learned counsel for the petitioner in Crl.O.P.No.7148 of 2022 Mr.E.Senthil Kumar adopted the submissions of the learned counsel for the petitioner Crl.O.P.No.7479 of 2022. He further submitted that the petitioner's husband filed a suit in O.S.No.4695 of 2007, challenging the mortgage in favour of M/s.Perfect Benefit Fund Limited and sale in favour of the second respondent/defacto complainant. There is a delay in giving the complaint.

8.The learned Senior Counsel for the petitioner in Crl.O.P.No.21178 of 2022, Mr.N.R.Elango, submitted that this petitioner has nothing to do with the *inter se* dispute between the accused and the second respondent/defacto complainant. Bald and baseless allegations are made against him with regard to wrongful restraint and criminal intimidation etc. There is no mention about the exact words said to have been used by him at the time of the alleged incident. There is no details given as to when and where he criminally restrained the second respondent/defacto complainant. Thus, the learned Senior counsel submitted that when there are several litigations pending and



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when the second respondent/defacto complainant purchased the litigious property in a bank auction sale and when the subject property purchased was not taken possession in the manner known to law, giving complaint based on assumed and presumed right cannot be maintained in law and thus, he prayed for quashment of the proceedings against the petitioner in Crl.O.P.No.21178 of 2022.

9.In response, the learned Government Advocate (Crl.Side) for the first respondent submitted that materials produced before this Court make out a *prima facie* case for framing charges against the petitioners. Therefore, prayed for dismissal of these petitions.

10.The learned counsel for the second respondent/defacto complainant submitted that accused 1 to 3 are family members. They created documents among the family members. Suppressing the documents, they also mortgaged the property in connivance with each other with M/s.Perfect Benefit Fund Limited. Second respondent/defacto complainant is a bonafide purchaser in the bank auction sale. Respondent police have not properly investigated this case and omitted to charge the accused under Section 420 IPC. The way documents were created and the way suits were filed show that the accused



are colluding with each other to cheat not only the second respondent/defacto complainant but others as well. Thus, he prayed for dismissal of these petitions.

11.In support of his submissions, he relied on the following judgments.

(i) P.Dharamaraj Vs. Shanmugam and Others reported in 2022 SCC Online SC 1186.

(ii) Luckose Zachariah @ Zak Nedumchira Luke and others Vs. Joseph Joseph and others reported in 2022 SCC Online 241.

12.Considered the rival submissions and perused the records.

13.From the records produced and submissions made by the learned counsel appearing for the parties, we can gather that the property bearing Door No.82/114, A Block, 3rd Avenue, Anna Nagar, was allotted to Late.Sathiyavani Muthu by the Government. The property bearing Door No.12, Big street, Kilpauk Garden, Chennai 600010, was allotted to the first accused Chezhieyan by the Government.

14.It is claimed that due to the dispute among the family members with



regard to the enjoyment of the property and institution of litigations, family members reached a settlement and a family arrangement was executed. As per the family arrangement, the Kilpauk Garden property standing in the name of Chezhiyan was allotted to Ezhilan son of Arachelvan subject to the life interest of late Sathiyavani Muthu and Arachelvan. The property at Anna Nagar, which was allotted originally to late Sathiyavani Muthu was allotted to Chezhiyan subject to the life interest of late Sathiyavani Muthu.

15.It is pertinent to refer to the suit filed in C.S.No.369 of 1986 by Arachelvan against late Sathiyavani Muthu and others. In the said suit, A.No.2942 of 1986 and A.No.5183 of 1986 were filed for temporary injunction and appointment of a Receiver, respectively. This Court, on 19.01.1988, dismissed A.No.5183 of 1986 for appointment of a Receiver and ordered the interim injunction granted in A.No.2942 of 1986 to be made absolute.

16.Arachelvan filed another suit in C.S.No.1309 of 1988 against late Sathiyavani Muthu and Chezhiyan praying that the family arrangement reduced into writing on 07.07.1988 between them is valid and binding on the



plaintiff and defendants and for costs. In the said suit, the family arrangement dated 07.07.1988 was filed. As per the settlement entered into between the parties, the suit was decreed by holding that the family arrangement dated 07.07.1988 is declared to be valid and binding on the defendants. As per this family agreement, the parties have swapped the Kilpauk Garden property and Anna Nagar property as referred above. The copy of the Will executed by Sathiyavani Muthu in favour of Chezhiyan, dated 03.03.1994, is also produced. It reaffirms the family settlement in respect of the Anna Nagar property.

17.M/s.Firm Foundations Ltd., filed a suit against Chezhiyan, Arachelvan and Ezhilan for recovery of a sum of Rs.30,10,236.72. This suit came to be filed on the basis of the development agreement entered into between the parties in connection with the Kilpauk Garden property. Ezhilan filed O.S.No.584 of 2005 against M/s.Perfect Benefit Fund Limited, Chezhiyan and Arachelvan with a prayer for declaring that the public auction conducted by M/s.Perfect Benefit Fund Limited on 19.01.2005 based on the simple mortgage dated 29.04.1997 alleged to have been executed by Chezhiyan by forging the signature of Arachelvan is invalid in law;



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Restraining M/s.Perfect Benefit Fund Limited from confirming the sale and executing the sale deed in favour of the successful bidder and for other reliefs.

Ezhilan also filed O.S.No.4695 of 2007, on the file of the I Assistant City Civil Court, Chennai, seeking prayer for declaration that the mortgage deed dated 29.04.1997 executed by the second defendant therein in favour of the first defendant therein by virtue of the forged and invalid power of attorney deed, dated 29.12.1995 alleged to have been executed by second defendant therein in favour of the third defendant is invalid in law and for other reliefs. Of these suits, suit in O.S.No.584 of 2005 came to be dismissed on 02.07.2008 by the II Assistant City Civil Court, Chennai.

18.The second respondent/ defacto complainant filed a suit in C.S.No.886 of 2010 against Ezhilan, Chezhiyan and Arachelvan for the relief of declaration that he is the absolute owner and title holder and for delivery of vacant possession of the Kilpauk Garden property; that the collusive compromise judgment and decree dated 25.10.1988 made in C.S.No.1309 of 1988 as null and void and for other reliefs. The prayer made in this suit shows that there is a cloud over his title and he had not taken possession of the property on the basis of the auction sale in his favour. It is seen from the



narration of facts that the above suits are pending in connection with the disputed properties. Some of the suits have been filed prior to the purchase of the property by the second respondent/defacto complainant in the auction sale.

19.This case came to be registered in Crime No.159 of 2014 for the offences under section 448, 406, 420, 294 (b), 506 (i) IPC r/w 120 (B) IPC. It is seen from the FIR allegations that second respondent/defacto complainant claims himself to be the successful bidder in the auction and the Kilpauk Garden property was sold to him by execution of sale deed dated 22.05.2006. It is also alleged in the FIR that this property was allotted to Chezhiyan by TNHB in 1986 and then, there was a family arrangement entered into between Chezhieyan and his brother Arachelvan. Suppressing the family arrangement, Chezhieyan, Arachelvan and Ezhilan had mortgaged the property with M/s.Perfect Benefit Fund Ltd., and obtained loan. Since they did not repay the loan amount, the property was sold in public auction. The accused collusively filed suit in O.S.No.4695 of 2007. Ezhilan died on 15.07.2011 and therefore, the suit was dismissed. Ezhilan's wife Suchitra made further construction in the building. He filed a suit before the Court claiming monthly rent of Rs.30,000/-. When the second respondent/defacto complainant



requested the accused not to encumber his property, accused Paramasivam said to have criminally intimidated to cancel the sale deed in his favour. On 11.11.2011, when he asked the accused to stop the illegal activities, the accused made a death threat. Therefore the complaint was given.

20.On the basis of this complaint, investigation was conducted and after investigation, final report was filed against the accused for the offences under Section 448, 341, 294 (b), 506 (i) r/w 34 IPC.

21.It is seen from the materials produced before this Court that Chezhiyan, Arachelvan and Ezhilan trade charges against each other, alleging fabrication of documents, impersonation etc., The fact remains that as per the family settlement, a decree was passed in C.S.No.1309 of 1988 as early as on 25.10.1988. Chezhiyan claims that Arachelvan fabricated and forged the documents and mortgaged the Kilpauk Garden property. Ezhilan claims otherwise and he claims that Chezhieyan had forged and fabricated the documents and mortgaged the property. We have seen that the suits filed in this regard are still pending. Only a competent Civil Court can resolve the complicated issue involved in this case. Admittedly, second



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respondent/defacto complainant is the purchaser through auction sale. He has not taken possession of the property purchased. There are already litigations pending in connection with this property. Therefore, his claim that the accused in this case restrained him from enjoying the property purchased through auction sale; third accused's occupancy; third accused impleaded herself in O.S.No.4695 of 2007, cannot be considered as offences liable for prosecution. The allegation that one had made criminal intimidation against another can be made by any person against anybody. Instead of resolving the possession issue through a competent Court, it appears that the second respondent/defacto complainant chose the mode of giving a criminal complaint to resolve the civil dispute. Therefore, the very basis for filing this case is not correct and therefore, this Court is of the considered view that the criminal prosecution launched against the petitioners are liable to be quashed.

22.Accordingly, these Criminal Original Petitions are allowed and the proceedings against the petitioners in C.C.No.10 of 2021, on the file of Special Court for Exclusive Trial of Land Grabbing Cases – I, Egmore, Allikulam, Chennai – 600 003, is quashed. Consequently, connected miscellaneous petitions are also closed.



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17.03.2023

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

- 1.The Special Court for Exclusive Trial of Land Grabbing Cases – I,
Egmore, Allikulam, Chennai – 600 003.
- 2.The Inspector of Police,
Central Crime Branch, Team -XV,
Anti Land Grabbing Special Cell – I,
Vepery, Chennai – 600 007.
- 3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Common Order in
Crl.O.P.No.7148, 7479 & 21178 of 2022

17.03.2023