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Crl.O.P.No.18512 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

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

Crl.O.P.No.18512 of 2021

in

Crl.MP.Nos. 10176 and 10178 of 2021

R.Venkateswaran

... Petitioner

Vs

1. The State Represented by
The Superintendent of Police,
Salem District,
Salem.
2. The Inspector of Police,
District Crime Branch, Salem.
(Crime No. 4 of 2018)
3. Mr.Sivakumar
Inspector of Police,
District Crime Branch, Salem.
4. Rajamanickam SSI
District Crime Branch
Salem.
5. Mr.Kannan

... Respondents



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Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in connection with the Final Report in C.C.No. 281/2021 on the file of Judicial Magistrate-6, Salem and quash the same in respect of the Petitioner/A3.

For Petitioner	: M/s.R.Sampath Kumar
For R1 & R2	: Mr.A.Gopinath Government Advocate (Crl.Side)
For R3 & R4	: No appearance
For R5	: Mr.N.Monokaran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No. 281/2021 on the file of Judicial Magistrate-6, Salem.

2. The case of the prosecution is that the father of the defacto complainant settled the property in favour of defacto-complainant comprised in Survey No.84/2/A2 K.N.P.N/225, Survey No.50, admeasuring 1111 1/2 classified as gramamatham situated at Angalamman Temple, Edapadi, by registered settlement deed dated 12.06.2002 vide document No.865 of 2002.

3. After the settlement, the defacto complainant is in possession and



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enjoyment of the said property. The said house was originally owned by his great grand father Arumugam Pakthar son of Muthuvel Pakthar. He died on 31.05.1938. His death was registered with the office of the Sub-Registrar, Edapadi as registration No.35/1938 on 02.06.1938.

4. While being so, the first accused's great grand father name was also Arumugam Pakthar. Utilising the said circumstances, the first accused in order to grab the property which was settled in favour of the defacto complainant conspired with other accused persons and manipulated the death certificate of the great grand father of the first accused as Arumugam Pakthar son of Muthusamy Pakthar. On the strength of the said death certificate, the first accused obtained a legal heirship certificate and registered the sale deed in respect of the subject property in favour of the second accused. The third accused who is being the Sub-Registrar, with his help, the record was manipulated and the death was registered as First accused's great grand father was Arumugam Pakthar son of Muthusamy Pakthar died on 24.09.1977. The third accused issued the death certificate on the application submitted by one T.G.Manickam, Chandra and another G.Manickam. Hence the complaint.



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5. On receipt of the said complaint, the third respondent registered the First Information Report in Crime No.4 of 2018 for the offences under Sections 465, 468, 471 and 420 of IPC. After completion of the investigation, third Respondent filed final report and the same was taken into cognizance by the Trial Court in C.C.No. 281 of 2021 on the file of the learned Judicial Magistrate-6, Salem.

6. The learned counsel for the petitioner submits that the petitioner was in charge of the Sub Registrar office, Thiruppanandhal, Thiruvidayamarudhur Taluk during the year 2017. At this juncture, one Mrs.Chandra wife of Selvam applied for the death certificate of one Muthusamy Pakthar on 20.03.2017. After due verification, with the death register of the year 1977, the death certificate was issued to the said Chandra. Thereafter, one G.Manickam applied for the very same death certificate on 13.04.2017 and he was also issued with the death certificate. Therefore, he had done his official duty as per the death register. Hence, he has nothing to do with the alleged allegation that he manipulated the death



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register.

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7. He further submitted that in fact after registration of First Information Report, he filed an application for Anticipatory Bail before this Court in Criminal O.P.No. 10810 of 2018. On instruction from the third respondent, the learned Additional public prosecutor submitted before this Court that the petitioner's name has been deleted. Accordingly, recording the said submission, the petitioner's anticipatory bail was closed before this Court by an order dated 05.09.2018. Subsequently, with the collusion of the third and the fourth respondents, the second respondent filed a final report including the petitioner's name also as an accused in this case. There are absolutely no materials to connect the petitioner as an accused in this case. No register was maintained by the petitioner.

8. He further submitted that, in fact, the said death register was maintained by the office concerned and only on verification of the said register, the petitioner processed the death certificate. After registration of First Information Report, there was enquiry conducted by the Deputy



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Inspector General of Registration, Thanjavur. On enquiry, he found that no manipulation was done by the petitioner and as such, he dropped all the proceedings pending against the petitioner. Even then, the second respondent filed a final report including the petitioner's name also as an accused in this case. Further, the second respondent, without even obtaining any expert opinion, in order to prove the manipulation of records has filed the final report thereby alleging that the petitioner only manipulated the death register and death certificate. There are no materials to connect the petitioner for any of the offences alleged by the prosecution.

9. Per contra, the learned counsel for the fifth respondent submitted that the person who applied for death certificate of the great grand father of the first accused are neither connected nor related to the death person namely the great grand father of the first accused. In fact, on enquiry, out of two of them, one person is a fictitious person. Therefore, only on the convince of the petitioner, the death register was manipulated and without even any reason, the death certificate was issued. On the strength of the said death certificate, the first accused obtained legal heirship certificate in order



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to grab the property which was already settled in favour of the defacto complainant.

10. Heard the arguments of the learned Counsel for the Petitioner and Learned Counsel for the Respondents.

11. On perusal of the records, it revealed that there are five accused in this case, in which the petitioner is arrayed as third accused. He was working as Sub-Registrar at the Thiruppanandhal Sub Registrar office. He had issued death certificate of great grand father of first accused. Further, he issued death certificate on three occasions to three different persons. Admittedly, they are no way connected with the subject property or related to first accused and defacto complainant.

12. On the strength of the death certificate, the first accused obtained a legal heirship certificate and executed the sale deed in respect of very same property, which was settled in favour of defacto complainant. It is also revealed that both the Defacto-Complainant and the first accused great



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grand father name is Arumugam Pakthar son of Muthuvel Pakthar.

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13. The said property owned by the said Arumugam Pakthar son of Muthuvel Pakthar. After his demise, his son viz., Vaiyapuri became the absolute owner of the said property. After the demise of said Vaiyapuri, his son Arumugam became the absolute owner of the property. The said Arumugam namely father of the defacto complainant had executed settlement deed in favour of the defacto complainant by the registered settlement deed dated 12.06.2002 vide document No. 865 of 2002. The petitioner is in a possession and enjoyment of the said property.

14. While being so, the first accused, in order to grab the property, he manipulated the death register with the help of the petitioner herein. They manipulated the death register as the first accused's great grand father Arumugam Pakthar S/o.Muthusamy who is the great grand father of the defacto complainant on 24.09.1977. On the strength of the death certificate, the first accused obtained the legal heir certificate. Thereafter, on the strength of the legal heir certificate, he executed the sale deed in favour of



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the second accused in respect of the subject property.

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15. On perusal of the statement recorded under Section 161 of Cr.P.C. of the applicants who applied for death certificate deposed that they never applied for any death certificate of Arumuga Pakthar namely the great grand father of the first accused. Their signatures also manipulated while applying for the death certificate. That apart, on the strength of the death certificate, the first accused applied for legal heir certificate. The said legal heir certificate was also not issued in favour of the first accused. Therefore, all the records were manipulated by the accused persons in order to grab the property belongs to the defacto complainant. Hence, the grounds raised by the petitioner cannot be considered to quash the entire proceedings, since, there is oral and material evidence very much available to attract the offences under Sections 465, 468, 471 and 420 of IPC as against the petitioner.

16. 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



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02.04.2019 in the case of ***Devendra Prasad Singh Vs. State of Bihar &***

WEB COPY **Anr.**, 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.

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



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law.

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17. Recently, the Hon'ble Supreme Court of India dealing 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***, has 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



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been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

18. Further, the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** 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



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appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for 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....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered in quash petition under Section 482 Cr.P.C.

19. In view of the above discussion, this Court is not inclined to quash the proceedings C.C.No.281 of 2021 on the file of the Judicial Magistrate-6, Salem. Considering the age of the petitioner, the personal appearance of the petitioner before the Trial Court is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Trial Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial, within a period of six months from the date of receipt of a copy of this



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20. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

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To

1. The Superintendent of Police,
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2. The Inspector of Police,
District Crime Branch, Salem.
(Crime No. 4 of 2018)
- 3 .The Public Prosecutor,
High Court, Madras.



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