



Crl.O.P.(MD)No.13049 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 14.09.2023

Delivered on: . .2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.13049 of 2020
and Crl.M.P.(MD)No.5951 of 2020

1.Vijaya

2.Gomathi

3.Mariappan

4.Sankaran

5.Sakthivel

... Petitioners

Vs.

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

2.Subbulakshmi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.455 of 2020 on the file of the first respondent police and quash the same.

For Petitioners : Mr.A.Sivasubramanian

For R1 : Mr.M.Sakthi Kumar,
Government Advocate(Crl.side)

For R2 : Mr.N.Mohideen Basha



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ORDER

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This criminal original petition has been filed to quash the first information report in Cr.No.455 of 2020 pending on the file of the first respondent police.

2. According to the petitioners, based on the complaint given by the second respondent, the first respondent police have registered case in Cr.No.455 of 2020 for the offence under Sections 109, 416, 419, 420, 463, 464, 465, 467, 468, 471 IPC. The prosecution case is that the defacto complainant has preferred complaint before the learned Judicial Magistrate, Tenkasi in Crl.M.P.No.6 of 2020 alleging that already suit was filed before the Principal Sub Court, Tenkasi in O.S.No.79 of 2007 for the relief of partition and separate possession. As per order in I.A.No.60 of 2009 dated 16.12.2010 and as per final decree, properties were allotted to the respective shares of the parties. The properties in Item No.1 and 2 mentioned in the petition were undivided property and final decree itself it was stated that it is in-divisible and thereby, it is common property to the defacto complainant as well as the accused. While so, A1 to A5, on 27.11.2019 created document in Doc.No.5152 of 2019 for partition, in that property,



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the defacto complainant also having 1/12th share. But the accused, sold the said property as if it was partitioned and less value of portion is shown as defacto complainant's share and other valuable portions shown as share of the accused. Thereby, they cheated and created forged documents. In fact, the petitioners have no any intention to cheat anybody and they are entitled to get the property and they have share over the property and thereby, they partitioned the property and the defacto complainant's share was not disturbed through partition deed. Therefore, they have not committed any offence. They have no any intention to cheat and no dishonest inducement of delivery of property, forgery by making false document for the purpose of cheating and thereby, the averments made in FIR are not constitute any offence. Further, the matter is pure civil in nature and the defacto complainant has given criminal colour for the civil dispute. 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 entered into partition deed dated 27.11.2019. Already the property was divided through final decree in O.S.No.



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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 partition 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 the same, the first respondent registered FIR, which is nothing but pure abuse of process of law. Even the contention 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 partition deed as if they entered into partition between them. In fact, the property is in-divisible and thereby, final decree in O.S.No.79 of 2007 passed and property was partitioned. The second respondent got 1/12th share of the property and Item Nos. 1 and 2 property was not divided. The petitioners herein created



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forged document, as if the above said un-divided 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.

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.455 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.



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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 partition 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 partition deed between them, that too, after excluding 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 entered into partition deed. If at all the second respondent affected by the above said partition deed, her remedy is to go to the civil Court and seek remedy in accordance



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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 above, this Court is of the opinion that the pending FIR in Cr.No.455 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.455 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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P.DHANABAL, J

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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.

Pre-Delivery Order
made in
Crl.O.P.(MD)No.13049 of 2020

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