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CrI.O.P.No.23797 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

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

CrI.O.P.No.23797 of 2019

and

CrI.M.P.Nos.12538 & 12539 of 2019

S.Nirmala

... Petitioner

Versus

1. State By : Inspector of Police,
Central Crime Branch-II,
Land Grabbing Special Cell-II,
Vepery, Chennai-7.
(Crime No. 27 of 2011)

Dr.K.Kuppurajan (died)

3. Chandralekha
4. K.Kanthakumar
5. A.Shanmuga Priya
6. V.Shanmugavalli

(R3 to R6 are Suo Motu brought on
record as legal heirs of deceased 2nd
respondent vide this court order
dated 10.01.2024)

... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C. No.40 of 2016 on the file of the learned Judicial Magistrate, Tambaram, Chennai and quash the same.

For Petitioner : Mr.N.S.Suganthan for
Mr.P.Krishnan

For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

Mr.E.Senthil Kumar for
LRs of R2

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.40 of 2016 on the file of learned Judicial Magistrate Court, Tambaram, Chennai.

2. Heard both sides.

3. The case of the prosecution is that the 2nd respondent's grandfather K.N.Ayyasamy Mudaliar had purchaser 10.46 acres in



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Survey No.437/2, Perungalathur Village, Tambaram Taluk under the deed of sale dated 06.04.1965 and other dates. Subsequently, he died on 11.02.1968. After his demise, the said properties are devolved on 4 sons and 3 daughters and their legal heirs. They were in joint possession and enjoyment of the properties. Now, the 2nd respondent/defacto complainant lodged a complaint in respect of Survey No.437/2 measuring an extent of 5.25 acres stating that the petitioner colluding with other accused in forgery of family card, voter identity, death certificate, legal heirship certificates of actual owners of the property and falsely gave the complaint as the original document of the property in Survey No.437/2 was lost and got the non-traceable certificate and also issued general publication through an advocate. Subsequently, the above properties were got registered as agreement of sale and an agreement of joint development with the persons viz., S.M.Sivaprakasam, S.Harimurugan and M.Shivasankaran as the property executed by the actual legal heirs of Kuppusamy Mudaliyar to the above persons. Thereafter, the petitioner purchased the said property alleged to have colluded with other accused in making forged documents and



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impersonation and executed the sale deed in favour of her. Hence, the complaint was lodged against the petitioner and she is arrayed as A11.

4. According to the 2nd respondent/defacto complainant, the vendor, who sold the property to the 11th accused not through original owner. As per the investigation, one Kengusamy fabricated the power of attorney in the year of 2005 and based on that only, the other accused created forged sale deed and grabbed the property belong to the defacto complainant. Furthermore, they contended that as per the investigation, the power of attorney was created by the 2nd accused as if legal heirs of original owner Ayyasamy Mudaliar was given to them. But, in fact, some of legal heirs died and on behalf of them also, the power deed was given. Moreover, the signature in the document is not belong to original owner of the property. As per the contentions of petitioner, she is the bonafide purchaser and she is no way connected with the case. Hence, she prayed to quash the proceedings.

5. By way of reply, the learned Government Advocate (Criminal Side) raised objections stating that since it is a case of forgery and impersonation, based on the fabricated documents of the year 2005, the



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accused Kengusamy (A3) and Mahendran (A1) along with this petitioner grabbed the property from the original owners and documents were created. So, at this stage, it cannot be decided, since because the offence charged against him is grave in nature. To that effect, he relied on the ratio laid down in the authority reported in **2017 (9) SCC 641** in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another**, wherein the Apex Court in para 18 held as follows:-

“18. The present case, as the allegations in the F.I.R. would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. The case involves allegations of extortion, forgery and fabrication of documents, utilisation of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. If the allegations in the F.I.R. are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal



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interest in prosecuting serious crime. In these circumstances, the High Court was eminently justified in declining to quash the F.I.R. which had been registered under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code.”

By relying the said ratio, the learned Government Advocate would submit that the case involves allegation of extortion, forgery and fabrication of document, which is against the societal interest in securing probity of title or interest in land and such offence cannot be construed to be merely private or civil dispute. Hence, he prayed to dismiss this petition.

6. Admittedly, the power deed was executed in the year of 2005 and immediately within six months, this petitioner entered into a sale agreement with the said power holder, who has fabricated and impersonated the person as original owner. However, as on date, there is no proof that she has produced any document showing that before purchasing the property she verified the encumbrance certificate in respect of the same. If at all, she might have obtained encumbrance certificate and she would have known the real facts. But, there is no



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materials at this stage to prove the fact that she had verified the title document as well as encumbrance certificate. Therefore, I do not find any merit to quash the proceedings against her. She is entitled to put forth her defence before the trial court. Accordingly, this Criminal Original Petition is dismissed as no merit. Consequently, connected Criminal Miscellaneous Petition in Crl.M.P.No. 12538 of 2019 is closed. In so far as Crl.M.P.No. 12539 of 2019 is concerned, the petitioner being a lady, her personal appearance is dispensed with and she is directed to appear as and when required.

10.01.2024

Index: Yes/No
Internet: Yes/No
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To

1. Inspector of Police,
Central Crime Branch-II,
Land Grabbing Special Cell-II,
Vepery, Chennai-7.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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