



Crl.O.P.No.23110 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23110 of 2021 &
Crl.M.P.Nos.12663 & 12664 of 2021

Bhavani

.. Petitioner

Vs.

1. The State by
Inspector of Police,
Central Crime Branch
(land Grabbing cell)
Vepery, Chennai 600 007
(Cr.No.330 of 2019)

2. T.S. Parasu Raman

... Respondents

PRAYER: Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records pending on the file of the Judicial Magistrate No.I, Poonamallee in C.C.No.114 of 2021 and quash the said criminal proceedings pending on the file of the Judicial Magistrate No.1, Poonamallee in C.C.No.114 of 2021.

For Petitioner : Mr. V. Parthiban

For Respondents: Mr. L. Baskaran,
Govt. Advocate (crl.side)
Mr.K.B.Vivekanandhan for R2



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ORDER

This Criminal Original Petition is filed to call for the records pending on the file of the Judicial Magistrate No.I, Poonamallee in C.C.No.114 of 2021 and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner is A2 in C.C.No.114 of 2021. The respondent police, in pursuance of a complaint given by one T.S.Parasuraman, registered a case in Cr.No.330 of 2019 for the offences under section 420, 465, 467, 468, 471 r/w.34 IPC on the allegation that A1 has falsely created legal heir certificate document No.415 /A7, dated 14.3.2001 in respect of the property owned by the 2nd respondent and based upon the false legal heir certificate, A1 obtained patta for the abovesaid property and settled the property in favour of his daughter/A2/petitioner herein and in the said settlement deed, A3 and A4 signed as witnesses. Thus they have created encumbrance in the property belonging to the 2nd respondent without his knowledge. After completion of



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investigation, the respondent police filed charge sheet against the accused persons and the matter was taken on file as C.C.No.114 of 2021.

3. He further contended that the petitioner is only a settlee of the disputed settlement document dated 14.03.2016 bearing Doc.No.1835 of 2016 registered at Tiruvallur Sub Registrar Office. The petitioner has not participated and not signed in the disputed settlement deed. According to the prosecution, the first accused alone has created false legal heir ship certificate and in pursuance of the legal heir certificate, she executed alleged settlement deed dated 14.03.2016 in favour of this petitioner/A2 and she is only a beneficiary of the settlement deed, therefore, no offence is made out against her. Therefore, the criminal proceedings initiated against the petitioner is liable to be quashed. Hence, he seeks to quash the criminal proceedings in C.C.No.114 of 2021 pending on the file of Judicial Magistrate No.I, Poonamallee and for allowing this Criminal Original Petition.



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4. The learned Govt. Advocate (crl.side) submitted that before the trial court, the case is pending at the stage of issuance of summons.

5. The learned counsel appearing for the 2nd respondent/defacto complainant submitted that this petitioner has full knowledge about the execution of false settlement deed by A1 in favour of her. Further, based upon this false settlement deed, she filed a suit in O.S.NO.56 of 2019 on the file of the District Munsif Court, Thiruvotriyur claiming right over the property and seek the relief of permanent injunction against this defacto complainant. Under the circumstances, she is also liable to be prosecuted for the offence committed by A1 along with her. Therefore, this Criminal Original Petition is not maintainable and seeks for dismissal of the same.

6. Heard the submissions of the learned counsel for the petitioner, learned Govt. Advocate (crl.side) appearing for the 1st respondent and learned counsel appearing for the 2nd respondent.



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7. On perusal of the records, the fact reveals that the petitioner is A2 in C.C.No.114 of 2020 pending on the file of the learned Judicial Magistrate I, Poonamallee. In pursuance of a complaint given by the defacto complainant Parasuraman, a case has been registered in Cr.No.330 of 2019 by the respondent police for the offence under sections 420, 467, 468, 471 r/w.34 IPC. On completion of investigation, final report was filed in C.C.No.114 of 2021 before the learned Judicial Magistrate No.I, Poonamallee and now the case is pending for service of summons.

8. The case of the prosecution is that the 2nd respondent's grandmother viz., Patchai Ammal is the mother of petitioner's mother Jayalakshmi/A1 and one Vijalakshmi. During her life time, the said Patchai Ammal executed a registered Will dated 21.08.1995 in favour of the 2nd respondent bequeathing her property situate at S.No.158/4 B1, North Mada Street, Kaladipet, Thiruvotriyur, Chennai, measuring 560 sq. ft and after settling the property in favour of 2nd respondent, she died on 14.11.1997. Whiles, with regard to the above said property belonging to the 2nd



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respondent, Jayalakshmi/A1 had executed a registered settlement deed in favour of petitioner herein on 14.03.2016 , as if, she is the legal heir of the deceased Patchai Ammal. In the settlement deed, the husband of A1 and one Munuswamy(since deceased) have signed as witnesses. Thus the accused have committed fraud and tried to grab the land belonging to the 2nd respondent.

9. Admittedly the petitioner/A2 is the beneficiary of the alleged settlement deed dated 14.3.2016. It is also not disputed that she filed a suit in O.S.NO.56 of 2019 pending on the file of the District Munsif Court, Thiruvotriyur, claiming possession based upon the alleged settlement deed. Perusal of the records would also reveal that on 08.02.2020, based on the compromise arrived between both the parties before the Lok Adalat, the learned District Munsif Court, Thiruvottiyur, recording the settlement arrived between the parties, not pressed the suit in O.S.No.56 of 2019 and to that effect, the petitioner has also filed the e-court Daily Status of the abovesaid court. Thus, as of now, no case is pending with regard to



disputed property.

10. In this case, on fact, the petitioner is A2 and she is only a settlee of the disputed property and received the disputed property through alleged settlement deed dated 14.03.2016 from her mother A1 namely Jayalakshmi. The petitioner has not executed any document, but she only received the property as per the settlement deed dated 14.03.2016. Except that, nothing has been done by her. In the circumstances, the principle stated by the Supreme Court in the case of *Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and others (2004) 4 SCC 168; Mohammed Ibrahim and others vs. State of Bihar and another (2009) 3 SCC CrI.P.929 and Devendra and others Vs. State of Uttar Pradesh and another (2009) 3 SCC CrI.461* has to be taken into consideration. Further, as per the observation of the Supreme Court reported in the case of *Mohammed Ibrahim and others vs. State of Bihar and another (2009) 3 SCC CrI.P.929*, unless the offence of falsification of document is proved, the offence under section cheating will not be made out. I find merit in the



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contention of the learned counsel for the petitioner.

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11. In this case, the petitioner/A2 herein, admittedly had not created any document, that too, false document. She only claims right over the disputed property based upon the false document i.e., settlement deed dated 14.03.2016 executed by A2.

12. In view of the above Supreme Court decisions, receiving a document from a person not having a title over the property will not amount to forgery. Therefore, as per the decisions cited supra, no offence is made out against this petitioner. Since she had not executed any document or fabricated any document, she is not said to have committed the offence of forgery or cheating. As there is no forgery, neither of the offence under sections 420, 465, 467, 468 and 471 r/w/34 IPC s are attracted.

13. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the



High Courts under Section 482 Cr.P.C in the following cases:

- (i) ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866***
- (ii) ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***
- (iii) ***M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors.*** reported in ***2021 SCC Online SC 315***

13.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866***, the Hon'ble Supreme Court has held as follows:

“6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the



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criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. 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.”



13.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan***

Lal & Ors. reported in ***AIR 1992 SC 604***, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the



Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13.3. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online SC 315***, the Hon'ble Apex Court has observed as follows:

“80., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;



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iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It



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would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court,



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the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

14. Accepting the prosecution case as it is, it is to be noted that the



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present case meets the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*.

15. In view of the above legal position, this court is of the view, continuing criminal proceedings against the petitioner is misuse of process of law, since no offence is made out against the petitioner. Therefore, the criminal proceedings in C.C.No.114 of 2021, on the file of learned Judicial Magistrate I, Poonamalee is quashed. It is reported by the learned Govt. Advocate (crl.side) that C.C.No.114 of 2021 was re-transferred to the court of Judicial Magistrate No.I, Poonamallee and was re-numbered as C.C.No.208 of 2023. In view of the above, criminal proceedings against the petitioner in C.C.No.208 of 2023 pending on the file of Judicial Magistrate No.1, Poonamallee is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Index: Yes/No
Internet: Yes/No
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To

1. The Judicial Magistrate No.I,
Poonamallee.
2. The Inspector of Police,
Central Crime Branch
(land Grabbing cell)
Vepery, Chennai 600 007
3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM, J.,

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