



Crl.R.C.(MD).No.13 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD).No.13 of 2022

and

Crl.M.P(MD).No.250 of 2022

1.K.Ponnusamy

2.Subramanian

3.Periyasamy

4.Lakshmi

5.Ramya

.. Petitioners / Accused 1 to 4 & 6

Vs.

1.State represented by
The Inspector of Police,
Karur Town Police Station,
Karur District.
Cr.No.682/2015

.. 1st Respondent

2.S.Sivasamy

.. 2nd Respondent /Defacto Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397
r/w 401 of Cr.P.C., to call for the records and set aside the order passed in
C.M.P.No.3027 of 2017 dated 02.01.2020 on the file of the Judicial
Magistrate No.1, Karur.



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For Petitioners : Mr.K.Suresh
For R1 : Mr.M.Muthumanikkam,
Government Advocate (Crl.Side)
For R2 : Mr.M.U.Mohamed Aslam
for M/s.Ajmal Associates

ORDER

The petitioners have been arrayed as accused in Crime No.682 of 2015 on the file of the first respondent police. As per the FIR, they are said to have committed offence under Sections 420, 468, 477, 120 B & 34 IPC. Before the registration of the case, number of civil proceedings as well as writ proceedings were pending between the parties. In the writ proceedings, this Court in W.P(MD)No.12855 of 2013 by order dated 25.03.2015 passed the following orders.

“Today, when the matter is taken-up for hearing, the learned counsel for the fourth respondent has brought to the notice of this Court that as against the impugned order the petitioner has already preferred an appeal before the District Revenue Officer concerned and that has also been disposed of. In fact, in respect of the very same issue, there is a suit pending in O.S.No.232 of 2013 on the file of the District Munsif, Karur.



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2.In view of the above, this Writ Petition stands closed making it clear that the parties will abide by the outcome of the suit pending between the parties. No Costs. Consequently, the connected miscellaneous petitions are closed.”

2. Thereafter, a complaint was given and the same was registered in the above crime number for the alleged offence under Sections 420, 468, 477, 120B read with 34 IPC. The said crime was registered on 21.09.2015, ie., long after the dismissal of the writ petition on 25.03.2015. The same was investigated by the investigation officer in detailed manner and the investigation officer, after considering the pendency of the suit and all the records and also recording the statement of the parties, came to a conclusion that this issue has to be resolved by the Civil Court, more particularly, he recorded the statement that the petitioner and the respondent's ancestors have the property at Survey No. 47. In the said Survey No.47, they are enjoying the property through the oral partition. On the basis of the oral partition, they are enjoying the separate partition. According to the complainant, there is some mistake in UDR regarding the subdivision of the properties which are in possession



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and enjoyment of the parties. Hence, the father of the respondent namely, Subbarayan made a representation to the Thasildar, Karur, vide a petition, undated and the same was looked by the Firka surveyor on 21.08.2009. On the basis of the order of this Court, sub division was effected on 18.11.2009 and the same was challenged by the second respondent himself on the ground that the said Subbarayan died on 16.07.2009. After this date, it is the case of the second respondent that the signature of Subbarayan was forged by the petitioners and hence, they committed the offence under Sections 420, 468, 477, 120B read with 34 IPC. Without considering the above specific aspect, the investigation officer investigated the complaint and hence they filed the protest petition before the learned Judicial Magistrate No.I, Karur. The learned Judicial Magistrate No.I, Karur, examined number of witnesses and taken the protest petition as a private complaint in C.C.No.1 of 2020 by examining the witnesses and taken cognizance by issuing summons to the petitioners for the alleged offence under Sections 420, 468, 477, 120B read with 34 IPC and closed the report in RCS No.10 of 2016. The order made in C.M.P.No.3027 of 2017 and taken as private complaint on file in



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C.C.No.1 of 2020 is challenged before this Court in the present revision petition.

3. The learned counsel for the petitioners elaborated his argument and made the following submissions:

3.1. Admittedly, both the ancestors, without dividing the property, had enjoyment over the properties on the basis of the oral partition. In the said aspect there is a mistake in UDR. Hence, Subbarayan, during his life time made oral partition and the said partition was finalised only after his death ie., on 08.09.2009,. But before his death, enquiry was completed and hence there is no chance to make the forgery of the signature of the petitioners. Making such application to measure the property allotted to them under the oral partition, no way benefited the petitioners. Hence, they made the submission before this Court that taking cognizance by the learned trial Judge is abuse of process of law and the same is against the principle laid down by the Hon'ble Supreme Court giving criminal colour to the civil dispute.



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3.2. The learned counsel further submitted that both parties filed suit. In the said suit, there is a decree against the petitioners and the second respondent's specific prayer for the mandatory injunction also was dismissed. In the said circumstances, the dispute is only civil in nature. Taking cognizance is not at all made out under the circumstances. Hence, he requested to quash the proceedings in C.C.No.1 of 2020 for which he relied the judgements of the Hon'ble Supreme Court reported as follows:

1. 2021(5)SCC435
2. 2013(11)SCC673
3. 2016SCCOnline Allahabad 583

3.3. On the basis of the reliance, he specifically stated that taking cognizance on the basis of protest petition by the learned Judicial Magistrate No.I, Karur, is abuse of process of law and the same is liable to be quashed.

4. Per contra, the learned counsel for the second respondent, on instructions, submitted that the signature of the deceased Subbarayan was



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forged by the accused persons and hence there was sub-division. To that extent, the investigating agency is bound to investigate the matter in the manner known to law, ie., he has to obtain the signature of the petitioners and do the investigation by obtaining the handwriting expert opinion. Without doing that, they filed the final report on the basis of the enquiry made by the parties and the document relied by the parties and completed the investigation filing negative report in R.C.S.No.10 of 2016, which is not sustainable in law. Hence, the learned trial Judge, after considering the entire sworn statement of the complainant and the remaining witnesses, correctly taken cognizance under Sections 420, 468, 477, 120B and 34 IPC. Hence, there is no legal ground to interfere with the order of the learned trial Judge and also there is no perversity in taking cognizance of the offence. Hence, he seeks for dismissal of this petition.

5. The learned Government Advocate (criminal side) also supported the submission of the learned counsel for the petitioner that the investigating agency, after perusal of the entire records and the dispute between the parties, correctly closed the case and filed the RCS report in R.C.S.No.10 of 2015 before the learned trial Judge. The learned trial



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Judge, before considering the entire evidence, simply on the basis of the sworn statement and other examination of witnesses, took cognizance and hence, he seeks for dismissal of the complaint.

6. This Court has perused the entire records and also considered the submissions of the learned counsel appearing for both sides and the precedents relied upon by them.

7. Admittedly, both parties are the legal heirs of one Ammaiappa Gounder and Subbarayan Gounder. During the life time, they were enjoying their property without division. After their demise, they all entered into oral partition and till date, each party is enjoying the property on the basis of the oral partition. In the said circumstances, considering the UDR mistake, the deceased Subbarayan before his death on 16.11.2016 made a petition to Tahsildar to measure the properties. It is revealed from the document annexed with the RCS report that the Firka surveyor on 21.08.2009 measured the properties and recommended for the Patta. On the basis of the recommendation, the Tahsildar made a subdivision on 28.11.2009. Therefore, the submission of the learned



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counsel for the second respondent that the petitioners forged the signature of the deceased Subbarayan is not correct. This proceedings emanated before his death and completed after his death. In the said circumstances, the allegation of the forgery of the signature of Subbarayan is not correct and also Subbarayan sought sub-division in respect of his enjoyment of properties. In the said circumstances, the allegation against the petitioners' that they forged signature of Subbarayan is not at all correct and the same was properly investigated by the investigating agency and filed the final report as 'mistake of fact' before the learned Judicial Magistrate. Hence, this Court finds all justification on the part of the investigating officer in filing the closure report in RCS.No.10 of 2016 on the file of the learned Judicial Magistrate No.I, Karur.

8. The learned Judicial Magistrate, accepting the protest petition and taking cognizance under Section 200 Cr.P.C, by examining the witnesses P.W1 to P.W4 and issuing summons under Sections 420, 468, 477, 120B and 34 IPC is not at all maintainable under the above state of circumstances. Admittedly, there was no evidence that the petitioners



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manipulated the signature of Subbarayan and it is not the case of the second respondent that the application shown in page No.3 itself is not given by Subbarayan before his death. The deceased Subbarayan submitted an application to sub divide the property before his death on 21.08.2009. The proceeding to measure continued on the basis of his earlier application and sub division was made only on 18.11.2016, ie., after number of years. Therefore, no offence of forgery is made out against the petitioners. In this aspect, the learned counsel for the petitioners correctly relied the following judgments of the Hon'ble Supreme Court to quash the proceedings initiated by the learned Judicial Magistrate in accepting the protest petition filed by the respondent.

(i) 1998 UPCR 118 [M/s. Pepsi Food Ltd. v. Special Judicial Magistrate]

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of



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recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

(ii) 2002 Crl.L.J 996 [Paul George v. State]:

"We feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas..... It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of the jurisdiction being exercised as to in what manner the reasons may be recorded eg, in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by the application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenging without even a whisper of the merits of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially."

(iii) 2005 (8) SCC 89 [S.M.S.Pharmaceuticals Ltd., v. Neeta

Bhalla]:

"Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether



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a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

(iv) 2013(11) SCC 673 [Paramjeet Batra v. State of

Uttarakhand]:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High



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Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

(v) 2021(5)SCC 435 [Krishna Lal Chawla v. State of U.P.,]:

23..... We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land."

9. Following the above principle laid down by the Hon'ble Supreme Court, according to the view of this Court, continuation of criminal proceedings against the petitioners is a clear abuse of process of law and hence, this Court is inclined to quash the proceedings initiated against the petitioners. This Court also taken into consideration of the earlier order passed by this Court in W.P(MD)No.12855 of 2013, dated 25.03.2015, where it is clearly held that a parties directed to redress their dispute in civil Court. Subsequently, all civil proceedings ended in favour of the petitioners and the specific case of the second respondent seeking the issuance of a decree for mandatory injunction in respect of the sub division also negated by the Civil Court and there was no challenge as



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on date. In the said circumstances, the issues between the parties were resolved by the competent civil Court in favour of the petitioner and hence there was no scope for initiating the criminal proceedings.

10. In the result, this Criminal Revision Petition is allowed and the order in C.M.P.No.3027/2017 dated 02.01.2020 taking cognizance in C.C.No.1 of 2020 by the learned Judicial Magistrate No.I, Karur, is liable to be quashed and accordingly quashed. Consequently, connected miscellaneous petition is closed.

11. The observation made in this petition does not have any impact on the pending proceedings between the parties and the civil Court shall dispose the case without influenced by the order passed by this Court in this case.

19.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJJ



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To

- 1.The Judicial Magistrate No.1,
Karur.
- 2.The Inspector of Police,
Karur Town Police Station,
Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

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