



Crl.O.P.(MD).No.13246 of 2020 and etc

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).Nos.13246, 15044, 15049 and 15053 of 2020

and

Crl.M.P.(MD) Nos.6084, 7213, 7214 and 7217 of 2020

Crl.O.P(MD)No.13246 of 2020:

Abdul Nazar

... Petitioner/Accused No.1

Vs.

1. The State Represented by,
The Inspector of Police,
Central Crime Branch,
Madurai City,
(Crime No.48 of 2019)

... 1st Respondent/Complainant

2. N.Faizal Khan
Complainant

... 2nd Respondent/Defacto

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.48 of 2019 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.



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Crl.O.P(MD)No.15044 of 2020:

Syed Mydeen

... Petitioner/Accused No.4

Vs.

1. The State Represented by,
The Inspector of Police,
Central Crime Branch,
Madurai City,
(Crime No.48 of 2019)

... 1st Respondent/Complainant

2. N.Faizal Khan

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.48 of 2019 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

Crl.O.P(MD).No.15049 of 2020:

Khaleel Rahuman

.. Petitioner/Accused No.5

Vs.

1. The State Represented by,
The Inspector of Police,
Central Crime Branch,
Madurai City,
(Crime No.48 of 2019)

... 1st Respondent/Complainant

2. N.Faizal Khan

.. 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.48 of



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2019 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

Crl.O.P(MD).No.15053 of 2020:

Manickam

... Petitioner/Accused No.7

Vs.

1. The State Represented by,
The Inspector of Police,
Central Crime Branch,
Madurai City,
(Crime No.48 of 2019)

... 1st Respondent/Complainant

2. N.Faizal Khan
Complainant

... 2nd Respondent/Defacto

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.48 of 2019 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

In all cases:

For Petitioners : Mr.B.Prahalad Ravi

For Respondents : Mr.M.Muthumanikkam
Government Advocate(Crl.Side)
for R1

: Mr.D.Shanmugaraja Sethupathi
for R2



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COMMON ORDER

Since the petitioners in all petitions are accused in the same crime number on the file of the first respondent police, these petitions are taken up together and disposed by way of this common order.

2. The case of the prosecution is that the petitioners and the defacto complainant are brothers. There was a property dispute relating to a house property situated at Ismayilpuram, Munichalai Road, Madurai between the defacto complainant and the 1st accused which resulted in filing of O.S.No.235 of 2016 on the file of the District Munsif Court, Madurai Town. Relating to the shopping premises at Meenakshi Bazar, Madurai, another civil suit in O.S.No.530 of 2016 was filed on the file of the Additional District Munsif Court, Madurai. In both the suits, the defacto complainant is the party and the said suits were instituted based on the Hiba executed orally on 15.09.2012 and further another document was executed by the defacto complainant on 25.06.2013. Further, he lodged a complaint to the Thilagar Thidal Police Station on 23.08.2016 and CSR.No.352 of 2016 was assigned and enquired and the same was subsequently closed as 'civil in nature'. The said fact was also recorded in



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Crl.O.P(MD).No.19249 of 2019 by this Court by order dated 24.01.2022.

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Now, again, for the same allegations the present complaint was lodged by the defacto complainant. Hence, these petitions.

3. The petitioner and other accused is said to have committed the offence under Sections 465, 468, 471 and 120B IPC. The allegation is that the accused conspired together and created a forged lease deed to a shopping complex belongs the defacto complainant. In the said allegation FIR was registered.

4. The learned counsel for the petitioners submitted that the house property is concerned, the suit which is pending before the competent Court. In the suit, the stand of the petitioner is that a Hiba took place in the year 2016. On the basis of the Hiba, he executed the settlement deed relating to the house property in favour of A2. Insofar forged lease deed relating to the shopping complex is concerned, the petitioners did not commit any offence of forgery of the lease deed. The learned counsel further submitted that in view of the pendency of the suit, this case was registered much later after 7 years from the date of occurrence. Hence,



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he seeks the quashing of the FIR in Crime No. 48 of 2019 on the file of the 1st respondent police. He further submitted that in the FIR, it is stated that the petitioners stolen the documents from the custody of the defacto complainant, but in the written statement filed by the petitioner/A1 in the suit, it is stated that this document was entrusted with the petitionerA1. Hence, there is a contradiction between the statement of the contention in the FIR and the written statement. In the said circumstances, he seeks for quashment of the FIR.

5.The learned Government Advocate(Criminal Side), on instructions, submitted that the investigation was completed and proper final report was filed under Sections 406, 468, 465, 471 and 120B IPC before the jurisdictional Court and the same was taken on file. He further submitted that even though in the FIR it is stated that the document was stolen but the investigation reveals that there is endorsement in the document and the same was misused by A1. Hence, Section 406 IPC was incorporated by the investigating officer. Hence, the learned Additional Public Prosecutor submitted that defence of the petitioners can not be looked at the stage of the quashing of the FIR for which he relied upon



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the judgments of the Hon'ble Supreme Court reported in **2022(11) SCC 705**, **2022 (2) SCC 129**.

6. The learned counsel for the defacto complainant reiterated the submissions made by the learned Government Advocate(Criminal Side) and specifically submitted that there is a conspiracy between all the accused to grab the property of the defacto complainant. The defence intends to stop the proceedings of the present criminal case and hence, he seeks dismissal of these petitions.

7. This Court has considered the rival submissions made by both side counsel and perused the precedents relied upon by them.

8. There is a allegation of conspiracy to defraud the defacto complainant's property. In pursuance of the conspiracy two forged documents were said to have been created by the petitioner. One set of allegation is that accused created the lease deed relating to the shopping complex. Another set of allegation is that the accused created forged settlement deed without title relating to the house property. The said



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allegations need detailed investigation. During the course of investigation into the above serious allegation, this court has no jurisdiction to dwell upon the defense of the petitioner that there was a “hiba” and other pleadings in the suit. The Hon’ble Supreme Court has reiterated the principle that there is no bar to entertain the criminal complaint even in the case of the availability of the civil remedy. Further, the petitioners’ case does not come under any of the parameters laid down by the Hon’ble Supreme Court in the “**State of Harayana Vs Bhajanlal**” and also the Learned Additional Public Prosecutor rightly placed the following paragraph of the judgments of the Hon’ble Supreme Court reported in the case of **Gimpex (P) Ltd., V. Manoj Goel** reported in **2022(11) SCC 705**, has held as follows:

It is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The Court considering the prayer for quashing does not adjudicate upon a disputed question of fact.

8.1. In the case of **Mahendra K.C., vs. State of Karnataka** reported in **2022 (2) SCC 129** has held as follows:

Prima facie decision in a case where the entire



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facts are incomplete and hazy-Held, not permissible, particularly when the evidence hasnot been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.

Therefore, this court is not inclined to entertain this quash petition.

9. Accordingly these Criminal Original Petitions stand dismissed with the above observation. Consequently, the connected criminal miscellaneous petitions are closed.

17.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJL/sbn

To

1. The Inspector of Police,
Central Crime Branch,
Madurai City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL/sbn

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