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Crl.O.P.No.25271 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

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

Crl.O.P.No.25271 of 2021

and

Crl.M.P.Nos.13982 & 13983 of 2021

1. Indhirani

2. Jothimallika

3. Krishnamoorthy

.... Petitioners

Vs

1. The State by

Sub Inspector of Police,

Land Grabbing Special Cell,

Erode District.

2. Jeevanandam

.... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the case in C.C.No.3 of 2021 on the file of the Special Judicial Magistrate Court, Special Court for Exclusive Trial of Land Grabbing Cases, Erode and quash the same.

For Petitioners : Mr.V.Parthiban

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

For R2 : Mr.L.P.Shanmugasundaram



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3 of 2021 on the file of the Special Judicial Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases, Erode.

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 property, comprised in R.S.No.52/5 (S.F.No.37/1) to an extent of 25 cents, belongs to one Venkatachalam, viz., the husband of the first accused and father of the second and third accused, by virtue of sale deed dated 10.07.1972. The said Venkatachalam entered into an agreement for sale with one K.S.Balakrishnan and Nallasivam to sell the said property and also received an advance. Thereafter, he executed a power of attorney in favour of one Nagaraj on 25.05.1993, in order to sell the property in favour of the said K.S.Balakrishnan and Nallasivam. In turn, the said Nagaraj executed a sale deed in favour of K.S.Balakrishnan and Nallasivam on 23.11.1993. In turn, The said K.S.Balakrishnan and Nallasivam sold out the property by way of registered sale deed dated 18.09.2014 in favour of the second respondent. The said



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Venkatachalam died on 02.01.2012. Thereafter, the accused 1 & 2 had executed a sale deed with regard to their respective share in the said property in favour of the 3rd accused. Hence, the complaint.

4. On receipt of the said complaint, the first respondent registered FIR in Crime No.23 of 2015 for the offences under Sections 120B, 420, 467, 468 & 471 of IPC.

5. The learned counsel appearing for the petitioner would submit that the power of attorney executed by the said Venkatachalam is not a registered General Power of Attorney and is a Specific Power of Attorney. In the power of attorney, he categorically stated that the sale deed in favour of K.S.Balakrishnan and Nallasivam in respect of power agent, viz., Nagaraj, had executed a sale deed in favour of K.S.Balakrishnan and Nallasivam. Therefore, the sale deed is null and void and the petitioners/accused, being legal heirs of the said Venkatachalam, have title over the property. Hence, the first and second accused, being wife and daughter of the deceased Venkatachalam, have relinquished their right over the property executed in favour of the third accused. Therefore, no offence is made out.



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6. A perusal of the records reveals that admittedly the deceased

VENKATACHALAM owned a property ad-measuring 25 cents comprised in R.S.No.52/5 situated at Chittode Village, Bhavani Taluk, Erode District, by virtue of the registered sale deed dated 10.07.1972. While he was alive, he had entered into an agreement for sale with one K.P.Kumaresan on 25.03.1993 in favour of one Nagaraj, though it was specifically stated that he has to register the sale deed in favour of the agreement holder or in favour of the persons, who were directed by the agreement holder. Thereafter, on 23.11.1993, by a registered sale deed, the power of attorney holder, viz., Nagaraj, executed a sale deed in favour of K.S.Balakrishnan and Nallasivam. In turn, they executed the sale deed in favour of the second respondent herein by a registered sale deed dated 18.09.2014. The said Venkatachalam died on 02.01.2012. If at all any grievance over the executed sale deed by the said Nagaraj in favour of K.S.Balakrishnan and Nallasivam, the principal viz., Venkatachalam, while he was alive, he would have lodged a complaint as against the power of attorney. After demise of the said Venkatachalam viz., on 02.01.2012, the accused 1 & 2, being legal heirs of the said Venkatachalam, who are wife and daughter of the said Venkatachalam, had relinquished the right over the property since they have no title over the property. Already the subject property was sold in favour of K.S.Balakrishnan and Nallasivam. In



turn, they had executed a sale deed in favour of the second respondent, when the said Venkatachalam, the principal was very much alive. Hence, in order to grab the property, they had executed the release deed in favour of the third accused. Therefore, all the offences were clearly made out by the petitioners and the petitioners failed to raise any grounds before the Trial Court.

7. 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.



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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.

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

9. 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



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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.

10. 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.

11. In view of the above, this Court is not inclined to quash the C.C.No.3 of 2021 on the file of the Special Judicial Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases, Erode. Accordingly, this Criminal Original Petition stands dismissed. The personal appearance of the 1st and 2nd petitioners alone 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,



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questioning under Section 313 Cr.P.C. and at the time of passing judgment.

The Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. The petitioners are at liberty to raise all the grounds before the Trial Court. Consequently, connected miscellaneous petitions are closed.

16.10.2023

Internet : Yes / No

Index : Yes / No

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To

1. The Special Judicial Magistrate Court,
Special Court for Exclusive Trial of Land Grabbing Cases,
Erode

2. The Sub Inspector of Police,
Land Grabbing Special Cell,
Erode District.

3. The Public Prosecutor,
High Court, Madras.



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