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Crl.O.P.Nos.32800 and 32803 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

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

Crl.O.P.Nos.32800 and 32803 of 2019

and

Crl.M.P.Nos.18072, 18073, 18076 and 18077 of 2019

Crl.O.P.No.32800 of 2019:-

1. Mani
2. Mari @ Marimuthu
3. G.Jayapal
4. G.Sivalingam
5. Jagadeesan

... Petitioners

-Vs-

1. The State represented by
The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.
(Crime No.30/2012)

2. R.Prabhakaran

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the criminal case in CC.No.414 of 2017 on the file of the learned Judicial Magistrate No.II, Vellore and quash the same by allowing this quash petition.

For Petitioners	: Mr.P.Krishnan
For R1	: Mr.L.Baskaran
	Government Advocate (Crl.side)
For R2	: Mr.K.M.Balaji



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Crl.O.P.No.32803 of 2019:-

1. Jagadeesan

2. Uma Maheswari

... Petitioners

-Vs-

1. The State represented by
The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.
(Crime No.30/2012)

2. R.Prabhakaran

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the criminal case in C.C.No.415 of 2017 on the file of the learned Judicial Magistrate No.II, Vellore and quash the same by allowing this quash petition.

For Petitioners	: Mr.P.Krishnan
For R1	: Mr.L.Baskaran
	Government Advocate (Crl.side)
For R2	: Mr.K.M.Balaji

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.414 and 415 of 2017, on the file of the learned Judicial Magistrate No.II, Vellore.

2. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.side) for the first respondent and the learned counsel for the



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second respondent and perused the materials available on record.

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3. Both the petitions are arising out of same Crime No.30 of 2012.

Therefore, this Court is inclined to pass common order.

4. The petitioners in Crl.O.P.No.32800 of 2019 are arrayed as A1 to A4 and A7. The petitioners in Crl.O.P.No.32803 of 2019 are arrayed as A1 and A2.

5. The case of the prosecution is that the land in S.No.849/6 of Mosur Village, Arakkonam Taluk, Vellore District belonged to one Ponnammal. It is alleged that A1 and A2 had executed a Power of Attorney dated 12.05.1994 vide Document No.38 of 1994 in favour of one Gunapolavaram to sell the land. The land in S.No.842/6 of the said Village belong to one Govinthan. A3 and A4 had also executed a Power of Attorney dated 19.08.1993 vide Document No.130 of 1993 in favour of the said Gunapolavaram to sell the land. Therefore, the said Gunapolavaram is the power agent of A1 to A4. He had sold the lands to one K.Vadivel and V.Parameswari in the year 2006. Thereafter, A1 to A4 and A7 had entered into criminal conspiracy and created forged documents and the accused had again sold the property to the complainant under the sale deed



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dated 06.09.2010. Hence, the complaint.

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6. On receipt of the complaint, the first respondent registered FIR in Crime No.30 of 2012 for the offences punishable under Sections 406, 420, 463, 464, 465, 468, 506(ii) read with 120(b) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.414 of 2017 for the offences under Sections 120(b), 420, 467, 468 read with 471 of IPC as against A1 to A4 and A7. After investigation, an additional report was filed and the same has been taken cognizance in C.C.No.415 of 2017 for the offences under Section 506(ii) of IPC as against A1 and A2.

7. The land comprised in S.No.849/6 of Mosur Village, Arakkonam Taluk, Vellore District belongs to one Ponnammal. The first and second accused had executed a Power of Attorney in favour of one Gunapolavaram vide Document No.38 of 1994 dated 12.05.1994. The land comprised in S.No.842/6 of the very same village belongs to one Govindan. A3 and A4 had also executed a Power of Attorney in favour of the said Gunapolavaram vide Document No.130 of 1993 dated 19.08.1993. All the accused conspired together and fabricated the documents by forging several documents for the purpose of



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cheating the defacto complainant by using those forged documents as genuine documents. They made two sales for the very same property and received the sale consideration. Therefore, there are incriminating materials to attract the offences under Sections 120(b), 420, 467, 468 read with 471 of IPC as against all the accused persons. In order to attract the offences under Section 506(ii) IPC, there are also materials available to attract the said offence as against A1 and A2.

8. 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



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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.

9. 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.”

10. 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



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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.

11. 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.

12. In view of the above, this Court is not inclined to quash the proceedings in C.C.Nos.414 and 415 of 2017, on the file of the learned Judicial Magistrate No.II, Vellore. However, 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



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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.Nos.414 and 415 of 2017, within a period of six months from the date of receipt of a copy of this order.

13. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

15.11.2023
(2/2)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

To

1. The Judicial Magistrate No.II, Vellore.
2. The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.



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