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Crl.O.P.Nos.6876 and 7061 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM:

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

**Crl.O.P.Nos.6876 and 7061 of 2021**

**and**

**Crl.M.P.Nos.4552 and 4704 of 2021**

|                  |                                                 |
|------------------|-------------------------------------------------|
| 1. K.R.Manoharan | ...Petitioner in <b>Crl.O.P.No.6876 of 2021</b> |
| 2. R.Kumar       | ...Petitioner in <b>Crl.O.P.No.7061 of 2021</b> |

-Vs-

1. State by Sub-Inspector of Police,  
Central Crime Branch,  
Salem City.

2. R.Vanaja ...Respondents in **both Crl.O.Ps**  
**Prayer in Crl.O.P.No.6876 of 2021:** Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in C.C.No.28 of 2017 on the file of Judicial Magistrate No.V, Salem and set aside the order dated 04.08.2017 of framing of charges against the petitioners.

**Prayer in Crl.O.P.No.7061 of 2021:** Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in C.C.No.28 of 2017 on the file of Judicial Magistrate No.V, Salem and quash the same.



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**In Crl.O.P.No.6876 of 2021**

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For Petitioner : Mr.R.Rajarathinam, Senior Counsel  
for Mr.A.Aswinkumar

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

For R2 : Notice served, No appearance

**In Crl.O.P.No.7061 of 2021**

For Petitioner : Mr.R.Rajarathinam, Senior Counsel  
for Mr.K.Shanker

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

For R2 : Notice served, No appearance

**COMMON ORDER**

These Criminal Original Petitions have been filed challenging the proceedings in C.C.No.28 of 2017 on the file of Judicial Magistrate No.V, Salem.

2. Both the petitioners are arrayed as A1 and A2 in C.C.No.28 of 2017, on the file of the learned Judicial Magistrate No.V, Salem. Therefore, this Court is inclined to pass a common order.



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3. The second respondent lodged a complaint and it was not registered by the first respondent. Therefore, the second respondent was constrained to file a petition for direction under Section 156(3) of Cr.P.C and on direction, the first respondent registered FIR in Crime No.5 of 2015 for the offences under Sections 120B and 420 IPC alleging that the mother of the defacto complaint owned a house ad-measuring 2400 sq.ft, situated at Old Door No.163, New Door No.9, Ammapettai Town, Cuddalore main road, Salem, in which the defacto complainant has one share. The accused are her own brothers. They approached her to sell the subject property and assured to share the sale consideration as per their share. Though initially she refused, after repeated approach by the other accused persons, she consented to sell the property and agreed to share the sale consideration. Accordingly, she had executed a sale deed on 27.11.2014. However, she was not paid her share as agreed by the accused. Hence, the complaint.

4. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.28 of 2017 by the Trial Court, in which the petitioner in Crl.O.P.No.6876 of 2021 is arrayed as A1 and the petitioner in Crl.O.P.No.7061 of 2021 is arrayed as A2. Both are brothers.





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7. Therefore, no offence is made out as against the petitioners and the present proceedings has been initiated only to extract money from the petitioners.

8. The learned Government Advocate (Crl.side) submitted that the petitioners assured the defacto complainant to share the sale consideration with the defacto complainant and dragged the defacto complainant to the Register Office and obtained signature while executing the sale deed in favour of the said Vimala. After receipt of the sale consideration, they failed to share her share. Thus, they induced the second respondent to sign in the sale deed and thereafter, cheated to pay her share. Therefore, there are ingredients to attract the offence under Section 420 IPC. The grounds raised by the petitioners can be considered only before the Trial Court, during trial by letting evidence.

9. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the first respondent and perused the materials available on record.



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10. There are totally two accused, in which the petitioners are arrayed as A1 and A2. The petitioners are charged with the offences punishable under Sections 420 and 120B of IPC. The petitioners and the second respondent are brothers and sisters. Their mother owned the subject property and she died on 27.02.2010. After her demise, the petitioners intended to sell the property by giving assurance to share the sale consideration with the second respondent. However, they failed to share the sale consideration. Hence, the charge.

11. A perusal of records revealed that the second respondent lodged complaint and the same was enquired and closed as all the allegations are civil in nature. Therefore, the second respondent had approached the learned Judicial Magistrate under Section 156(3) of Cr.P.C. On direction, the first respondent registered FIR for the offence under Sections 120B, 420 IPC. Before the demise of their mother, there was a registered settlement deed dated 23.05.2008, thereby half share of the subject property was settled in favour of the second son/second accused. Thereafter, she had also executed a registered Will dated 04.01.2010, in which several properties were given to the sons, wife of the first son and grand daughters.



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12. From a perusal of the Will dated 04.01.2010, it is clear that the left out properties in this Will will be equally shared by two sons viz., the petitioners herein. As per the settlement deed and Will, the petitioners alone are the absolute owners of the subject property. These details are clearly mentioned in the sale deed dated 27.11.2014. Even though the second respondent or other legal heirs of the deceased mother have no right in the subject property, on the request made by the purchaser viz., one Vimala, all the legal heirs including the second respondent had executed a sale deed along with the petitioners in favour of the purchaser. In fact, one of the witnesses is none other than the daughter of the second respondent herein. The husband of the second respondent is a retired Tahsildar and as such, on his instigation, the present complaint has been filed as against the petitioners. Further, no prudent person can execute the sale deed without receiving the sale consideration. Even assuming that the case of the second respondent is true, she would not have signed the sale deed if any sale consideration was not paid. She also filed a suit in O.S.No.16 of 2017, on the file of the Sub Court, Dharmapuri for partition and also challenged the settlement deed and the Will executed by her mother. It is also pending.



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13. Thus, it is also pertinent to note that she claimed her share in the property which was already sold out by her along with her brothers viz., the petitioners herein, without challenging the said sale deed. It shows that the present complaint is nothing but a clear abuse of process of Court and lodged only to extract money from the petitioners.

14. Therefore, the impugned proceedings cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in C.C.No.28 of 2017 on the file of the learned Judicial Magistrate No.V, Salem is hereby quashed. These Criminal Original Petitions are allowed. Consequently, connected Miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Judicial Magistrate No.V, Salem.
2. The Sub-Inspector of Police,  
Central Crime Branch,  
Salem City.
3. The Public Prosecutor,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN. J.**

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Crl.O.P.Nos.6876 and 7061 of 2021  
and  
Crl.M.P.Nos.4552 and 4553 of 2021

06.11.2023