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CrI.O.P.No.19843 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.19843 of 2021**

**and**

**CrI.M.P.Nos.10809 & 10810 of 2021**

1.P.Marayee  
2.P.Valliyammal @ Vasantha  
3.P.Palaniammal @ Kannammal  
4.P.Murugesan  
5.M.Karthikeyan  
6.D.Dhanabal

... Petitioners

Vs.

M.Karumana Kounder

... Respondent

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of proceedings pending in C.C.No.23 of 2021 on the file of Judicial Magistrate Court, Paramathi, for the alleged offences under Sections 465, 468 r/w.34 IPC and to quash the same.

For Petitioners : Mr.W.Camyles Gandhi

For Respondent : Mr.S.Vijayakumar



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## **ORDER**

This Criminal Original Petition has been filed challenging the criminal proceedings in C.C.No.23 of 2021 on the file of Judicial Magistrate Court, Paramathi.

2.The petitioners are the accused and the respondent is the complainant in C.C.No.23 of 2021.

3.The case of the respondent/complainant in C.C.No.23 of 2021 is that the respondent purchased the property in S.Nos.14/2C and 14/2D for a total extent of 2.16 Acres in Kabilakurichi Village, Paramathi Vellore Taluk, Namakkal District, on 28.08.1995, vide registered sale deed bearing Doc.No.816 of 1995, from petitioners 1 to 3. Subsequently, the petitioners 1 to 3 filed a suit in O.S.No.26 of 2017 on the file of the District Munsif Court, Paramathi, with a prayer to declare the sale deed obtained by the respondent on 28.08.1995 as null and void. Pending the suit, the petitioners 1 to 3 executed a sale deed in respect of the same property in favour of 4<sup>th</sup> petitioner with the help of 7<sup>th</sup> petitioner-Documents Writer and petitioners 5 to 6 who signed the deed as witnesses and the same was registered as Document No.86



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of 2020 by the Sub-Registrar, Paramathi, who is arrayed as 8<sup>th</sup> accused. Thus,

it is the case of the respondent that the petitioners, by creating false documents in order to grab the land, have executed a false deed in favour of 4<sup>th</sup> petitioner. Hence, the respondent filed a private complaint against the petitioners 1 to 8 before the Judicial Magistrate Court, Paramathi and the learned Magistrate took cognizance of the matter in C.C.No.23 of 2021 for the offences under Sections 465, 468 r/w.34 IPC as against petitioners 1 to 6; Sections 465, 468 r/w. 109 IPC as against petitioners 7 and 8.

4.Learned counsel for the petitioners submitted that the respondent/complainant, by impersonating the 1<sup>st</sup> petitioner namely Marayee, got the sale deed in Document No.816 of 1995 on 28.08.1995 in respect of the complaint mentioned property. Subsequently, this came to the knowledge of the petitioners 1 and 3 and hence, they filed a suit in O.S.No.26 of 2017 on the file of the District Munsif Court, Paramathi, for declaring the said document in Doc.No.816 of 1995 as null and void. The suit is pending. In these circumstances, the petitioners 1 to 3, due to their financial crisis, executed the sale deed registered as Document No.86 of 2020 on the file of Sub-Registrar's Office, Paramathi, in favour of 4<sup>th</sup> petitioner with the help of petitioners 5 and 6 who signed as witness to the document. Learned counsel further submitted



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that the respondent has impersonated the 1<sup>st</sup> petitioner and has falsely obtained the sale deed in Document No.816 of 1995. Therefore, the petitioners 1 to 3, who are the real owners of the subject property, have every right to sell the property to the 4<sup>th</sup> petitioner. The learned counsel further submitted that the complainant has not an affidavit before invoking the jurisdiction of the learned Magistrate under Section 156(3) Cr.P.C., as mandated by the Hon'ble Supreme Court in *Priyanka Srivatsava and others v. State of U.P. and others* reported in (2015) 6 SCC 287. The learned counsel contended that, since the petitioners 1 to 3 are the real and absolute owners of the property, no offence is made out. Hence, the learned counsel seeks to quash the private complaint lodged by the respondent.

5.Per contra, learned counsel appearing for the respondent/complainant submitted that the allegations raised by the petitioners are not correct and the respondent purchased the property on 28.08.1995 vide registered sale deed bearing Doc.No.816 of 1995 from petitioners 1 to 3 for a valid consideration and there is no impersonation. Subsequently, the petitioners 1 to 3 filed a suit in O.S.No.26 of 2017 on the file of the District Munsif Court, Paramathi, with a prayer to declare the sale deed obtained by the respondent on 28.08.1995 as null and void. Pending the suit, the petitioners 1 to 3 have executed a sale



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deed in respect of the same property in favour of 4<sup>th</sup> petitioner with the help of other petitioners. Thus, the learned counsel submitted that, the petitioner, with the intention to grab the property from the respondent, have created false documents and executed a false sale deed to defeat the rights of the respondent. Hence, the respondent filed the complaint, which has to be adjudicated by letting in evidence. Further, the learned counsel submitted that, before the trial Court, the complainant was examined and Exs.P1 to P8 were marked and the case is now pending for trial. Therefore, the learned counsel sought for dismissal of this petition.

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

7.Perusal of records would reveal that the petitioners are the accused in C.C.No.23 of 2021 on the file of Judicial Magistrate Court, Paramathi. The respondent is the complainant who filed the complaint for the offences under Sections 465, 468 r/w.34 IPC as against petitioners 1 to 6 and Sections 465, 468 r/w. 109 IPC as against petitioners 7 and 8. The allegations in the complaint is that the complainant purchased the complaint mentioned property in S.Nos.14/2C and 14/2D for a total extent of 2.16 Acres from the legal heirs



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of one Valliyammal on 28.08.1995 vide a registered sale deed bearing

Document No.816 of 1995 for a valid consideration. The petitioners 1 to 3 filed a suit in O.S.No.26 of 2017 on the file of District Munsif Court, Paramathi, with a prayer to declare the sale deed in favour of the complainant dated 28.08.1995 as null and void and to declare that the properties belong to petitioners 1 to 3 and also for interim injunction. Pending the suit, the petitioners 1 to 3 executed a sale deed in favour of 4<sup>th</sup> petitioner, witnessed by petitioners 5 and 6, with the help of Document Writer-7<sup>th</sup> petitioner on 13.01.2020, registered as Document No.86 of 2020 on the file of Sub-Registrar's Office, Paramathi and also mentioned the details of the purchase by the complainant in the document itself. The respondent, in his complaint, has further stated that, knowing fully well about the title of the complainant, the petitioners have falsely averred in their subsequent sale deed in favour of 4<sup>th</sup> petitioner that the earlier sale deed in Doc.No.816 of 1995 got cancelled by virtue of the order dated 17.02.2017 made in I.A.No.479 of 2010 in O.S.No.376 of 1999 on the file of Sub-Court, Namakkal. The respondent contends that the said averment is a false one. Moreover, the respondent has stated that, instead of placing the order copy in I.A.No.479 of 2010, the petitioners 1 to 3 have enclosed the copy of the order in I.A.No.1 of 2017 which is an interlocutory application filed in I.P.No.5 of 2003 filed by the



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complainant before the Sub-Court, Namakkal, which is totally irrelevant.

Thereby, by falsely creating documents, the petitioners have executed the false sale deed in Doc.No.86 of 2020 in order to grab the property from the complainant. Under these circumstances, the complaint has been filed.

8.The question as to whether the petitioners 1 to 3 have title to execute the sale deed in favour of 4<sup>th</sup> petitioner or not, is to be adjudicated factually by letting in evidence before the trial Court. Whether the petitioners have committed any offence or not, is also to be adjudicated before the trial Court. Further, the averment made by the petitioners 1 to 3 in the sale deed in Doc.No.86 of 2020 regarding the cancellation of sale deed in favour of the complainant is also to be proved before the trial Court. All these allegations made in the complaint involve disputed questions of facts, which cannot be adjudicated by this Court while exercising its jurisdiction under Section 482 Cr.P.C. The petitioners themselves have put forth their defence of impersonation, which is disputed by the respondent. Therefore, this aspect also has to be adjudicated by the trial Court. 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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9.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.

10.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.

11.Therefore, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are closed.



WEB COPY 12. However, the learned counsel for the petitioners submitted that the 1<sup>st</sup> petitioner is a 76 years old lady and hence, requested this Court to dispense with the personal appearance of the 1<sup>st</sup> petitioner before the trial Court. Considering the age of the 1<sup>st</sup> petitioner and acceding to the request of the learned counsel for the petitioners, the personal appearance of the 1<sup>st</sup> petitioner alone before the trial Court shall be dispensed with on condition that she 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, she shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that she will not dispute her identity and that the counsel named by her 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 her presence and remand her to custody as laid down by the Supreme Court in ***State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]***. If the accused absconds, the trial Court shall direct registration of an FIR against her under



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Section 229-A IPC.

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13.The trial Court is directed to complete the trial and dispose the case in C.C.No.23 of 2021 within a period of four months from the date of receipt of a copy of this order.

**13.07.2023**

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To

The Judicial Magistrate,  
Paramathi.



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**V. SIVAGNANAM, J.**

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