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Crl.O.P.No.17793 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

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

Crl.O.P.No.17793 of 2021
and Crl.M.P.Nos.9765 & 9767 of 2021

R.B.Ramakrishnan

...Petitioner

Vs.

1. The State Rep. by
The Sub Inspector of Police,
Central Crime Branch-II,
Team No.1,
Anti Land Grabbing Special Cell,
Egmore, Chennai – 600 008.

2. D.Jones

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.175 of 2020 pending on the file of the learned Judicial Magistrate-I, Ponnammallee and quash the same.

For Petitioner : Mr.G.Rajkumar

For Respondents

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

For R2 : No appearance



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ORDER

This petition has been filed to quash the proceedings in C.C.No.175 of 2020 pending on the file of the learned Judicial Magistrate-I, Ponnammallee, thereby taken cognizance for the offences under Sections 120(b), 467, 468, 471, 420 r/w 465 of IPC as against the petitioner.

2. The case of the prosecution is that the property comprised in survey Nos.127/7 part 128/1 ad measuring 4800 sq.ft., situated at plot No.86 to 89, Varalakshmi Nagar, Maduravoyal Village, Ambattur, owned by the defacto complainant by way of registered sale deed dated 09.01.2012 from one Premasutha, vide document No.107/12. When the defacto complainant visited the house plot to construct house, the accused persons objected the same and also claimed ownership over the house plot.

3. It is further alleged that the second accused is being the mother of the third and fourth accused had executed settlement deed in respect of the above plots in favour of A3 and A4 on 04.01.2008 vide



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registered document Nos.47 & 48 of 2008. In turn, A3 & A4 had executed power of attorney on 11.02.2008, in favour of their father viz., A1, vide document No.383/2008 and 1808/2008. Hence the complaint. On receipt of the said complaint, the first respondent registered FIR for the offence under Sections 468, 471 & 420 of IPC. After completion of investigation, filed final report and the same has been taken cognizance in C.C.No.175 of 2020 on the file of the learned Judicial Magistrate No.1, Ponnammalle for the offences under Sections 120(b), 467, 468, 471, 420 r/w 465 of IPC as against the petitioner and others.

4. The learned counsel appearing for the petitioner submitted that there are totally four accused in which the petitioner is arrayed as third accused. A1 and A2 were already died. The petitioner is the son of A1 & A2. A4 is also another son of A1 & A2. The petitioner is nothing to do with the alleged offence projected by the prosecution. His mother settled the property comprised in survey No.127/7 part 128/1 ad measuring 2400 sq.ft., situated at Varalakshmi Nagar, Madhuravoyal, in plot Nos.88 & 89, by way of registered settlement deed dated 04.01.2008, vide document No.48 of 2008. Thereafter in order to deal with the property, he had executed power of attorney in favour of his



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father. Though the property was settled in his favour, he was not a party to the said document and it was unilaterally executed by his mother.

Therefore, he is nothing to do with the alleged offence.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of settlement deed executed in favour of the petitioner dated 04.01.2008 revealed that his mother derived title by way of Will executed by her mother. Her mother purchased the said property on 15.05.1980. On perusal of the Will registered vide document No.48 of 2005 at the office of Sub Registrar Officer, Ambattur, it pertains to some other property and it was executed completely by different person.

7. That apart, immediately after execution settlement deed in favour of the petitioner, he had executed power of attorney in favour of his father vide document No.383 of 2008 dated 11.02.2008. Though the petitioner was not a party to the document, which was executed by his mother vide document No.48 of 2008 dated 04.01.2008, all the accused persons conspired together and with only intention to grab the property,



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they created encumbrance over the property by executing all these documents.

8. Therefore, there are ingredients and evidence to attract the offence under Sections 120(b), 467, 468, 471, 420 r/w 465 of IPC as against the petitioner. Therefore, the grounds raised by the petitioner cannot be consider to quash the entire proceedings. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.



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13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.



20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for



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the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

11. In view of the above discussions, this Court is not inclined to quash the criminal proceedings. The trial Court is directed to complete the trial and pass orders on merits and in accordance with law, without influencing any of the observations made by this Court, within a period of six months from the date of receipt of a copy of this Order.

12. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Judicial Magistrate-I,
Ponnamallee.
2. The Sub Inspector of Police,
Central Crime Branch-II,
Team No.1,
Anti Land Grabbing Special Cell,
Egmore, Chennai – 600 008.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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