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Crl.O.P.No.22327 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

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

Crl.O.P.No.22327 of 2021

and

Crl.M.P.No. 12115 and 12116 of 2021

1. Venkatasamy
2. Devaraj

... Petitioners

-Vs-

1. State of Tamil Nadu
Represented by
The Inspector of Police,
Prevention of Land Grabbing Cell
Dharmapuri.

2. Shantha

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.102 of 2020, on the file of the Judicial Magistrate at Palacode and quash the Final Report dated 11.03.2016.

For Petitioners : Mr.S.Subramanian

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.K.K.N.Ganesan



ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.102 of 2020, on the file of the Judicial Magistrate at Palacode.

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

3. The case of the prosecution is that the subject property originally belonged to the defacto complainant's father and his two brothers. The defacto complainant's father had no male issues and he had only two daughters, viz., the defacto complainant and another. While being so, the defacto complainant's father's two brothers and his legal heirs impersonated as defacto complainant and executed a partition deed in respect of 1/3rd share of the defacto complainant's father. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered an FIR in Crime No.8 of 2014 for the offences under Sections 420, 465, 468, 471, 419 of IPC read with 120B of IPC. After completion



of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.102 of 2020, on the file of the Judicial Magistrate, Palacode and it is pending for trial.

5. Originally, the subject property belonged to the grandmother of the petitioners and the second respondent by name Lakshmi Ammal. She had three sons, viz., Venkatasamy, Banni and Krishnan. After demise of the said Lakshmi Ammal and her husband, they succeeded to the land owned by the said Lakshmi Ammal as her legal heirs. They were in joint possession and enjoyment of the property. After demise of Krishnan, his only son Venkatachalam has inherited his share. Similarly, after the demise of Venkatasamy, his two daughters, viz., Venkatammal and Shantha had inherited his share. After demise of Banni, his two sons, viz., Venkatasamy and Devaraj, who are the petitioners herein, have inherited his share. The deceased Venkatasamy had no sons and had left behind only two daughters.

6. According to the defacto complainant, she was impersonated by A5 and a partition deed dated 19.05.2008 was executed, thereby 1/3rd share of their father Venkatasamy was allotted in favour of



A1, A4 to A6. Though the petitioners were not allotted any share, they only arranged the impersonation, viz., A5. The other accused persons had executed a partition deed in favour of A1, A4 to A6. That apart, no person has executed partition deed, thereby relinquished her right without any consideration in favour of others. Further the defacto complaint had no issues. Utilizing the said circumstances, the accused persons impersonated the defacto complainant and executed a partition deed dated 19.05.2008.

7. The learned counsel for the petitioners specifically contended that a civil issue had been converted into a criminal case and as such, the final report cannot be sustained as against the petitioners. They are beneficiaries under the partition deed dated 19.05.2008. The defacto complainant subsequently filed a suit for partition in respect of the very same property as against her sister Venkatammal in O.S.No.9 of 2009 and the same was decreed, by compromise, by a Judgment and Decree dated 01.12.2014. Therefore, the alleged partition deed executed between the accused persons is not valid.



8. In support of his contention, he relied upon the

Judgment reported in **(2023) 2 SCC 195** in the case of ***R.Nagender***

Yadav Vs. State of Telangana, in which the Hon'ble Supreme Court of India held that while exercising its jurisdiction under Section 482 Cr.P.C, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the Court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute, which is in substance of civil nature, is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent the abuse of process of law.

9. In the case on hand, though the defacto complainant subsequently filed a suit for partition between herself and her brother, it has nothing to do with the present charge, since the petitioners



impersonated the 5th accused, in order to grab the property belonged to the second respondent, fabricated a partition deed and shared the property belonging to the dafacto complainant that too without any share to her. Therefore, the essential ingredients of the criminal offence is clearly made out by the petitioners and as such, the entire criminal proceedings cannot be quashed.

10. 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 ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & 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 law.

11. 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***, 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 been taken



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

12. 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 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 petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

13. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

14. In fact, L.Ws 7 & 8 categorically had spoken about the overt act of the petitioners that the petitioners along with other accused persons arranged the 5th accused and impersonated the defacto complainant for execution of partition deed. They only called the L.Ws.7 & 8 to stand as witnesses. They witnesses the partition deed dated 19.05.2008. Therefore, the above Judgment is clearly applicable to the present case.



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15. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.102 of 2020, pending on the file of the Judicial Magistrate, Palacode. Considering the age of the petitioners, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the 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 in C.C.No.102 of 2020, within a period of six months from the date of receipt of a copy of this order.

16. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous petitions are closed.

03.10.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Judicial Magistrate,
Palacode
2. The Inspector of Police,
Prevention of Land Grabbing Cell
Dharmapuri.
3. The Public Prosecutor
High Court, Madras.

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