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CrI.O.P.No.16806 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CrI.O.P.No.16806 of 2021
and
CrI.M.P.Nos.9183 & 9184 of 2021

V.Dayananda

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by the Inspector of Police,
District Crime Branch (Anti Land Grabbing Special Case)
Villupuram District.
(Crime No.25 of 2018)

2.Vasanth

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in respect of charge sheet in C.C.No.9 of 2020 on the file of the Chief Judicial Magistrate Court No.II, Villupuram, and quash the same, as against the petitioner herein.

For Petitioner : Mr.Prakash Goklaney

For R1 : Mr.L.Baskaran
Government Advocate (CrI. Side)

For R2 : Mr.P.Amarnath



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ORDER

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This Criminal Original Petition has been filed challenging the criminal proceedings in C.C.No.9 of 2020 on the file of the Chief Judicial Magistrate Court, Villupuram, now stated to be pending on the file of Judicial Magistrate Court No.I, Villupuram.

2.The case of the prosecution is that the petitioner/A1 executed a false sale deed in favour of one Perumal Gounder, son of Poongavanam Gounder, in respect of the property belonging to the 2nd respondent/*de facto* complainant, with the help of A3 and A4 who signed as witnesses to the said sale deed. Hence, on the complaint given by the 2nd respondent/*de facto* complainant, the 1st respondent Police registered a case in Crime No.25 of 2018 against A1 to A4 for the offences under Sections 423, 467, 468, 471 IPC and Section 82(a) of Registration Act, 1908. The respondent Police filed a final report before the Judicial Magistrate Court No.II, Villupuram, which was taken on file in C.C.No.9 of 2020. Challenging the criminal proceedings in C.C.No.9 of 2020, A1 is before this Court.



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WEB COPY 3.Learned counsel for the petitioner/A1 submitted that the petitioner is an aged person and is suffering from medical problems and lost his memory subsequently and hence, the petitioner is not in a position to face the trial before the trial Court or the proceedings before the District Registrar for cancellation of the sale deed executed by the petitioner. Therefore, the learned counsel seeks to quash the criminal proceedings as against the petitioner.

4.Per contra, learned Government Advocate (Crl. Side) appearing for the 1st respondent Police, as well the learned counsel appearing for the 2nd respondent/*de facto* complainant submitted that the case is now pending before the trial Court for framing of charges.

5.Considered the submissions made by the learned counsel on either side and perused the entire materials available on record.

6.Perusal of materials would reveal that the petitioner is an accused in C.C.No.9 of 2020 on the file of Judicial Magistrate Court No.II, Villupuram, which is now stated to be pending on the file of Judicial Magistrate No.I, Villupuram. Pursuant to the complaint given by the 2nd respondent, namely



Vasantha, alleging that the petitioner, by creating false documents, executed a sale deed in favour of one Perumal Gounder (A2), son of Poongavanam Gounder, with the help of A3 and A4 who signed as witnesses to the said sale deed, the 1st respondent Police registered a case in Crime No.25 of 2018 for the offences under Sections 423, 467, 468, 471 IPC and Section 82(a) of Registration Act, 1908. After filing final report before the Judicial Magistrate Court No.II, Villupuram, the case was taken on file by the learned Magistrate in C.C.No.9 of 2020.

7.The main ground on which the criminal proceedings is now sought to be quashed is that the petitioner is aged about 84 years and he is suffering from various medical ailments and memory loss and hence, he is unable to face the trial. However, the said ground has to be considered by the trial Court. With regard to the other grounds raised by the petitioner in this petition, viz., cancellation of the document, etc., factual disputes are to be adjudicated by the trial Court by appreciating the oral and documentary evidence let in by the parties. Admittedly, now proceedings are pending before the District Registrar for cancellation of the document. This Court, by exercising its powers under Section 482 Cr.P.C., cannot probe into the matter nor can conduct a roving enquiry on factual disputes.



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8.The Hon'ble Supreme Court, in the cases of *State of Haryana and others v. Bhajanlal* reported in *AIR 1992 (604)*, *R.P.Kapoor v. State of Punjab* reported in *AIR 1960 SC 866* and *Neeharica Infrastructure Pvt. Ltd. v. State of Maharashtra and others* reported in *AIR 2021 SC 1918*, has laid down the categories where the inherent powers of the High Court under Section 482 Cr.P.C. can be exercised and has also settled the principle that, in exercising its jurisdiction under Section 482 Cr.P.C., the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not and that is the function of the trial Magistrate and ordinarily, it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence, the accusation made against the accused would not be sustained.

9.This Court finds that the case on hand has not met the parameters laid down by the Hon'ble Supreme Court in the cases stated *supra* and this Court does not find any merit in this Criminal Original Petition.



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10. Therefore, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are closed.

11. However, the learned counsel for the petitioner requested this Court to dispense with the personal appearance of the petitioner before the trial Court. Considering the age of the petitioner and the submissions of the learned counsel for the petitioner regarding the medical conditions of the petitioner, the personal appearance of the petitioner before the trial Court shall be dispensed with on condition that he shall be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment and also as and when required by the trial Court. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in ***Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]***. On such application being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in ***State of Uttar***



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Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused

absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC.

13.07.2023

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To

- 1.The Chief Judicial Magistrate,
Villupuram.
- 2.The Judicial Magistrate No.I,
Villupuram.
- 3.The Inspector of Police,
State of Tamil Nadu,
District Crime Branch (Anti Land Grabbing Special Case)
Villupuram District.
- 4.The Public Prosecutor,
High Court, Madras.

V. SIVAGNANAM, J.



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