



CRL O.P. No.10427 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.10427 of 2022
and Crl. M.P. Nos.6245 and 6247 of 2022

1. Duraimani S/o. Karuppaiah
2. Dhanalakshmi W/o.Manokaran
3. Kolanchi S/o. Muthusamy ... Petitioners / Accused
vs.

1. State represented by:-
The Superintendent of Police,
Cuddalore District.

2. The Sub-Inspector of Police,
District Crime Branch, Cuddalore.

3. Mala Jayalakshmi W/o. Nadi Muthu Respondents

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records pertaining to the proceedings in C.C. No.225 of 2016 on the file of the Chief Judicial Magistrate No.II, Virudachalam and to quash the same.

For petitioners: Mr. S. Ruban Prabu



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For Respondent : Mrs. G.V. Kasthuri,
Additional Public Prosecutor,
High Court, Madras [for R1 and R2]

Mr. R. Sankara Subbu [for R3]

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the proceedings pending in C.C. No.225 of 2016 on the file of the learned Judicial Magistrate No.II, Virudachalam.

2. The case of the prosecution is that one Sivaraman, who was the retired Deputy Superintendent of Police purchased the properties in Survey No.426/1, 426/2, 426/3, 426/4 and 426/5, in total 3 acres 39 cents, through a Deed in the year 2006 and thereafter, he was in possession and enjoyment of the properties and thereafter, he obtained patta for those properties and also he cultivated eucalyptus plants in the said lands. While so, the said Sivaraman died on 07.10.2018. The Mahalakshmi, Kala Jayalakshmi and Latha Rajalakshmi are the legal heirs of the said Sivaraman. They also transferred Patta in their names in respect of the said properties and also cultivated Eucalyptus trees. In the



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meantime, the said legal heirs of the Sivaraman settled at Chennai and they are out of station. Taking advantage of the same, all the accused, in order to grab the properties, stand in the name of Sivaraman, included the said properties in their partition deed and 1st and 2nd accused are also close relatives of the Sivaraman, and without including the legal heirs of the Sivaraman, they included the said properties in the partition deed and they partitioned the properties. In the said partition deed, they also allotted one share to the Sivaraman by suppressing the fact that the said property was purchased by the said Sivaraman and it was an exclusive separate property of the said Sivaraman.

2.1. Further, the accused also sold the said Eucalyptus trees planted in the said land worth about Rs.2 lakhs. Therefore, they committed serious offences by creating forged documents and cheated the defacto complainant, thereby, complaint has been lodged by the defacto complainant and the same was elaborately investigated by the respondent police and they filed final report. The said final report has been taken on file by the jurisdictional Magistrate and calendar case



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number was assigned. Now the said C.C. No.225 of 2016 on the file of the learned Judicial Magistrate No.II, Virudachalam is under challenge through this petition.

3. According to the petitioners, the property does not belong to the said Sivaraman and the same is joint family property of the petitioners and the Sivaraman and thereby, they entered into partition deed and a portion of the property was also allotted to the legal heirs of the said Sivaraman and thereby, there is no any criminal act done by them and already a Suit in O.S. No.146 of 2014 is pending against the defacto complainant and all the legal heirs of the said Sivaraman. Therefore, the pending proceedings are abuse of process of law.

4. The learned counsel appearing for the petitioners would contend that the FIR itself is an abuse of process of law and the defacto complainant had suppressed the material facts and falsely lodged a false complaint against the petitioners. The subject matter of the complaint is



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civil in nature and the 2nd respondent suppressed the Suit filed by the 2nd petitioner and the son of the 1st petitioner before the Principal District Munsif Court, Ulundurpet in O.S. No.146 of 2014 against the legal heirs of the said Sivaraman and they also filed a written statement and thereafter they filed this complaint, thereby, it is an abuse of process of law. In fact, the property mentioned in the complaint was purchased by M. Sivaraman who is the father of the 3rd respondent and the brother of the petitioners 1 and 2, but the sale price was paid by Asalambal, who is the mother of the petitioners 1 and 2 and late M. Sivaraman, out of her husband's pension benefits and other sources, thereby, the property was the ancestral property purchased by joint family property income of the petitioners and the said Sivaraman. Therefore, they entered into Partition Deed and there is no ingredients to constitute offences under Sections 120-B, 406, 467, 471, 420 read with 109 of IPC as alleged by the prosecution. The 1st respondent also without ascertaining the truth filed final report against these petitioners. Therefore, the pending proceedings in C.C. No.225 of 2016 against the petitioners is abuse of process of law and are liable to be quashed.



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5. The learned counsel appearing for the 3rd respondent would contend that the property originally purchased by the Sivaraman, the defacto complainant and these petitioners are the legal heirs of the said Sivaraman and without including the legal heirs of the said Sivaraman, these petitioners in order to grab the property entered into Partition deed and in the Partition deed, some of the properties were allotted to the heirs of the Sivaraman. However, the properties mentioned in the complaint are exclusively belonging to the Sivaraman and they are the separate properties, thereby they suppressed the facts and executed the Partition Deed by excluding the legal heirs of the said Sivaraman. Therefore, they cheated the legal heirs of the Sivaraman and also forged the documents as if the said properties are joint family properties of the Sivaraman and without including the legal heirs of the said Sivaraman, they created the Partition Deed. Therefore, they are liable to be punished in accordance with law. Thereby, the defacto complainant lodged a complaint and based on the complaint, the 1st respondent police also conducted an elaborate investigation and as per the investigation, there are prima facie



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materials available to proceed with the case against these petitioners.

Therefore, they filed final report. The trial Court also, based on the final report, after satisfying that there are prima facie materials available as against the petitioners to proceed the case, taken cognizance and now the case is pending for examination of witnesses. Therefore, at this stage, the petitioners have to face the trial and the petition filed by the petitioners is liable to be dismissed.

6. The learned Government Advocate (Criminal side) appearing for the 1st and 2nd respondents would submit that based on the complaint given by the 3rd respondent, the 1st respondent police have registered the FIR in Cr. 1 of 2015 and thereafter they elaborately investigated the case and filed final report. As per the final report, there are prima facie materials available to proceed with the case. Therefore, they filed final report before the trial Court. The trial Court also after considering that there are materials available to proceed with the case as against these petitioners, taken cognizance for the offences under Sections 120-B, 406, 467, 471, 420 read with 109 of IPC and now the

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case is pending for further proceedings. Therefore, at this stage, the petitioners have to face the trial and the petition is liable to be dismissed.

7. Heard both sides and perused the entire materials available on record.

8. The main contention of the prosecution is that these petitioners without including the legal heirs of one Mr. Sivaraman entered into partition and executed a Partition deed and the property of the said Sivaraman has been included fraudulently in the partition deed and also they failed to include the legal heirs of the Sivaraman and some portions of the properties only allotted to the heirs of Sivaraman. This is the main allegation.

9. According to the petitioners, the said property was purchased by Sivaraman through the joint family funds. Therefore, the properties are the joint family properties of the petitioners and the said Sivaraman. The said fact has been denied by the legal heirs of the said Sivaraman,



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thereby, a Civil Suit is also pending before the Principal District Munsif Court, Ulundurpet in O.S. No.146 of 2014. However, though there is a dispute pending between the parties in respect of the character of the properties as to whether the property is an ancestral property of the said Sivarmaan or his self-earned property, the partition deed was executed between the parties without including the legal heirs of the Sivaraman, that is these petitioners executed the partition deed between them by excluding the legal heirs of the Sivaraman by allotting one partition to the legal heirs of Sivaraman.

10. The only contention of the 2nd respondent / complainant is that without including the legal heirs of the Sivaraman, they executed the partition deed and thereby, they committed the offences. This Court also perused the records and they revealed that these petitioners entered into partition without including the heirs of the deceased Sivaraman, however they allotted share to them. Therefore, the said aspect has to be dealt with by the trial court after examination of witnesses and it requires elaborate trial and the Trial Court has to decide as to whether any intention to the petitioners to cheat, by examining the witnesses. Moreover, the 1st



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respondent police has conducted elaborate investigation and as per the investigation, there are prima facie materials available to proceed with the case as against these petitioners and thereby, they filed final report before the Trial Court. The trial Court also, after satisfying that as per the final report, there are prima facie materials available as against these petitioners, has taken cognizance and at this stage, this Court cannot interfere with the order of the trial Court for taking cognizance of the case for the offences under Sections 120-B, 406, 467, 471, 420 read with 109 of IPC. It is for the trial Court to decide that what are all the offences made out based on the materials available in this case. Moreover, the statement of the witnesses and the genuineness of the documents cannot be tested at this stage and it needs elaborate trial and hence the petitioners have to face the trial and therefore, this petition has no merits and deserves to be dismissed.

11. Accordingly, the Criminal Original Petition is dismissed. No costs. The connected miscellaneous petitions are closed.

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index: Yes/No
Internet: Yes/No
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To

1. The Chief Judicial Magistrate No.II, Virudachalam.
2. The Public Prosecutor, High Court, Madras.
3. The Superintendent of Police, Cuddalore District.
4. The Sub-Inspector of Police, District Crime Branch, Cuddalore.

P.DHANABAL,J

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