



WEB COPY



Crl.O.P.No.8210 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.8210 of 2023

and

Crl.M.P.Nos.5222 & 5224 of 2023

M.Latha

W/o.B.Mohan

... Petitioner

-VS-

1.State represented by its
The Inspector of Police,
S-12, Chitlapakkam Police Station,
Chromepet, Chennai – 600 044.

2.N.Dhanapal
S/o.Late Natesan

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for records related to C.C.No.368 of 2022 on the file of Judicial Magistrate I, Tambaram and quash the same.

For Petitioner : Mr.T.Mohan
for Mr.G.Mutharasu

For Respondents : Mr.A.Gopinath
Government Advocate [Crl.side] [R1]
No appearance [R2]



Crl.O.P.No.8210 of 2023

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.368 of 2022 on the file of Judicial Magistrate I, Tambaram.

2. The second respondent is the father of the petitioner and he gave a complaint to the first respondent to the effect that the petitioner had taken advantage of the age and health condition of the second respondent and had managed to get a sale deed executed in her favour. When the second respondent questioned the petitioner about the same, he is said to have been threatened. Based on this complaint, the first respondent registered a First Information Report in Crime No.713 of 2019.

3. The first respondent proceeded to investigate the case and a final report came to be filed before the Court below and it was taken on file by the Court below in C.C.No.368 of 2022. Aggrieved by the same, the present petition has been filed before this Court.



Crl.O.P.No.8210 of 2023

WEB COPY

4. When the matter came up for hearing on 17.04.2023, this Court passed the following order:

"This petition is filed to call for the records related to C.C.No.368 of 2022 on the file of the Judicial Magistrate I, Tambaram and quash the same.

2. The learned counsel for the petitioner submitted that the defacto complainant/petitioner's father had infact executed sale deed in respect of the disputed property in favour of the petitioner in the year 2011. However, her father had given a false complaint against her alleging that, sale deed was executed at the time of his illness and unconscious mind. On the basis of the complaint, FIR in Crime No.713 of 2019 was registered for the offence under Sections 341, 294(b) & 506(1) of IPC, subsequently, offences were altered to 406 of IPC and final report was also filed. Thereafter, petitioner's father/defacto complainant had filed a petition before the District Revenue Officer, Tambaram under Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The District Revenue Officer had passed Na.Ka.No.1461/2021/m dated 15.07.2021 cancelling the sale deed. Against the said proceedings, petitioner filed W.P.No.17205 of 2021 before this Court and obtained stay. In the said circumstances, continuance of the proceedings in C.C.No.368 of 2022 is not appropriate and therefore, present petition is filed.

3. Mr.S.Santhosh, learned Government Advocate (Crl. Side) takes notice for 1st respondent. Issue notice to the 2nd respondent returnable in three weeks time.

4. Post the matter after three weeks. Trial in this case shall go on, but pronouncement of judgment is alone to be deferred till next hearing."



Crl.O.P.No.8210 of 2023

WEB COPY

5. Heard Mr.T.Mohan, learned counsel for petitioner and Mr.A.Gopinath, learned Government Advocate [Crl.side] appearing for the first respondent. Notice has been served on the second respondent and his name has also been printed in the cause list, however, there is no representation on the side of the second respondent.

6. This Court has carefully considered the submissions made on either side and materials available on record.

7. In the instant case, the sale deed was executed in favour of the petitioner in the year 2011. This is sought to be questioned by second respondent by way of giving a criminal complaint in the year 2022. It is also seen from records that the second respondent had approached the competent authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and filed a petition for cancellation of the same. The competent authority had also cancelled the sale deed through proceedings dated 15.07.2021. This order has been put to challenge by the petitioner before this Court and the same is pending in W.P.No.17205 of 2021.



Crl.O.P.No.8210 of 2023

WEB COPY

8. In the considered view of this Court, the allegations that have been made in the final report read along with the materials available before the Court does not make out an offence u/s.406 IPC. To constitute an offence u/s.406 IPC, the ingredients of the offence of criminal breach of trust must be satisfied u/s.405 IPC. To satisfy the ingredients, there must be entrustment of the property or the dominion over the property must be entrusted. The next ingredient is that the person to whom it has been entrusted must have misappropriated or converted the property to his own use and dishonestly used or disposed of the property.

9. In the instant case, the second respondent has lost right and title over the property by virtue of the execution of the sale deed in the year 2011. Therefore, the property which came into the hands of the petitioner no more belongs to the second respondent. In view of the same, there is no question of charging the petitioner for an offence of criminal breach of trust.

10. Insofar as the charge u/s.506(i) IPC is concerned, there is absolutely no material to sustain this charge since the ingredients of Section 503 IPC has not been satisfied.



Crl.O.P.No.8210 of 2023

WEB COPY

11. In the considered view of this Court, the continuation of criminal proceedings as against the petitioner will amount to abuse of process of Court, which requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.368 of 2022 on the file of Judicial Magistrate I, Tambaram, is quashed. Consequently, connected miscellaneous petitions are closed.

07.07.2023

Index: Yes/No
Speaking Order/Non-speaking Order
Neutral Citation : Yes/No
gm

To

- 1.The Judicial Magistrate I,
Tambaram.
- 2.The Inspector of Police,
S-12, Chitlapakkam Police Station,
Chromepet, Chennai – 600 044.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.8210 of 2023

N.ANAND VENKATESH., J

gm

Crl.O.P.No.8210 of 2023

07.07.2023