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CrI.O.P.No.21063 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.21063 of 2022 and
CrI.M.P.Nos.13733 & 13734 of 2022

1.K.Manoharan
2.S.Selvaraj
3.S.Ponnusamy
4.Baby Saroja

... Petitioners

Vs.

1.State, Rep. by
The Inspector of Police,
C.C.B, Coimbatore City.

2.Kumar.M

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned proceedings in C.C.No.91 of 2022 on the file of the Learned Judicial Magistrate-VII, Coimbatore and quash the same in so far as the petitioners concerned.

For Petitioner	:	Mr.B.Kumarasamy
For R1	:	Mr.A.Gokulakrishnan, Additional Public Prosecutor
For R2	:	Mr.G.Balamanikandan



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.91 of 2022, pending on the file of the Judicial Magistrate Court No.VII, Coimbatore, for offence under Sections 120B, 465, 467, 468, 471, 420 & 506(i) of IPC.

2.Gist of the case is that the 1st respondent Police received direction from the learned Judicial Magistrate No.VII, Coimbatore under Section 156(3) Cr.P.C., to register the case on the complaint of the 2nd respondent/defacto complainant. On such direction, the 1st respondent Police registered FIR in Crime No.46 of 2020 for offence under Sections 120B, 406, 465, 467, 468, 471, 420 and 506(i) of IPC against the petitioners/A1, A2, A3 & A6 and two other accused/A4 & A5. In this case, the petitioners/A1, A2, A3 & A6 are known to the 2nd respondent for the past thirty years and they are good family friends. A1 studied college with the 2nd respondent, from then on, they are friends. On 08.12.1988, A1 purchased plot No.39, A2 purchased plot No.40 and the 2nd respondent purchased plot No.29 from their own money in K.P.P Nagar at Kuniyamuthur village, Coimbatore. This being so, during the



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year 2012, all the accused conspired together to usurp the property of the 2nd respondent. A1 and A2 approached the 2nd respondent on the pretext that if all the three plots are sold together, it will fetch higher rate since the value of the plots gets appreciated. On that pretext, original documents of 2nd respondent's property was received by A1 and A2, thereafter, they informed 2nd respondent plots could not be sold. During the month of June 2013, when the 2nd respondent asked return of property documents, A1, A2 and A3 refused to return back the original documents and demanded Rs.1,00,000/-. When the same was questioned, he was further threatened to be done away by the accused. In this case, the 4th petitioner/A6 on 10.06.2016 had called the 2nd respondent through landline and thereby, she supported the other accused to usurp the property of the 2nd respondent. The accused projected the case as though the 2nd respondent while handing over the original documents, executed three signed promissory notes, dated 10.09.2009, 04.06.2011 and 22.06.2022 and took loan for sum of Rs.9 lakhs, Rs.5 lakhs and Rs.6 lakhs along with Deed of Mortgage, dated 23.02.2012. Using these documents, the 1st petitioner/A1 filed suit in O.S.No.339 of 2013 which was initially pending before the learned V Additional District Judge,



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Coimbatore. The suit is for recovery of money and creating a charge on the property. The 2nd respondent filed a suit in O.S.No.2729 of 2013 before the learned District Munsif, Coimbatore for mandatory injunction and to return the sale deed document.

3.In the meanwhile, the 2nd respondent took an application to forward the said three promissory notes and Mortgage of Deed for Forensic Examination. Thereafter, a report received from the Handwriting Expert in the year 2018 stating that the signature found therein does not tally with the signature of the 2nd respondent. In the meanwhile, the suit filed by the 1st petitioner/A1 got dismissed for non-prosecution in the year 2017. Later, it got restored in the year 2020. After receipt of the expert opinion confirming the forgery committed in the promissory notes and Deed of Mortgage, the 2nd respondent lodged the complaint. Hence, the above case.

4.Learned counsel for the petitioners submitted that admittedly, the



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petitioners and the 2nd respondent are close friends for the past 30 years.

The 1st & 2nd petitioners/A1 & A2 purchased plots adjacent to each other in same area and thereafter, the properties value got appreciated. For some urgent needs, the 2nd respondent handed over the documents to the 1st petitioner and took loan. Later, the 2nd respondent was unable to return back the loan, hence, for creating charge and not to alienate the property, a suit was filed by the 1st petitioner, which hurt the 2nd respondent badly. Thereafter, the 2nd respondent, who handed over the promissory notes to the accused later claimed that his signature are forged. It is not in dispute that Handwriting Expert opinion is only an expert evidence, which has to be corroborated with other evidence and accepted, thereafter, only whether forgery committed or not, can be proved. On the face of the expert evidence, registering a case and filing final report is not proper. In all prudence, the 2nd respondent ought to have awaited till the outcome of the civil suits. Hence, he prayed for the quashing the proceedings against the petitioners.

5.Learned Additional Public Prosecutor appearing for the 1st



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respondent Police submitted that on the direction of learned Judicial Magistrate No.VII, Coimbatore, FIR came to be registered in Crime No.46 of 2020 on 26.11.2020, thereafter investigation commenced, statement of witnesses recorded, documents collected and charge sheet filed. In this case, the Handwriting Expert is LW3, who confirmed the forgery committed in the promissory notes and Mortgage of Deed. One thing is certain that in this case, signature found in promissory notes and Mortgage of Deed are not that of the 2nd respondent. He further submitted that the alleged documents are produced by the accused herein before the civil Court. In view of the same, the accused cannot have any other explanation or defence in the criminal case. Only on collecting of sufficient material, charge sheet filed before the trial Court. At this stage, this Court has to look only whether *prima faice* case is made to proceed with the case and not to find whether there are sufficient materials to convict the accused. Hence, he opposed this petition and the contention of the petitioner.

6.Learned counsel for the 2nd respondent submitted that in this



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case, the admitted facts are that the documents which contained the forged signature of the 2nd respondent, all produced by the 1st and 2nd petitioners in the civil suit. The documents forwarded from the civil Court to the Handwriting Expert, studied by LW3, who confirmed that forgery committed. Since *prima facie* materials available against the petitioners, it is for the accused to prove their defence during trial. He further submitted that LW3 is the Handwriting Expert, who is an independent person both to the petitioners as well as the 2nd respondent. There is nothing to show that he had axe to grind against the accused. In view of the same, the report of the Handwriting Expert has to be accepted as it is. It is during the trial, the points raised by the learned counsel for the petitioners to be decided. Hence, he opposed this Quash Petition. Learned counsel for the 2nd respondent fairly submitted as regards A6 except for phone call on one occasion that is 10.06.2013, there is no material against the her. He further submitted that all the accused in a concerted manner, conspired together in execution of forged documents, projecting the same as genuine and attempted to usurp the valuable property of the 2nd respondent/defacto complainant.

7.This Court considered the rival submissions and perused the



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materials available on record.

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8.The points raised by the petitioners are factual and disputed which are to be necessarily decided during trial. In this case, the evidence of LW3-Handwriting Expert and his report are against the accused. The documents containing the forged signature of the 2nd respondent, have been produced by the accused in a civil case, which are all matter of fact to be decided during trial. In the result, this Criminal Original Petition is dismissed in so far as the petitioners 1 to 3 are concerned. Hence, they are directed to face the trial in C.C.No.91 of 2022.

9.As regards the 4th petitioner/A6 except for one day when she called the 2nd respondent over phone, there is no other material against her. It is an admitted case that the 4th petitioner/A6 and the 2nd respondent are college friends for the past 30 years. In view of the same, no fault can be found on this call.



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10.In view of the above, the proceedings in C.C.No.91 of 2022, on the file of the Judicial Magistrate Court No.VII, Coimbatore is quashed as against the 4th petitioner/A6-Baby Saroja alone. Accordingly, this Criminal Original Petition is allowed in so far as the 4th petitioner/A6 is concerned.

11.The trial Court to give preference to the case in C.C.No.91 of 2022 and dispose of the same as expeditiously as possible, without any further delay.

12.The observations made herein is only for the purpose of disposing this Criminal Original Petition. The trial Court uninfluenced with the order of this Court, shall decide the case on its own merits in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

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M.NIRMAL KUMAR, J.
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Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
To

- 1.The Judicial Magistrate Court No.VII,
Coimbatore.
- 2.The Inspector of Police,
C.C.B, Coimbatore City.
- 3.The Public Prosecutor,
High Court, Madras.

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