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Crl.O.P.No.32757 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.No.32757 of 2019
and
Crl.M.P.Nos.18058 and 18060 of 2019

1. Uma Maheswari
2. Subramani
3. Jagadeesan
4. Thulasi @ Thulasi Raman ... Petitioners

-Vs-

1. The State represented by
The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.
(Crime No.56 of 2010)

2. V.Pugazendhi ... 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.355 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



Crl.O.P.No.32757 of 2019

ORDER

This Criminal Original Petition has been filed to quash the proceeding in CC.No.355 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 second respondent and perused the materials available on record.

3. The case of the prosecution is that A1 had sold the property ad-measuring 1.32 acres in S.F.No.848/5 at Mosur Village by a registered sale deed dated 05.11.2007 vide Document No.9090 of 2007 to the defacto complainant. When the defacto complainant proceeded to take possession of the said property, he came to know that A1 had executed the above said sale deed, without having any legal right or title over the property. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.56 of 2010, for the offences punishable under Sections 120(b), 420, 467, 468, 471, 506(ii) read with 109 IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.355 of 2017 by the Trial Court for the offences under Sections 120(b),



CrI.O.P.No.32757 of 2019

420, 467, 468, 471, 506(ii) read with 109 IPC.

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5. There are totally five accused, in which the petitioners are arrayed as A1 to A3 and A5. The 4th accused died and as such, all the charges are abated as against him. According to the petitioners, the second respondent purchased the subject property after verifying the marketable title of the first accused. Therefore, the second respondent is estopped from giving the complaint as against the purchaser. There was a registered sale deed in compliance with the provisions of the Registration Act. Therefore, it is valid as per Section 59 and 60 of the Registration Act. The sale deed came into existence on 05.11.2007, whereas, the second respondent lodged a complaint only on 09.11.2010 viz., after a period of three years. The petitioners have not committed any offence of forgery by creating any false documents.

6. A perusal of documents revealed that the subject property was originally owned by Perumal, Chinnappan and Subramani. After the demise of the said Perumal, his legal heir one Murugasan and after the demise of the said Chinnappan, his wife Selvarani and the said Subramani had executed a Power of Attorney in favour of one A.P.Gokul vide Document No.75 of 2000. In turn, the power holder had executed a sale deed in favour of one Vadivelu and his



Crl.O.P.No.32757 of 2019

wife Parameswari by a sale deed dated 05.02.2007. It was registered vide Document No.5631 of 2007 on 26.07.2007. Whereas, one owner viz., Subramani had executed a sale deed in favour of the first accused by the registered sale deed dated 12.02.2007. In turn, the first accused executed a sale deed in favour of the second respondent on 05.11.2007. After registration of the sale deed in favour of the first accused, other legal heirs of the original owners Murugesan, Perumal and other legal heirs executed a consent deed in favour of the first accused. However, the first sale deed, executed in favour of Vadivelu and his wife Parameswari are none other than the parents of the second respondent herein. Therefore, the grounds raised by the petitioners are mixed question of facts and the documents produced by the petitioners can be tested only before the Trial Court during the Trial.

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



Crl.O.P.No.32757 of 2019

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.

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



CrI.O.P.No.32757 of 2019

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 **CrI.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



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CrI.O.P.No.32757 of 2019

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.

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.



CrI.O.P.No.32757 of 2019

WEB COPY

11. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.355 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 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.355 of 2017, within a period of six months from the date of receipt of a copy of this order.

12. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

15.11.2023
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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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CrI.O.P.No.32757 of 2019

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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