



Crl.O.P.No.22942 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.22942 of 2019 and
Crl.M.P.No.11990 of 2019

P.Balasubramanian

..Petitioner

Vs.

1. State Rep. by its
Inspector of Police,
City Crime Branch -1,
Vepery, Chennai – 600 007.

2. Niraichelvi (died)

3. S.Nithyanandam

4. S.N.Kalpana

5. S.N.Sujatha

...Respondents

(R3 to R5 impleaded as per the order
dated 01.09.2022 in Crl.M.P.No.13565
of 2022 and 11990 of 2019 in
Crl.O.P.No.22942 of 2019)

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to quash the proceedings in Crime No.234 of 2018 on the file of the City Crime Branch-1, Vepery, Chennai – 600 007.

For Petitioner : Mr.Mohanamurali.K

For 1st Respondent : Mr.A.Gopinath,
Government Advocate (Crl. Side)

For Respondents 3 to 5 : Mr.B.Damodaran



Crl.O.P.No.22942 of 2019

ORDER

This Criminal Original Petition is filed to quash the proceedings in Crime No.234 of 2018 on the file of the City Crime Branch-1, Vepery, Chennai – 600 007.

2. The defacto complainant Niraiselvi and her sister Porselvi are the daughters of the deceased T.M.Ramachandran born through the first wife Loganayaki; A4 viz., Saroja is the 2nd wife of the said T.M.Ramachandran and A1 (R.Manokaran) and A2 (Selvakumar) are her sons and A3 (Banumathi) is her daughter. A2 appointed A5 (Athi munusamy) and A6 (N.Rajeshkumar) as Power agents in respect of 2/6th share of the subject matter; another Power of Attorney is also said to have been executed by the other legal heirs in favour of Selvakumar (A2). The petitioner has purchased the property from the above power agents.

3. The defacto complainant Niraichelvi has given a complaint by stating that the property measuring 3.38 cents in Survey No.68/1C, 0.28 cents in Survey No.69/2 and 0.30 cents in Survey No.69/4B of Neelangarai Village, totally measuring 3.96 cents was belonged to her by virtue of Will



Crl.O.P.No.22942 of 2019

executed by her father T.M.Ramachandran on 22.04.1971; after the demise of the said T.M.Ramachandran, she has taken the possession of the said property and she is in enjoyment of the same; while so, one R.Manohar who is the son of Saroja has trespassed into the property and he had created forged patta in her land; his mother Saroja along with her children had conspired with Manohar and alienated the property in which they have no right; in fact the power agent Athi Munusamy has also given a complaint against the said Manohar and based on which the Police has arrested Manohar; the said Athi Munusamy himself does not have any title over the property; FIR has been registered in Crime No.234 of 2018 for the offences under Sections 465, 468, 471 and 506 (i) IPC.

4. In so far this petition is concerned the petitioner had purchased the property on behalf of his company M/s.Grahalaya Constructions Pvt., Ltd., from the person who do not have any title and he has also played an active role in committing the offence along with other accused. However the petitioner has filed this petition by stating that the civil matter has been given with criminal colour.

5. The learned counsel for the petitioner submitted that Banumathi



Crl.O.P.No.22942 of 2019

who is the daughter of the original owner T.M.Ramachandran and Selvakumar who is the son of T.M.Ramachandran had appointed one Athi Munusamy and N.Rajeshkumar as registered power agent on 05.03.2012; the power agents sold 1/6th undivided share of Selvakumar in favour of N.A.Associates under Doc.No.3155 of 2011 on 26.05.2011 who in turn sold the same to M/s,Grahalaya Constructions Pvt. Ltd., on 27.01.2012; Athi Munusamy and Rajeshkumar registered another sale deed in favour of M/s.Grahalaya Constructions on 19.03.2012 and hence the petitioner's company has become the owner of 2/6 undivided share of the property; the defacto complainant filed a suit in O.S.No.3169 of 1997 before the learned District Munsif, Alandur for the relief of permanent injunction and the same was dismissed; since the petitioner is the bonafide purchaser of 2/6 undivided share in the subject matter measuring an extent of 7.50 cents, there is no offence made out against him; there is enormous delay in giving the complaint and O.S.No.3169 of 1997 is filed to fill up the lacuna; the patta which was transferred in the name of the petitioner was done in pursuant to the Writ Petition filed by the petitioner in W.P.No.1538 of 2019; since the civil dispute has been exaggerated as a criminal complaint, the



Crl.O.P.No.22942 of 2019

complaint is liable to be quashed.

WEB COPY

6. The learned Government Advocate (Crl.side) submitted that the investigation has already been over and the charge sheet has been filed against the seven accused. In view of the earlier order passed in this case on 26.08.2019, no final report has been filed against the owner Balasubramanian.

7. There is no quarrel on the point that the subject matter along with its larger extent totally measuring 7.50 cents originally belonged to one T.M.Ramachandran who has two wives. A4 Saroja had executed a settlement in favour of A2 in respect of 1/6th share. It is claimed that the said T.M.Ramachandran had executed an unregistered Will on 15.03.1991 in favour of A1, A2, A3 and A4 and the defacto complainant. The said fact was denied by the defacto complainant and it is claimed that the original Will was executed by the deceased Ramachandran on 22.04.1971. The sister of the defacto complainant has filed a suit in O.S.No.3169 of 1997 for permanent injunction and the said suit was dismissed. However, the defacto



Crl.O.P.No.22942 of 2019

complainant Niraiselvi has filed the suit in O.S.No.400 of 2006 on the basis of the very same Will of the year 1971 and that has been decreed.

8. Though the petitioner claimed himself as a bonafide purchaser and being a builder, could have verified the previous records of the subject matter in order to confirm the facts about the legal heirs of the deceased Ramachandran. Admittedly the defacto complainant and her sister are not parties to the sale deed executed in favour of the petitioner. Even though the petitioner had filed the Writ Petition seeking direction to change the Patta in his name, the said Writ Petition was decided on merits. Even though the investigation has been completed and charge sheet has been filed as against A1 to A7, in view of the direction given by this Court, so far charge sheet has not been filed as against this petitioner. It is stated that he has purchased the property as early as in the year 2004 but the complaint has been given at a belated stage because the sister of the defacto complainant filed a suit in O.S.No.3169 of 1997.

9. During the pendency of the proceedings, the defacto complainant



WEB CONTENT

died and her legal heirs have been impleaded as R3 and R5 and they have filed their counter by elaborating that the second wife of their father and her children had created documents in favour of themselves and in favour of various parties. It is stated in the counter of the respondents R3 and R5 that the petitioners have purchased the property from wrong owners for a sum of Rs.16 crores, but the 4th accused who is the 2nd wife of the Ramachandran has stated that she has received only a sum of Rs.10 lakhs. The petitioner has invested a huge amount without verifying the antecedents of the property. In the said circumstances, unless the investigation is allowed to be done against the petitioner, it cannot be known whether the petitioner had any malafide intention in purchasing the property by ignoring the daughters born to Ramachandran through his first wife. So far as title is concerned, it is for the Civil Court to decide about the same. However, the Civil Court cannot find out the intention of cheating if any, present in the kind of the persons, who had given powers to various third parties. This Court while exercising powers under Section 482 Cr.P.C., cannot make any roving enquiry. Investigation of a complaint in a due process of law and that can not be stopped unless there is any glaring illegality or lack of *prima*



CrI.O.P.No.22942 of 2019

facie materials. Since the complaint on the face of it, makes out a case for investigation, the Investigative agency should be allowed to continue the investigation and come out with a report.

10. In view of the above stated reasons, this petition is dismissed.

Consequently, connected miscellaneous petition is closed.

05.01.2023

vum

Index:yes/No

Speaking order / Non speaking order

To

1. The Inspector of Police,
City Crime Branch -1,
Vepery, Chennai – 600 007.
2. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.O.P.No.22942 of 2019

R.N.MANJULA,J.

vum

Crl.O.P.No.22942 of 2019 and
Crl.M.P.No.11990 of 2019

05.01.2023