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Crl.O.P.Nos. 20525 & 23619 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

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

Crl.O.P.Nos. 20525 & 23619 of 2019

and

Crl.M.P.Nos.10556 & 12451 of 2019

S.Kiruthigan Lokesh		Petitioner in Crl.O.P.No.20525 of 2019
Rakesh Kumaran		Petitioner in Crl.O.P.No.23619 of 2019
Vs		

1. The State rep. by
Inspector of Police,
District Crime Branch,
Namakkal.

2. Saraswathi Respondents in both Crl.O.Ps

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the records in Fr.No.23 of 2019 in Crime No.17 of 2019 on the file of the respondent police and quash the same.

In both Crl.O.Ps

For Petitioners	: Mr.V.Raghavachari, Senior Counsel for Mr.R.Rajarajan
For R1	: Mr.L.Baskaran Government Advocate (Crl.Side)
For R2	: No appearance



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COMMON ORDER

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These Criminal Original Petitions have been filed to quash the FIR registered in Crime No.17 of 2019 on the file of the first respondent.

2. The second respondent lodged a complaint alleging that her husband purchased two properties at T.S.No.11/13 and Plot No.A1-12 within Namakkal Municipality. The brother of the defacto complainant was also living with her. After the demise of her brother, his sons, viz., the petitioner herein/A1 and A2, were under the custody of the defacto complainant and they were educated by her. A1 was entrusted with all the responsibilities of her family including maintaining the accounts even after the demise of her husband. After marriage of A1, he started living separately. After demise of her husband, A1 forged the signature of her husband and fabricated a Will in favour of his brother, viz., A2,. On the strength of the said forged Will, a sale deed was executed in favour of A3, who is none other than a close friend of A1. The properties are worth about Rs.1.50 Crores. However, it was undervalued for a sale consideration of Rs.20 Lakhs. A4 and A5 were



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the witnesses to this Will and A6 is the Sub Registrar and A7 is the Document Writer. Hence, the complaint.

3. On receipt of the complaint, the first respondent registered FIR in Crime No.17 of 2019 for the offences under Sections 120B, 465, 468, 471 and 420 of IPC.

4. The learned Senior Counsel appearing for the petitioners would submit that in both the petitions, the petitioners are arrayed as A1 and A2. They are brothers. The husband of the defacto complainant had executed an unregistered Will and thereby bequeathed the suit property in favour of A2 dated 23.11.2012, i.e., even six months before his death. As per the Will, “A” schedule property was bequeathed in favour of his daughter and “B” schedule property was bequeathed in favour of A2. Even according to the second respondent, both A1 and A2 were grown up in her house. They are taking care of the entire family including the deceased. They are none other than the brother's husband of the second respondent. Due to love and affection, the deceased bequeathed the property in favour of the accused. In fact, the second respondent and her



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daughter challenged the Will in O.S.No.146 of 2017 and subsequent sale deeds. After a period of two years, the second respondent had lodged a complaint for the very same set of allegations. In fact, pending FIR, the petitioners filed these petitions to quash the FIR.

5. Pending quash petitions, the first respondent had completed the investigation and filed final report. Therefore, the petitioners filed a copy application and sought for certified copy of the final report. However, it was denied, since the first respondent did not file any final report. That apart, once the alleged Will is subjudice, the prosecution cannot be lodged by the complainant for the very same set of allegations. In support of his contention, he relied upon the following Judgements :

(i) **1987 (Supp) SCC 146** in the case of ***Sardool Singh and another Vs. Smt.Nasib Kaur.***

(ii) **Criminal Appeal No.295 of 2022** in the case of ***Syed Yaseer Ibrahim Vs. State of Uttar Pradesh & Anr.***

(iii) **2023 LiveLaw (SC) 67** in the case of ***Usha Chakraborty & Anr Vs. State of West Bengal & Anr.***



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6. Per contra, the learned Government Advocate (Crl.Side)

appearing for the first respondent submitted that though the Will was already challenged before the Civil Court, the original Will was not produced by the accused during investigation. It was not compared by getting an expert opinion. Therefore, the Civil Court may be directed to refer the matter to hand writing expert opinion by comparing the original Will and the admitted signature. Though this Court granted Anticipatory bail, it is no way helpful for the petitioner to quash the entire proceedings. That apart, the grounds raised by the petitioner can be considered only by the Trial Court, that too during the trial.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. There are totally seven accused, in which, the petitioners are arrayed in both petitions as A1 and A2. Both are brothers. Even according to the second respondent, the petitioners were grown up in the house of the second respondent, even while her husband was alive. They were maintaining the accounts, even after the marriage



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of the first accused, he was only maintaining the accounts of the second respondent. That apart, the second respondent and her husband had no son. Therefore, they treated them as sons and executed a Will dated 23.11.2012 and thereby bequeathed the said properties in favour of A2. In turn, on the strength of the said Will, the second accused executed a sale deed in favour of A3. A4 and A5 are the witnesses to the alleged Will dated 23.11.2012. A6 is the Sub Registrar. A7 is the Document Writer, who had drafted the sale deed in favour of A3. Admittedly, the second respondent already filed a suit challenging the sale deed executed in favour of A3. The second respondent pleaded that no Will was executed by her husband, while he was alive. When the subject Will was subjudiced in O.S.No.146 of 2017, no prosecution can be lodged contending that the Will is a forged one.

9. In this regard, he relied upon the Judgement of the Hon'ble Supreme Court of India reported in **1987 (Supp) Supreme Court Cases 146** in the case of **Sardool Singh and another Vs. Nasib Kaur**, this Court held that the Civil Court is therefore seized of the question as regards the validity of the Will. The matter is sub judice in



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Civil Courts. At this juncture, the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the Will is a forged one.

10. Further he relied upon the Order of the Hon'ble Supreme Court of India in ***Criminal Appeal No.295 of 2022*** in the case of ***Syed Yaseer Ibrahim Vs. State of Uttar Pradesh & Anr***, this Court held that each of the rival claims would be tested in the course of the evidence adduced at the trial of the suit. Since the sale took place during the pendency of the suit, doctrine of *lis pendens* will apply. This itself is an indicator of the position that it is essentially a dispute of a civil nature.

11. He also relied upon the Judgement of the Hon'ble Supreme Court of India reported in ***2023 LiveLaw (SC) 67*** in the case of ***Usha Chakraborty & Anr Vs. State of West Bengal & Anr***, which is held as follows :

9. The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter



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affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the cell suit to cover up the civil nature of the dispute.

10. By non-disclosure the respondent has, in troth, concealed the existence of a pending civil suit between him and the appellants herein before a competent Civil Court which obviously is the causative incident for the respondents allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed herein before, the respondent alleged commission of offences under Sections 323, 384,



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406, 425, 467, 488, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the Ingredients to attract them, as adverted to herein before would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B, IPC. The ingredients to attract the alleged offence referred to herein before and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in *Paramjit Batra (supra)*, the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.”

Thus, it is clear that when the subject Will is already sub judiced by the Civil Court, the institution of the criminal prosecution is nothing but a clear abuse of process of law. Therefore, the FIR registered in Crime



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No.17 of 2019 on the file of the first respondent cannot be sustained and it is liable to be quashed.

12. In view of the above, the FIR registered in Crime No.17 of 2019 on the file of the first respondent, is hereby quashed. Accordingly, these Criminal Original Petitions stand allowed. However, the Trial Court in O.S.No.146 of 2017 is directed to get expert opinion by comparing the original Will dated 23.11.2012, which was produced by the petitioner with the admitted signature of the deceased husband of the second respondent. On receipt of the said report, the second respondent is at liberty to launch the prosecution as against the petitioners and others. Now, the respondent completed the investigation and final report was filed before the Judicial Magistrate, Paramathy and the same has been taken cognizance in C.C.No.85 of 2023. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

1. The Inspector of Police,
District Crime Branch,
Namakkal.

2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J,

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