



CrI.O.P.(MD)No.14533 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.08.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.14533 of 2023

and

CrI.M.P.(MD)Nos.11443 and 11445 of 2023

James

... Petitioner / Accused No.5

Vs.

1.The State represented by
The Inspector of Police,
Anti Land Grabbing Special Cell,
Dindigul, Dindigul District.
(in Crime No.102/2013)

... 1st Respondent / Complainant

2.D.Nagarajan

... 2nd Respondent / Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, praying this Court to call for the records pertaining to the case in C.C.No.27 of 2019 on the file of the learned Judicial Magistrate Court No.II, Dindigul, Dindigul District and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.T.Indrachithu

For R1 : Mr.SS.Madhavan,

Government Advocate (CrI.Side)



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ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking quashment of CC.No.27 of 2019 on the file of the learned Judicial Magistrate Court No.II, Dindigul, Dindigul District.

2.It is submitted by the learned counsel for the petitioner that the grandfather of the accused Nos.1 and 2 has executed a Will deed vide registered Doc.No.41/1979 in favour of accused Nos.1 and 2 showing the mother of the accused Nos.1 and 2 as Guardian in respect of the lands in S.No.761/2, to an extent of 60 cents, S.No.761/1, to an extent of 41 cents out of 82 cents, S.No.760/3, to an extent of 1 acre 59½ cents out of 1 acre 61 cents, S.No.760/6, to an extent of 55 cents and S.No.760/1, to an extent of 27½ cents out of 55 cents. The mother of the accused Nos.1 and 2, when both of them were minors, in the capacity of Guardian has executed a registered sale deed vide registered Doc.No.2641/1988.

3.The accused Nos.1 and 2 after attaining the age of majority had filed O.S.No.329 of 1997 on the file of the Principal District Munsif Court, Dindigul against the defacto complainant and others. The said suit was dismissed and aggrieved by the same, the accused Nos.1 and 2 have preferred an appeal in



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A.S.No.64 of 2002 on the file of the Additional Sub Court, Dindigul. It was allowed in part declaring that the accused Nos.1 and 2 have no right insofar as the 'B' schedule of property is concerned and confirming their rights insofar as the 'A' schedule of property is concerned.

4.The accused Nos.1 and 2 have appointed the accused No.3 as their power of attorney vide Doc.No.234/2012 dated 22.08.2012, the said power of attorney has sold part of the 'B' schedule of property vide Doc.No.2497/2012 dated 09.11.2012. The accused No.9 is the Document Writer and the accused Nos.6 to 8, 10 and 11 are the witnesses to the documents and the accused No.12 is the Sub Registrar.

5.On 24.02.2013, the accused Nos.1 to 6 have criminally trespassed into the defacto complainant's land and abused him in filthy language. Accordingly, a case was registered in Crime No.102 of 2013 for the offences punishable under Sections 120(b), 465, 468 IPC @ 120(b), 147, 294(b), 420, 423, 447, 465, 468, 471 and 506(i) IPC and after completion of investigation, final report is also filed in CC.No.23 of 2015 on the file of Judicial Magistrate Court No.II, Dindigul and renumbered as CC.No.27 of 2019.



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6. According to the learned counsel for the petitioner/accused No.5, after realizing that the accused Nos.1 and 2 have sold the property through their power of attorney in his favour, he has re-transferred the same in favour of accused Nos.1 and 2 under a registered sale deed and therefore, submitted that the petitioner is innocent and therefore, sought for quashment of the case against the petitioner.

7. The learned Government Advocate (Crl.side) on the other hand submits that there is a clear evidence against the petitioner/Accused to show that the petitioner in collusion with the accused Nos.1 and 2 has purchased the property without any consideration.

8. Heard the learned counsels appearing on either side and perused the records.

9. On a complaint given by the defacto complainant on 22.10.2013, a case has been registered against the petitioner and others in Crime No.102 of 2013 and after investigation, the charge sheet is filed was taken on file in CC.No.23 of 2015. The petitioner has not filed any petition seeking quashment of either FIR in the year 2013 or any time subsequent to 2015 seeking quashment of the



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charge sheet. The petitioner has received summons in this case, appeared before the Court, answered the charges and not filed any discharge petition. After 8 years of filing of the charge sheet, the petitioner has come forward challenging the same when the trial is about to be commenced. No explanation is offered as to why the petitioner could not challenge the charge sheet all these years. The petitioner has approached this Court after 8 years of filing of the charge sheet only with an intention to protract the trial. On this ground alone, this petition is liable to be dismissed.

10.The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceeding in the case of *State of Haryana v. Bhajanlal* reported in *1992 SCC (Cri) 426*, which reads as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently



channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the



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grievance of the aggrieved party.

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(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Considering the law laid down by the Hon'ble Apex Court, it is to be examined as to whether the charge sheet can be quashed.

11.In order to quash the charge sheet against the petitioner, the petitioner is expected to make out the case that even if the contents of the charge sheet are accepted to be true, there shall not be any case against the petitioner. According to the learned Government Advocate (Crl.side), there are allegations against the petitioner stating that in collusion with the accused Nos.1 and 2, he has purchased the property under the registered the sale deed without paying any consideration to the accused Nos.1 and 2. The submission of the petitioner is that the petitioner is innocent and bonafide purchaser and the defacto complainant and other witnesses have stated false in their 161(3) Cr.P.C., statement and he is not in collusion with the accused Nos.1 and 2.



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12. Further, it is also required to be proved that when he has re-transferred to the accused Nos.1 and 2, he has received back the sale consideration. If really he is a bonafide purchaser, there was no necessity to retransfer to the accused Nos.1 and 2. At the time of considering the petition filed under Section 482 of the Code of Criminal Procedure, the documents filed by the petitioner and the defence set up by the petitioner cannot be taken into consideration. While considering the application under Section 482 Cr.P.C., this Court cannot assess the veracity of the statements under 161 Cr.P.C., to conclude that the witnesses have given false statement. This Court cannot conduct the mini trial in order to give a finding in favour of the petitioner. The truth or otherwise of the version of the prosecution will be decided only after the trial.

13. Further, it is the case of the petitioner that once he realized that the accused Nos.1 and 2 have sold the property in his favour without having any title, as the title is vested with the defacto complainant, he has re-transferred the property in favour of accused Nos.1 and 2. It is to be noted that once the petitioner has realized that the defacto complainant is the owner of the property and the accused Nos.1 and 2 have no right over the said property, he should have transferred the property in favour of the defacto complainant and not in



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favour of the accused Nos.1 and 2 or atleast, he could have kept quite and should not have transferred the property back to the accused Nos.1 and 2.

14.Further, if at all once the petitioner has realized that the accused Nos.1 and 2 without any right have executed the sale deed in respect of the property belonging to the defacto complainant, then the petitioner should have approached the police and filed a complaint against the accused Nos.1 and 2 that they have cheated him. Further, the accused Nos.1 and 2 have executed the sale deed in favour of the petitioner without paying any consideration, for which the accused Nos.1 and 2 stated to have filed a suit for recovery of money and the said civil suit was decreed and aggrieved by the same, the accused Nos. 1 and 2 have preferred an appeal and in the appeal, the petitioner and the accused Nos.1 and 2 have settled the matter and the appeal was referred to Lok Adalat and an award was passed. Therefore, the conduct of the petitioner/accused No.5 that the sale deed was executed in his favour without paying any consideration also supports the case of the prosecution.

15.Considering the circumstances discussed above, the petitioner has miserably failed to make out a case that the charge sheet filed against him



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requires to be quashed. Accordingly, this Criminal Original Petition is

dismissed. Consequently, connected Miscellaneous Petitions are closed.

17.08.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Judicial Magistrate No.II,
Dindigul, Dindigul District.
- 2.The Inspector of Police,
Anti Land Grabbing Special Cell,
Dindigul, Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN. J.

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