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Crl.O.P.No.33029 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No. 33029 of 2019

and

Crl.M.P.No.18217 of 2019

and

Contempt Petition No.2388 of 2022

Crl.O.P.No.33029 of 2019:-

K. Nandhakumar

...Petitioner / A2

-Vs-

1.The State Rep. by,
Inspector of Police,
Land Grabbing Special Cell,
District Crime Branch,
Thiruvallur District.

... Respondent / Complainant

2.Ezhil Arasan

... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceedings in F.I.R.No.14 of 2019 on the file of the District Crime Branch Land Grabbing Cell, Thiruvallur District and to quash the same.



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K. Nandha Kumar

... Petitioner

Versus

1.Mr. Sethupathi
Inspector of Police
District Crime Branch
Land Grabbing Cell, Thiruvallur.

Now presently working at
Inspector of Police
Arakonam Taluk Police Station
Arakonam, Ranipet District,
Pin : 631 001
Respondent

...

Prayer :- This petition filed under Section 11 of Contempt of Courts Act, 1971 to punish the respondent for willful disobedience of the order dated 06.12.2019 passed by this Court in Crl.M.P.No.18217 of 2019 in Crl.O.P.No.33029 of 2019.

For Petitioner	: Mr. M. Sasikumar, in both petitions
For R1	: Mr. A. Damodaran, Addl. Public Prosecutor in both petitioner
For R2	: No appearance in Crl.O.P.No.33029 of 2019



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ORDER

This Criminal Original Petition has been filed seeking to quash the First Information Report in Crime No.14 of 2019 on the file of the District Crime Branch, Land Grabbing Cell, Thiruvallur District, for the alleged offences under Sections 420, 465, 468 and 471 of IPC.

2. It is alleged in the First Information Report that the petitioner had made a false claim of title in respect of a land belonging to the defacto complainant; that the defacto complainant purchased the land from the legal heirs of one Lakshmiammal by Sale Deed dated 27.10.2011; that thereafter the patta was also transferred in the name of the defacto complainant in respect of 42 cents by the proceedings dated 09.01.2012; that subsequently, the 1st accused who happens to be the father of the defacto complainant, in order to grab the property belonging to the said Lakshmiammal had executed a Settlement Deed in favour of the petitioner herein by Document No.705 of 2007 dated 02.02.2007; that the document was created only to grab the property belonging to the defacto complainant.



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3. The learned counsel for the petitioner would submit that this is a property dispute between the petitioner / A2, who is the son of the 2nd wife of A1 and the defacto complainant who is the son of the 1st wife of A1; that the said civil dispute is sought to be given a criminal colour; that admittedly there is no forgery of any document; that even, if the allegations are accepted to be true, it would only be a false claim of title and execution of Settlement Deed in favour of the petitioner by A1; and that the case is covered by the judgment of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (2009) 8 SCC 751.***

4. The learned counsel for the petitioner submitted that this Court had granted an order of interim stay of further investigation in the impugned FIR dated 06.12.2019. Thereafter, it was extended on 27.01.2020. In the meanwhile, the 1st respondent who were aware of the interim order passed by this Court had filed the final report on 31.12.2019, which was taken on file by the learned Judicial Magistrate, Special Court for Land Grabbing Case, Thiruvallur in C.C.No.55 of 2019. The learned counsel for the petitioner submitted therefore that the 1st respondent is guilty of contempt and the petitioner had filed the above



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contempt petition in Cont.P.No.2388 of 2022.

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5. The learned Additional Public Prosecutor, per contra, submitted there are allegations in the final report, which was filed pursuant to the impugned FIR and hence the proceedings need not be quashed.

6. Since the final report has been filed on the basis of the impugned FIR, this Court is inclined to go into the allegations in the final report to ascertain whether any offence is made out. It is seen from the allegations in the final report that the disputed property originally belonged to one Lakshmiammal. The defacto complainant had purchased the property from the said Lakshmiammal by the Sale Deed dated 27.10.2011. The allegation is that in respect of the same property, the defacto complainant's father (A1) in order to grab the property had executed the Settlement Deed in favour of the petitioner for 22 cents out of 42 cents of the disputed property and thus the accused had committed the offences under Sections 420, 465, 468, 471 read with 294(b) and 506(i) IPC.

7. This Court on perusal of the final report finds that the only allegation is that in respect of the property belonging to the defacto



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complainant, the defacto complainant's father / A1 had executed a Settlement Deed in favour of the petitioner, who is the 2nd wife son of A1.

It is also seen that earlier the father had settled 10 cents in respect of same property in favour of the defacto complainant. Subsequently, it is alleged that the defacto complainant realizing that A1 had no title had purchased the disputed property from Lakshmiammal. This Court finds, that even if the allegations are accepted to be true, the offences are not made out, as it is covered by the judgment of the Hon'ble Supreme Court in ***Mohammad Ibrahim vs. The State of Bihar (2009) 8 SCC 751***. The relevant observations are extracted hereunder.

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona



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fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of



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the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

...

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention



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thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

8. Since it is only a case of false claim of title and no offence of forgery or deception is made, the final report filed pursuant to the investigation of the impugned FIR is liable to be quashed. Hence, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.



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9. It is stated that the final report was originally filed before the

District Munsif -cum- Judicial Magistrate, Gummidipoondi and numbered as C.C.No.1 of 2021 and thereafter, as per the order of this Court vide ROC No.93405/A 2021 G4, dated 19.01.2022, the said calender case was transferred to the Special Land Grabbing Court, Thiruvallur was and re-assigned in C.C.No.44 of 2022. Further, as per the Memorandum of this Court vide Lr.ROC.No.93405/A/2021/G4 dated 01.10.2021 and 19.01.2022, the said Special Land Grabbing Court, Thiruvallur closed on 19.05.2023 and C.C.No.44 of 2022 was transferred to the District Munsif -cum- Judicial Magistrate Court, Gummidipoondi and numbered as C.C.No.32 of 2023.

10. The Registry is directed to mark a copy of this order to the learned District Munsif -cum- Judicial Magistrate, Gummidipoondi.

11. As regards the contempt petition, this Court finds that the respondent police had filed an affidavit stating that it was an inadvertent error and hence, he is tendering an unconditional apology for the same. This Court accepts the apology tendered by Mr. Sethupathi, Inspector of Police, District Crime Branch, Land Grabbing Cell, Thiruvallur and also



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directs him to be cautious in future and not disregard the orders passed
by this Court. Hence, the Contempt Petition is closed.

28.06.2023

smv

Index : Yes/No

Speaking order : Yes / No

Neutral Citation : Yes / No

To,

1. Inspector of Police,
Land Grabbing Special Cell,
District Crime Branch,
Thiruvallur District.
- 2.The District Munsif -cum- Judicial Magistrate, Gummidipoondi.
- 3.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.

smv



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