



Crl.O.P.(MD)No.13228 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 14.09.2023	Delivered on: . .2023
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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.13228 of 2020
and
Crl.M.P.(MD)No.6065 of 2020

1.Sankara Kalavathi
2.Rajeshwari
3.Sakthi
4.Saraswathi
5.Sundari

... Petitioners

Vs.

1.The State rep.by
The Inspector of Police,
Kadayanallur Police Station,
Tirunelveli District.

2.Lakshmi

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.456 of 2020 on the file of the first respondent police and quash the same.

For Petitioners : Mr.A.Sivasubramanian



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For R1 : Mr.M.Sakthi Kumar,
Government Advocate(Crl.side)
For R2 : Mr.N.Mohideen Basha

ORDER

This criminal original petition has been filed to quash the first information report in Cr.No.456 of 2020 pending on the file of the first respondent police.

2.According to the petitioners, the second respondent preferred a complaint before the learned Magistrate and the same was forwarded to the first respondent and based on the same, the first respondent registered FIR in Cr.No.456 of 2020 for the offence under Sections 109, 416, 419, 420, 463, 464, 465, 467, 468, 471 IPC. According to the petitioners, already civil suit was filed for partition in O.S.No.79 of 2007 before the Principal Sub Court, Tenkasi and preliminary decree was passed on 05.11.2008 and thereafter, final decree application was filed in I.A.No.60 of 2009 and final decree was also passed. Based on the final decree, the trial Court allotted share to Vijaya and Gomathi along with legal heirs of Ammani Ammal. Since the final decree was with regard to



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above mentioned heirs, the remaining shares allotted to the legal heirs of Kaliasammal, who are the defacto complainant and the petitioners herein. In the above said circumstances, the defacto complainant did not co-operate for the partition and further allotment of the properties of their shares and hence, the petitioners were left with to execute partition deed with regard to their share of the property. It was also informed to the defacto complainant that the present execution of partition deed and execution of sale deed in favour of one among them is only with regard to their share of property within the entire extent and none of the share with regard to the defacto complainant is disturbed. Even then, the defacto complainant did not co-operated with the petitioners and approached the first respondent police and lodged complaint and since there was no action, the defacto complainant filed private complaint and the same was forwarded to the first respondent. Further, the contention of the defacto complainant is that without obtaining signatures, the petitioners have executed sale deed dated 27.11.2019 and thereby, the petitioners 2 to 5 executed first item of the suit schedule property in favour of the first petitioner. Further allegation is that the petitioners have executed partition deed in respect of the second item of the suit schedule property and have partition according to their own whims



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and fancies, with regard to the property, which is in joint possession. In fact, the allegations made in FIR are false and concocted and there is no iota of truth in the complaint. There is no prima facie materials available to constitute the offence. The dispute is civil in nature and the defacto complainant without availing the civil remedy, in order to harass the petitioners, filed this criminal complaint. Therefore, the pending FIR is pure abuse of process of law and the same is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioners would submit that the petitioners herein are share holders of the property and thereby, they executed sale deed dated 27.11.2019. Already the property was divided through final decree in O.S.No. 79 of 2007 and thereafter a portion of the property allotted to the petitioners and the defacto complainant. One portion of the property was not partitioned, since it is un-dividable. Thereafter, the petitioners created document with regard to their share and thereby, the petitioners did not commit any offence as alleged in the complaint. After filing complaint, the learned Magistrate forwarded the same to the first respondent under Section 156(3) Cr.P.C., and based on



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the same, the first respondent registered FIR, which is nothing but pure abuse of process of law. Even the contents of FIR, would not constitute any offence as alleged in FIR. Therefore, the pending FIR is clear abuse of process of law and the same is liable to be quashed.

5.The learned counsel appearing for the second respondent would contend that the disputed property was allotted in common to the second respondent and the petitioners herein and they without knowledge of the second respondent, they themselves created sale deed as if they entered into sale between them. In fact, the property is in-divisible and thereby, final decree in O.S.No. 79 of 2007 was passed and property was not partitioned and kept as common. The second respondent got 1/12th share of the property and Item Nos. 1 and 2 property was not divided. The petitioners herein created forged document, as if the above said undivided property is their share, in order to cheat the second respondent. Hence, the second respondent preferred complaint before the learned Magistrate and the same was forwarded to the first respondent. The case is now under investigation and at this stage, this petition is not maintainable. Since the matter requires elaborate investigation, this petition is liable to be dismissed.



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6.The learned Government Advocate(Crl.side) appearing for the first respondent would submit that the second respondent preferred a complaint before the learned Magistrate and the same was forwarded to the first respondent and thereby, the first respondent registered FIR in Cr.No.456 of 2020 for the offence under Sections 109, 416, 419, 420, 463, 464, 465, 467, 468, 471 IPC. Now the case is under investigation. As per complaint, there are prima facie materials available to constitute offence and thereby, the matter requires elaborate investigation. Hence, this petition is liable to be dismissed.

7.Heard both sides and perused the materials available in the records.

8.It is admitted fact that the petitioners are share holders of the disputed property, in which, a portion was allotted as common to the parties. It is also admitted fact that already suit was filed in O.S.No.79 of 2009 for partition and separate possession. I.A.No.60 of 2009 was filed for final decree and the same was allowed. As per final decree, this property was kept under common, since it was in-divisible. While so, the petitioners herein executed sale



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deed in respect of the above said common property. The second respondent's contention is that in order to cheat the second respondent, they allotted a lesser value portion to the second respondent and they allotted higher value portion for their share and thereby, they cheated the second respondent. They also created forged document and thereby, they committed offence.

9. Since the petitioners herein are share holders and they also executed sale deed between them, that too, after excluding the share of the second respondent, the offence under Sections 109, 416, 419, 420, 463, 464, 465, 467, 468, 471 IPC would not attract. Admittedly, the petitioners left the share of the second respondent and thereafter only, they executed sale deed. If at all the second respondent affected by the above said sale deed, her remedy is to go to the civil Court and seek remedy in accordance with law, but not by preferring the complaint for the offence under Sections 109, 416, 419, 420, 463, 464, 465, 467, 468, 471 IPC. Further, even according to the complaint and FIR, the above said offences are not made out and the allegations are not in specific and vague allegations. Since the petitioners have executed deed in respect of their share and without any intention, no offence of cheating, creation of forged documents are made out. Therefore, as stated



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above, this Court is of the opinion that the pending FIR in Cr.No. 456 of 2020 is pure abuse of process of law and thereby, the same is liable to be quashed.

10.In the result, this criminal original petition is allowed and the pending FIR in Cr.No.456 of 2020 on the file of the first respondent police is hereby, quashed. Consequently, connected miscellaneous petition is closed.

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Index :yes/No
Internet:yes/No
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To

- 1.The Inspector of Police,
Kadayanallur Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J

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Pre-Delivery Order
made in
Crl.O.P.(MD)No.13228 of 2020

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