



Crl.O.P.No.7960 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.7960 of 2022
and
Crl.M.P.Nos.4618 & 4620 of 2022

1. R.Mohan Raj
2. Unnamalai
3. K.Viswanathan

... Petitioners

Versus

1. State rep. By the
Inspector of Police,
Anti-Land Grabbing Special Cell,
Salem.
(Crime No.1485 of 2011)

2. M.Rajamanickam

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the criminal case in C.C.No. 896 of 2020 on the file of the learned Judicial



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Magistrate/Special Court for Land Grabbing Cases, Salem, quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1
Mr.T.Vijayaraghavan for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C. No. 896 of 2020 on the file of learned Judicial Magistrate/Special Court for Land Grabbing Cases, Salem.

2. Heard both sides.

3. The petitioners are ranked as A1 to A3 in the F.I.R. in Crime No.1485 of 2011 registered against the petitioners for the offence under Sec.448, 427, 294(b), 506(ii) of I.P.C. altered to 120B, 174, 192, 175, 294(b), 341, 423, 447, 465, 468, 471 and 506(ii) I.P.C. based on the



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complaint given by the 2nd respondent/defacto complainant alleging that the 2nd respondent is the owner of the property measuring an extent of 3200 sq.ft. comprised in Survey No.95/2, Allahapuram Village, Salem District by virtue of sale deed dated 17.10.2005. While so, the 1st petitioner, being his neighbour, by taking advantage of his position as the M.L.A. of Salem North Constituency damaged the souther side compound wall and encroached a portion 3 years prior to the complaint. As per the allegation levelled in the F.I.R., during the 1st week of October 2011, when the 2nd respondent attempted to repair the building, the petitioners 1 and 2 abused him, threatened him and also criminally intimidated him with dire consequences. Hence, he gave a complaint. Subsequently, after completion of investigation, the 1st respondent filed a charge sheet and the same was taken on file in C.C.No.896 of 2020 on the file of Judicial Magistrate/Special Court for Land Grabbing Cases, Salem and the same is pending. Now, the petitioners have filed this petition praying to quash the said charge sheet.

4. The learned counsel for petitioners would submit that in the year of 1995, the 2nd petitioner entered into Varthamana agreement with



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original owner Ramachari in respect of 1200 sq.ft. on 02.10.1995, which is adjacent to her house. From that day onwards, she is possession and enjoyment of the property, thereby she entered into an agreement on 25.01.2003 by paying another sum of Rs.3,00,000/- and she had paid totally a sum of Rs.5,00,000/- for entire sale consideration for an extent of 1200 sq.ft. with an intention to purchase the same and the original owner Ramachari also agreed to execute a sale deed as and when required. So, based on the said Vardhamana agreement, she is in enjoyment of the property from the year of 1995. Now, the original owner sold the property to 2nd respondent on 17.10.2005. Thereafter, he gave a complaint alleging that all the petitioners colluded together and manipulated those Vardhamana letter and Sale agreement, thereby F.I.R. was lodged in Crime No.1485 of 2011 without any basic ingredients. The final report was also filed and based on that, the charge sheet in C.C.No.896 of 2020 was taken on file by the trial judge and the charges framed against these petitioners without any basis. Furthermore, they would also content that there is no incriminating materials to prove that Vardhamana letter and sale agreement was fabricated by these



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petitioners. Hence, they wanted to quash the proceedings.

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5. The learned Government Advocate (Crl. Side) appearing for 1st respondent would submit that the alleged Varthamana letter is not executed by the original owner Ramachari, however, at that time, the 1st petitioner Mohanraj by abusing his position, he created those documents and grabbed 1200 sq.ft. belong to Ramachari annexed with his property, thereby the complaint was lodged by subsequent purchaser.

6. By way of reply, the learned counsel for petitioners would submit that the subsequent purchaser has no right to challenge those documents, which were executed by the original owner in the year of 1995 and 2003. After 5 years of the sale agreement, the subsequent purchaser gave this complaint as such is not maintainable in law and there is no ingredients in respect of fabrication of document. So, the proceedings against them is ordered to be quashed. For that, he relied the ratio laid down in the authority reported in **2018 (7) SCC 581** in the case of **Sheila Sebastian vs. R. Jawaharaj and another**, wherein the Apex Court held in para 25 and 29 as follows :-

“25. Keeping in view the strict interpretation of penal



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statute i.e. referring the rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Sec.464 further clarifies that, for constituting an offence under Sec.464, it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

29. 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 laches 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 investigation 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 investigating officer, 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.”

But, coming to the facts of the case, it is true that if there is no ingredient in respect of charge of forgery, the person can be discharged from the enquiry proceedings. However, in the instant case, two documents of the year 1995 and 2003 are unregistered documents. As on date, the petitioners are claiming ownership of the property based on the varthamana agreement of the year of 1995 and the sale agreement of the year 2003 as if they are bonafide purchasers of the property from the original owner, but they have not obtained valid sale deed. Therefore, the validity of the documents and intention of the parties can be decided only at the end of trial and not at this stage. Hence, I do not find any merit in this petition and this Court is not inclined to quash the proceedings initiated in C.C.No.896 of 2020. Accordingly, this Criminal



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Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition in Crl.M.P.No. 4618 is closed. So far as Criminal Original Petition in Crl.M.P.No.4620 of 2022 is concerned, all the petitioners are more than 65 years old senior citizens. So, their personal appearance before the trial judge is dispensed with and they are directed to appear before the trial judge as and when required.

18.01.2024

Index: Yes/No
Internet: Yes/No
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To

1. Inspector of Police,
Anti-Land Grabbing Special Cell,
Salem.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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