BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.13998 of 2021
and
Crl.M.P(MD) No.7305 of 2021

1. M.Selvamani
2. T.Rajkumar ... Petitioners

Vs.

1. The Inspector of Police
   Sipcot Police Station
   Tuticorin
2. S.Thangaraj ..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No. 211 of 2019 on the file of the Inspector of Police, Sipcot Police Station, Tuticorin, Tuticorin District and quash the FIR in Crime No. 211 of 2019 on the file of the Inspector of Police, Sipcot Police Station, Tuticorin, Tuticorin District as against the above petitioners/accused No.4 & 5.

For Petitioners	: Mr.Ka.Ramakrishnan
For R.1	: Mr.M.Sakthikumar Government Advocate(Crl.Side)
For R-2	: Mr.P.P.Alwin Bala

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report in Crime No. 211 of 2019 on the file of the Inspector of Police, Sipcot Police Station, Tuticorin, Tuticorin District

2. According to the petitioners the properties comprised in S.No.113/2 of Sankaraperi Village, Tuticorin District to an extent of 1 acre 30 cents originally belonged to one Gnanami Nadar and after his demise the property devolved to his son namely Samuel Nadar who is the father of the defacto complainant and the above said Samuel Nadar died on 07.03.1986 leaving behind the second respondent and his brothers as his legal heirs. The above said Samuel had purchased the property through a registered sale deed dated 04.01.1965 and thereafter it was under their enjoyment and possession. The first accused who is having the same identical name of the father of the second respondent has created a general Power of Attorney stating that it was his ancestral property and has derived title through patta bearing Patta No.503 and on the strength of the patta the first accused created a general Power of Attorney vide Doc. No.678/2018 dated 23.03.2018 for the above said property in favour of the second accused. The second accused on the strength of the general Power of Attorney has divided the land into plots and sold the plots to A3 to A5. Accordingly the fifth accused/second petitioner has purchased land to an extent of 10.68 cents through a

registered sale deed vide document No.645/2018 dated 06.07.2018 and the fourth accused/first petitioner has purchased a land to an extent of 10.11 cents through a registered sale deed vide Document No.646/2018 dated 06.07.2018 and thereafter they are in enjoyment and possession of the property. The second respondent later gaining the knowledge has lodged complaint before the first respondent police and the first respondent has registered a case against the petitioners in Crime No.211 of 2019 for the offences under Sections 420,465,467,468 of IPC and the same is pending investigation. The above said First Information Report registered as against the petitioners is erroneous and do not have any iota to proceed against the petitioners and hence the First Information Report is liable to quashed.

3. The learned counsel appearing for the second respondent filed counter stating that the petitioners are wife and son of Tamilarasan respectively who was the incumbent Sub Registrar, Pudur, Thoothukudi District at the time of fraudulent registration and he was the master mind of the entire crime episode. The petitioners and other conspired together and made fraudulent document with an intention to grab the properties of family of the second respondent. The property in S.No. 113/2 measuring to an extent of 1.30 acres situated in Sankaraperi Village, Thoothukudi Taluk belong to the father of G.Samuel Nadar through a registered sale deed dated 04.01.1965 and he was in

possession and enjoyment of the same. After the demise of his father his legal heir inherited the property by succession and sisters Dhanapackiyam, Saroja and Selvarani executed a release deed dated 10.07.1981 and 28.04.1980 respectively in favour of their brother. Thereafter partition suit was filed in O.S.No.53 0f 1995 before the Sub Court, Thoothukudi and the same was decreed in their favour. Thereafter properties were partitioned. However during the UDR the name of the Gnanamuthu was mistakenly mentioned as Gnanamani but the respondent did not notice the same. Infact after the death of his father patta was not changed.

4. The above said mistake in the similarity of the same of the father of the second respondent the petitioners in connivance with husband created forged power of attorney dated 23.03.2018 in favour of one Petchiraj and he had created sale deed in respect of 31.51 cents in favour of the first petitioner who is the wife of the said Sub Registrar, Tamilarasan and other sale deeds in favour of the second petitioner who is the son of the Sub Registrar, Tamilarasan to an extent of 75.68 cents before the Sub Registrar, Pudur, Thoothukudi District. The Principal of the forged power deed namely Samuel was born on 08.03.1976 and his age as on today is 48. Whileso his age on the date of issuance of UDR patta must be only 11years . Thus it is clear that the mentioning of the father's name in the patta issued during UDR is only a mistake and the

same was taken advantage by the petitioners to create the forged deeds. Hence the second respondent preferred a criminal complaint before the Superintendent of Police, Thoothukudi and a case in Crime No.211 of 2019 for the offences under Sections 420,465,467 and 468 of IPC was registered by the first respondent. The first petitioner's husband willfully registered the deed fraudulently which is abuse of his official capacity as Sub Registrar , hence at this stage this petition is liable to be dismissed.

5. The learned counsel appearing for the petitioners would contend that the petitioners have purchased the property for valuable consideration and they are *bonafide* purchasers. Based on the parental deed in favour of his father of his vendor and after verifying the records these petitioners after enquiry purchased the properties and they have no intention to cheat anybody and they have not created any documents and thereby the above said offence charged against the petitioners in the First Information Report will not attract as against these petitioners and the defacto complainant has no any title deed in their names and they are the owners of the properties and these petitioners purchased the properties for valuable consideration and thereby the offences alleged in the First Information Report will not attract. In support of his contention he relied on the following judgments:

a) Mohammed Ibrahim and Others .vs. State of Bihar and another reported in (2009)3 SCC(Cri.)929

b)Mohammed Ali and Others .vs. State of Uttar Pradesh and Others in the case of Criminal Appeal No.2341 of 2023.

c)Usha Chakraborty and another .vs. State of West Bengal and Others reported in CDJ 2023 SC 073

d) Randheer Singh .vs. State of U.P and others reported in CDJ 2021 SC 844.

6. The learned counsel appearing for the second respondent would contend that the second respondent and others are the original owners of the property and the petitioners have no role over the property. After the second respondent purchased the property in the year 1965 registered sale deed and they are in possession and enjoyment. After demise of his father the second respondent along with his brother and sister were in possession and enjoyment of the property. Thereafter the sister of the second respondent executed released deed in favour of this second respondent. Thereafter they filed partition suit and the same was decreed in their favour. Whileso, during the UDR scheme name of the father of the second respondent was mistakenly mentioned as Gnanamani instead of Gnanamuthu. Taking advantage of the same, these petitioners created forged documents with connivance of the Sub Registrar who is none other than the husband of the first petitioner and the father of the second petitioner thereby he gave complaint before the first respondent and the first respondent also registered the First

Information Report and the same is at preliminary stage and therefore at this stage this petition is liable to be dismissed. In support of his contention he relied on the judgment of the Hon'ble Apex Court in the case of ***Sheila Sebastian .vs. R.Jawaharaj and another*** reported in**(2018)7 SCC 581.**

7. The learned Government Advocate(Crl.Side) appearing for the first respondent would contend that based on the complaint given by the second respondent the first respondent registered the First Information Report and it is at the initial stage. Further he also accepted the arguments of the learned counsel appearing for the second respondent.

8. Heard both sides and perused the materials available on record.

9. On perusal of the records it is observed that the second respondent had given complaint before the first respondent police and the first respondent has registered a case against the petitioners in Crime No.211 of 2019 for the offences under Sections 420,465,467,468 of IPC and the same is pending investigation. The petitioners have filed this petition to quash the First Information Report alleging that they are *bonafide* purchasers and they have purchased the property for valuable

consideration and they have no intention to cheat anybody and the second respondent has no right or title over the property and he has not produced any document to show his possession and title. However the petitioner has all the title deeds and patta. Thereafter they have filed writ petition before this Court in W.P(MD) No.13535 of 2022 and the same was ordered in favour of the petitioner i.e., patta has to be transferred in the name of the petitioner vendor. The second respondent is also a party to the writ petition and thereby the petitioners are the owner of the property and thereby the First Information Report is liable to be quashed.

10. The contention of the second respondent is that he is the owner of the property and in the year 1965 his father purchased the property and patta was also stands in the name of his father. Due to the error in the UDR scheme taking advantage of the name similarity the offence said to have been committed. Since the case is at the initial stage and so many documents involved in this case and without investigation truth will not come out and inorder to find out the truth elaborate investigation is required in this case. Unfortunately the first respondent has not conducted proper investigation in this case. The registration of the First Information Report is 2019 for the past four years the first respondent has not investigated the case. However the averments made in the First Information Report are serious in nature, thereby at this

stage following the guidelines issued by the Hon'ble Apex Court in the case of ***Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others*** *reported in* ***2021 SCC Online SC 315,*** this Court cannot scuttle the investigation. The learned counsel appearing for the petitioner has relied on the following judgments:

a)Mohammed Ibrahim and Others .vs. State of Bihar and another reported in (2009)3 SCC(Cri.)929, wherein it is held as follows:

> *"This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See:G. Sagar Suri v State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind".*

b) Mohammed Ali and Others .vs. State of Uttar Pradesh and Others in the case of Criminal Appeal No.2341 of 2023, wherein it is held as follows:

> *7. Mr. Siddhartha Dave, the learned senior counsel appearing for the appellants herein in his written submissions has stated as under:-*
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> *"(a) The allegations in the First Information Report are not only absurd*

but also highly improbable given that the said incident allegedly occurred in the year 2008 while the FIR has been lodged after an inordinate delay of 14 years, that is, on 4.06.2022, which has not been explained.

(b) It is respectfully submitted that the alleged First Information Report is absolutely false and frivolous, and on a reading of the said FIR, the offence under Sections 420, 467, 468, 471, 342, 386, 504 and 506 of IPC is clearly not made out against the Petitioners. Although the Complainant has alleged that upon coming to know about his fraudulent appointment as a Director of a Company, he resigned from the Company way back in the year 2017 but no complaint during this period was ever lodged by the Complainant. Further the name of the said Company has also not been mentioned in the FIR.

(c) It is submitted that the Respondents have incorrectly projected the Petitioners to be hardened criminals when the fact is that every time the Petitioners and their family members were granted protection by the Courts, the Police immediately registered new FIRs against them. It is submitted that the State of Uttar Pradesh is misusing its administrative as well as police machinery to harass the Petitioners and their family members by registering false cases against them. Further the State authorities have not only illegally demolished three residential houses of the Petitioners but has also registered false criminal cases against even those persons who stand surety for the Petitioners and their family members in cases where bail or anticipatory bail has been granted to them. The Petitioners are neither members of any Gang nor are they involved in illegal mining or land grabbing activities.

(d) It is submitted that after the change of Government in the State of Uttar Pradesh in the year 2017, the ruling party came to power and immediately after the change of Government the Petitioners along with their family members were falsely implicated in more than 30 criminal cases at the behest of the ruling party. The Petitioners are being unnecessarily harassed by the State machinery including the Police. Although the Respondent State is heavily relying upon the criminal cases registered against the Petitioners and their family members to show that they are habitual offenders but till date the Petitioners have not been convicted by any Court of law and moreover every time the

Petitioners or their family members gets protection (anticipatory bail or stay of arrest) from either this Hon'ble Court or the Hon'ble High Court, the local Police immediately registers false cases against them.

(e) It is submitted that the alleged Look Out Notice dated 10.05.2022 was issued much prior to the registration of the present FIR No. 195 of 2022 which was registered on 25.08.2022.

(f) It is respectfully submitted that the alleged First Information Report has been maliciously instituted at the behest of the present ruling party in the State of Uttar Pradesh to wreak vengeance and to settle political scores with Petitioner No.3 Iqbal alias Bala as he belongs to a rival political party and he was also a Member of Legislative Council from the period 2011 to 2016. The Petitioner belongs to a respectable family of Saharanpur and he is running several Charitable Institutions.

(g) The allegations made in the First Information Report do not prima facie constitute any offence or make out a case under Sections 420, 467, 468, 471, 342, 386, 504, 506 of IPC against the Petitioners and thus, the FIR is liable to be quashed. It is pertinent to mention that even after the charge sheet has been filed, the petition for quashing of a FIR is well within the powers of a Court of law [Please see: ANAND KUMAR MOHATTA & ANOTHER VS. 8 STATE (NCT OF DELHI), DEPARTMENT OF HOME & ANOTHER (2019) 11 SCC 706 at paragraph 14 & 16].

(h) For the reasons mentioned above, the Special Leave Petition may be allowed and the order of the Hon'ble High Court refusing to quash the FIR No. 127 of 2022 dated 4.06.2022 be set aside."

c)Usha Chakraborty and another .vs. State of West Bengal and Others reported in CDJ 2023 SC 073, wherein it is held as follows:

"*10. By non-disclosure the respondent has, in troth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation* *based on the same the petition filed underSection 156(3),Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323,384,406,423,467,468,420and 120B,IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406,423,467,468,420 and120B,IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjit Batra (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment".*

d) Randheer Singh .vs. State of U.P and others reported in CDJ 2021 SC 844, wherein it is held as follows:

33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a *purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.*

11.As far as judgments submitted by the learned counsel for the petitioner are concerned those judgments are with regard to the stage after trial. Now this case is at the stage of First Information Report and thereby the said judgments are not applicable to the present facts of the case.

12. The learned counsel appearing for the second respondent has relied the judgement in the case of ***Sheila Sebastian .vs. R.Jawaharaj and another*** reported in**(2018)7 SCC 581,** wherein the Hon'ble Apex Court has held as follows:

"This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused.

The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavour should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process, the common man will lose confidence on the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice".

13. On careful reading of the said judgment it is clear that the investigation officer is expected to be diligent while discharging his duties and he has to be fair, transparent and his only endeavour should be to find out the truth. In the case of hand also the investigation has not been completed for the past four years and the same is not appreciable.

14. In view of the above discussions this petition stands dismissed. Consequently connected miscellaneous petition is closed.

15. Further the petitioners are is at liberty to challenge the final report if any filed against them. The first respondent is directed to investigate the case in a fair manner and complete the investigation and

file final report within a period of two months from the date of receipt of a copy of this order.

22.08.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police
   Sipcot Police Station
   Tuticorin

2.The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

P.DHANABAL, J.

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Crl.O.P.(MD).No.13998 of 2021

22.08.2023