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CrI.O.P No.8218 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.01.2023**

CORAM

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

CrI.O.P No.8218 of 2021  
and CrI.M.P. No.5436 of 2021

1. Syed Mohammed Mujeebuddin
2. Rafiya Fathima

... Petitioners

Vs.

1. State rep. by  
Inspector of Police,  
Central Crime Branch 15<sup>th</sup> team,  
Vepery, Chennai – 600 007.

2. Zaiba Sulatan

... Respondents

**PRAYER:** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the final report in C.C. No.3109 of 2020 on the file of the learned CCB/CBCID Metropolitan Magistrate's Court, Egmore, Chennai against the petitioners herein.

For Petitioners : Mr.R.Abdul Mubeen

For Respondent 1 : Mr.A.Gopinath  
Government Advocate (CrI. Side)  
R2 : Mr.M.Jaikumar

**ORDER**



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This petition has been filed to call for the records and quash the final report in C.C. No.3109 of 2020 on the file of the learned CCB/CBCID Metropolitan Magistrate's Court, Egmore, Chennai against the petitioners herein.

2. The petitioners are the accused 1 and 2. The case of the prosecution is that the second respondent / *de facto* complainant and her husband had purchased the property comprising bearing Old Door No.20, Old No.4, New Boag Road, T.Nagar, Chennai – 600 017, comprised in T.S. No.5718 part, R.S. No.171, T.No.8889/2, Block 129. The said property originally belonged to one S.R. Krishnamurthy Iyer who sold the same to M/s.Marakathammal and others under a sale deed dated 21.04.1960. The said Marakathammal sold the said property to one A.R.Ettiappa Naicker on 09.10.1964. The said A.R.Ettiappa Naicker along with his children sold the property under a sale deed dated 11.08.1978 to one M.Appavoo Chettiar. The said Appavoo Chettiar sold the property under two sale deeds dated 01.07.1983 in favour of Dr.Hajjni Sarthar Jahan The said Dr.Hajjni Sarthar Jahan died intestate on 08.03.1994 leaving behind her children Shameem F.Baig, Syed Mohamed Nadeeruddin, Syed Mohamed Bashiruddin, Naseem Kabirudeen



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and her mother Mumtaj Begum. They succeeded the property belonged to Dr.Hajjni Sarthar Jahan and the sharers have gifted their respective shares in favour of one of the sharers Naseem Kabiruddin under oral gift known as 'Hiba' and it was confirmed in writing. The said Naseem Kabiruddin, Mumtaz Begum and Ahmed Sheriff have jointly sold the property under two sale deeds dated 11.02.1996 and 21.02.1996 in favour of the defacto complainant and her husband. Subsequent to the purchase it came to the knowledge of the defacto complainant that there is a mortgage dated 24.05.2010 pending in respect of the property in favour of one Kannaian in which the survey number has been mentioned as S.No.172. It came to the knowledge of the defacto complainant and her husband that the said Syed Mohamed Mujibudeen had executed a power of attorney on 17.05.2010 and the property has been dealt by the power agent. Syed Mujibudeen is alleged to be the grandson of the Dr.Hajjni Sarthar Jahan. When Dr.Hajjni Sarthar Jahan had direct legal heirs who had dealt the property, the person by name Syed Mohamed Mujibudeen will not have any right over the said property and the documents have been created just to defraud the interest of the petitioners and others and hence a complaint has been given. A case was registered on 30.09.2011 in Cr. No.451/2011 against the accused for the



offences punishable under Sections 420, 465, 467, 468, 471 r/w.120(b) IPC.

After investigation charge sheet has been filed in C.C. No.3109/2020 for the offences under Section 420, 423, 465, 467, 468, 471 r/w.120(b) IPC.

3. The learned counsel for the petitioners submitted that the matter is civil in nature and the *de facto* complainant has given a criminal colour to a civil dispute; there are no ingredients available on record to make out a criminal case against the petitioners; the first petitioner being the grandson of Dr.Hajjni Sarthar Jahan has also got the right over the property and hence the proceedings should be quashed as against the petitioners.

4. The learned Government Advocate submitted that Dr.Hajjni Sarthar Jahan had direct legal heirs and they alone have the right to inherit the properties belonged to her; the petitioners herein have colluded together to create documents in respect of the subject property and acted upon it; after investigation, charge sheet has been filed; in fact the petition filed to quash the proceedings by the fourth accused in Crl.M.P. No.17508 of 2022 was also dismissed by this Court; since the petitioners have direct overt act they cannot be presumed to be innocent without subjecting them to trial; the



learned counsel for the second respondent had also argued in the same line made by the learned Government Advocate.

5. The allegations in the complaint and records collected by the prosecution during the course of investigation would show that the first petitioner is said to be the grandson of Dr.Hajjni Sarthar Jahan and he had executed power of attorney on 17.05.2010. The second respondent and her husband have purchased the property on 21.02.1996. The entries pertaining to the mortgage is dated 24.05.2010. When the rightful legal heirs of late Dr.Hajjni Sarthar Jahan had rightly dealt the property and alienated the same in favour of various persons, all of a sudden in the year 2010, a mortgage deed had been executed in favour of some third parties. Even if the first petitioner is presumed to be the grandson of late Dr.Hajjni Sarthar Jahan he will not get any priority in succeeding the property than the direct heirs of Dr.Hajjni Sarthar Jahan.

6. Since the document has been created subsequent to the purchase made by the petitioners herein and knowing pretty well that the petitioner is not the direct legal heir of Dr.Hajjni Sarthar Jahan it is appropriate to subject



the petitioners to undergo trial to prove the facts stated in the charge sheet.

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7. It is not a case which does not have any *prima facie* materials to make out any case against the petitioners. Even though the matter appears to be civil in nature, the manner in which the documents have been executed by a person who does not have any right and that too after several years of its alienation in favour of third parties, have necessitated a detailed investigation and the charge sheet has been filed subsequently. Hence the proceedings cannot be prevented. However, the petitioners are at liberty to raise whatever contentions they wanted to raise before this Court as their defense before the trial Court.

8. In view of the above stated reasons, this Criminal Original Petition is dismissed.

**19.01.2023**

Index : Yes/No  
Speaking Order : Yes / No  
bkn



To:



Crl.O.P No.8218 of 2018

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1. The Metropolitan Magistrate,  
CCB/CBCID,  
Egmore, Chennai.
2. Inspector of Police,  
Central Crime Branch 15<sup>th</sup> team,  
Vepery, Chennai – 600 007.
3. The Public Prosecutor,  
Madras High Court.



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

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