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CrL.OP.No.10656 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrL.OP.No.10656 of 2024

and

CrL.MP.Nos.7239 and 7240 of 2024

1. S.Santhamani
2. Ponnusamy
3. Sabapathy

... Petitioners

Vs.

- 1.The State
Represented by Inspector of Police,
District Crime Branch, Coimbatore.

2. G.K.Rathinavel

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the proceedings in C.C.No.871 of 2023 on the file of the Judicial Magistrate-IV, Coimbatore and quash the same.

For Petitioners : Mr.S.Senthilnathan

For Respondents : Mr.K.M.D.Muhilan
Government Advocate (CrL. Side)
for R1
: Mr.K.M.Balaji for R2



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ORDER

This Criminal Original Petition is filed to quash the criminal complaint against the petitioners herein for the offence under Sections 420, 468, 471, 506(i) and 34 of IPC.

2. On a complaint given by one G.K.Rathinavel against the petitioners herein namely S.Santhamani, Ponnusamy and Sabapathy, the respondent police has investigated the matter and filed final report.

3. The learned counsel appearing for the petitioners submits that it is purely a civil dispute regarding the measurement and identification of the property, wherein the defacto complainant who claims to have purchased 48 cents of land from one Maragathavel, has no valid title over the said extent of land. Infact, Chinnasamy who is the predecessor in title of the said land was holding only 9 acres and 70 cents of land, but, made an illegal claim of holding larger extent had subjected the property for attachment in a proceedings initiated by TNPID Court. Infact the petitioners herein had already instituted a suit in O.S.No.69 of 2018 before the Sub Court, Coimbatore for declaration and permanent



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injunction and the same is pending. Therefore, being a purely civil dispute, there cannot be any prosecution. The learned counsel further submits that if the petitioners succeed in the suit for declaration, then their right will be affected by forcing them to face the criminal prosecution.

4. The learned counsel appearing for the second respondent herein/defacto complainant submits that Chinnasamy who is the convicted accused in TNPID case, in order to liquidate his property and settle the claimants came out on bail and sold 10.33 cents of land which was already under attachment. The property was purchased by one CSS.Raja under registered sale deed vide Document No.13327 of 2008. Thereafter, the said Raja had sold the property to several persons and in respect of 48 cents of land which is part of 10.33½ acres was sold to the said defacto complainant. He gave a power of attorney to G.K.Maragathavel on 27.12.2010.

5. Based on the said power of attorney deed, the defacto complainant purchased 48 cents of land. When he went to field to fence the land on 24.12.2017, the accused persons threatened the defacto



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complainant with dire consequences and claim title over the property.

Hence, he gave the complaint to the police, who did not act upon his complaint and therefore approached the learned Judicial Magistrate, Coimbatore for direction under Section 156(3) of Cr.P.C.

6. Pursuant to the said direction, FIR in Cr.No.13 of 2018 came to be registered on 29.05.2018 by DCB, Coimbatore. Subsequent to the registration of complaint, the police has investigated the matter and being satisfied, final report filed.

7. The learned Government Advocate (Crl.Side) submits that the statements of LW1 and LW2 and the documents collected during the course of investigation clearly discloses cognizable offence committed by these petitioners. From the investigation, it is brought to the notice that Chinnasamy who is accused in the TNPID offence had **invested** the crime proceeds in immovable properties in the year 1999 and sold 3.25¼ acres of land to Ponnusamy in the year 1999. After alienating 2.35 acres of land, Chinnasamy was holding the remaining 10.33½ acres of land. This property was attached by the TNPID Court pending disposal of the criminal case against Chinnasamy.



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8. In the said circumstances, 10.33½ acres of land was sold by Chinnasamy to C.S.S.Raja and the sale proceeds was deposited in the TNPID Court for distribution to the investors. 48 cents of land which the defacto complainant had purchased, forms part of 10.33 ½ acres of land which was alienated under the supervision of TNPID Court. While so, the accused persons had fabricated the documents to the extent of 42 cents of land as if the second accused Ponnusamy has settled 42 cents of land in favour of Santhamani, taking advantage of the fact that the patta was issued for larger extent jointly in the name of Chinnasamy and Ponnusamy. Since fabrication of record and common intention to cheat the defacto complainant who is bonafide purchaser been made out, the final report is filed.

9. This Court after considering the submissions made by their respective counsel and on perusal of the records find that in the year 1999 a portion of the land extending around 3.25¼ acres of land was sold to Ponnusamy by Chinnasamy. Joint Patta Number 111 been issued. The said Ponnusamy had instituted a suit in O.S.No.69 of 2018 contending that though the sale deed of Chinnasamy in favour of Ponnusamy indicates that the total extent of 2.20 acres sold in



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SF.No.328/1B infact the total extent available was only 1.68½ acres.

Therefore, the actual extent of land possessed by the vendor Chinnasamy cannot be 10.33 acres, but only 9.70 acres. Chinnasamy holding the adjacent land has sold over and above the extend he possessed.

10. On the above said premises, the suit has been filed much after the petitioner initiated criminal complaint against the petitioners. In the complaint, it is clearly stated that it was on 27.12.2017, the petitioners herein tried to interfere the defacto complainant when he went to fence the land. While so, filing a civil suit claiming that the land purchased by the petitioners herein under the supervision of Court belongs to him cannot be a bar for the prosecution when there is a clear case of fabrication of record collected during the course of investigation.

11. Hence, this Court finds that the complaint investigated and ended in final report though may have a trapping of civil dispute, the disclosure of cognizable offence creating settlement deed by including the land held by Chinnasamy claiming the land in SF.No.328/1B is less than the measurement shown in the document is a matter for trial and the same cannot be interfered, just because the petitioners had filed a suit for



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declaration. It is to be noted that the suit is 10 years after alienation of the property and the sale proceeds been distributed to the investors in the connected proceedings pending on the file of TNPID Court, Chennai.

12. Hence, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

29.07.2024

Vv

To

1. The Judicial Magistrate-IV,
Coimbatore
2. The Inspector of Police,
District Crime Branch, Coimbatore.
3. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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