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CRL O.P. No.24915 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.24915 of 2022
and Crl. M.P. Nos.15585 and 15586 of 2022

1. Loganathan S/o. Jayaraman
2. Muthukumar S/o. Loganathan
3. Marimuthu S/o. Duraikannu ... Petitioner / Accused

vs.

1. State represented by:-

The Sub-Inspector of Police,
Anti-Land Grabbing Cell,
District Crime Branch, Villupuram,
Villupuram District.

..1 Respondent / Complainant.

2. Angayarkanni W/o. Rajan.

.... 2nd Respondent / Defacto
Complainant

3. E. Gowrishankar

S/o. Sivagnana Samantham

... 3rd Respondent / A1

4. Loganayaki W/o. Gnanasekaran ... 4th Respondent / A2

5. V. Gnanasekaran S/o. Vaithiyanathan ... 5th Respondent / A3

6. Sundaramoorthy S/o. Arumugam ... 6th Respondent / A4.

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records relating to the charge filed by the 1st respondent police against the petitioners/accused herein in



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C.C. No.67/2020 on the file of the Judicial Magistrate Court No.II,
Tindivanam.

For petitioner : Mr. M. Venkadeshan

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

Mr. Avinash Wadhwani [for R2]

ORDER

This petition has been filed to quash the proceedings in C.C.
No.67/2020 on the file of the Judicial Magistrate Court No.II,
Tindivanam.

2. The case of the prosecution is that A1 is the close relative of the defacto complainant and A2 and A3 are husband and wife and A4 to A7 are relatives. The property in Survey No.479/2 measuring to an extent of 0.78 acres belongs to one Ganapathy Mudaliar and he executed a Will in the year 1969 in favour of his son Manicka Vasaga Mudaliar. The said Manicka Vasaga Mudaliar died leaving behind his legal heirs namely Angayarkanni, Dhanamathya and Sambavi and they are in possession of the property. One Singaravelu obtained the property through a Partition



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Deed in the year 1899 in Survey No.479/2 to an extent of 1.59 acres. Out of 1.59 acres, he sold 0.25 cents to one Kandasamy in the year 1958 and for the remaining extent of 1.34 acres, he executed a Will in the year 1970 to an extent of 1.90 acres instead of 1.34 cents. Thereafter, the Sivagnana Sambandam died in the year 1999 leaving behind his legal heirs Saradha, Gowrishankar, Singaravelu and Srinivasan. Based on that Will, the legal heirs of Sivagnana Sambandam namely Saradha and Gowrishankar, executed a Power Deed to one Loganayaki in the year 2005. In the meantime, Saradha died in the year 2010. The said Loganayaki and her husband, sold the property to one Muthukumar and Marimuthu by suppressing the death of said Saradha. While so, in the year 2019, 1st accused, the husband of Loganayaki namely Gnanasekaran, the 4th accused Loganathan and the 7th accused Sundaramoorthy trespassed into the land and damaged the fencing stone, trees and building. Therefore, FIR has been registered as against the petitioner and others and after investigation, charge sheet has been filed as against the petitioner and others.



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3. The learned counsel appearing for the petitioner would submit that the 1st respondent police have registered a false case as against the petitioner herein and others for the offences under Sections 420, 468, 471, 447, 427 of IPC alleging that the land bearing Survey No.479/2 to an extent of 1.59 acres situated at Marakkanam Village, Tindivanam Taluk, Villupuram District was owned by the 3rd respondent's grand father Singaravelu through a Family Partition Deed bearing Doc. No.1920 of 1899. The said Singaravelu, sold 0.25 cents in favour of one Kandaswami vide Sale deed in the year 1958. The remaining extent of land of 1.34 acres was given to his son Sivagnana Sambantham through a Will in the year 1970 and thereafter, the said Sivagnana Sambantham died. In the said Will, the extent of the property was mentioned as 1.90 acres without deducting 0.25 cents. Thereafter, the legal heirs of the said Sivagnana Sambantham sold the property through a Power Agent to the buyers. In the meantime, the mother of the 3rd respondent Saradha died in the year 2010. By suppressing the same, sale deed was executed in favour of the petitioners. Further, in the year 2009, the 5th respondent, the petitioner herein and the 7th respondent trespassed in to the defacto



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complainant's land, thereby, the defacto complainant lodged the complaint.

3.1. These petitioners have not committed any offence as alleged in the FIR. In fact, the 2nd petitioner and the 3rd respondent are the decedents of one Arunachala Mudaliar. The property in dispute, i.e., the land in Old Survey No.489 and resurvey No.479/2 measuring to an extent of 1 acre and 90 cents was bequeathed by the paternal grand father of the 3rd respondent in favour of the father of the 3rd respondent through a Will dated 24.06.1970. Out of the 1 acre 90 cents of land, an extent of 12.5 cents and 55 cents of vacant land were sold by the 4th respondent herein in favour of the petitioners 1 to 3. The petitioners 1 to 3 purchased the said land in the year 2011 for a valuable consideration.

3.2. While the facts are being so, the 2nd respondent tried to encroach the land of the 1 to 3 petitioners. Immediately they filed a Suit in O.S. No.97 of 2013 on the file of the Sub-Court, Tindivanam for the relief of declaration and permanent injunction and interim injunction was granted by the Court and the same is still in force. In order to circumvent the above civil suit, the 5th respondent lodged a false complaint



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and registered the case and the respondent police have not considered the real facts and filed the final report and the Trial Court also has taken cognizance for the offences under Sections 120-B, 420, 468, 471, 447 and 427 of IPC. These petitioners are only the purchasers and no offence of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating and using the forged documents as genuine are made out. Since the petitioners are the original owners of the property, there is no question of trespass under Section 447 of IPC would attract. Therefore, the pending proceedings are liable to be quashed as against the petitioners.

3.3. In support of his contention, the learned counsel appearing for the petitioners has relied upon the following judgments:-

3.3.1. ***Gorige Pentaiah vs. State of A.P. and Ors. reported in 2009 CRI.L.J. 350.***

3.3.2. ***Sheila Sebastian vs. Jawaharaj and another reported in (2018) 7 Supreme Court Cases 581.***

3.3.3. ***B. Chandravarma and 3 others vs. State in Crl. O.P.***



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No.11885 of 2018.

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4. The learned counsel appearing for the 2nd respondent would contend that the petitioners along with others have entered into conspiracy and created forged documents and the accused 1 to 4 without having title of the property, sold the property to these petitioners. In fact, the father of the 1 to 4 accused had property in S.F. No. 479/2 to an extent of 1.59 acres and thereafter, one Singaravelu sold the property to an extent of 0.25 acres to one Kandasamy in the year 1958. Thereafter, the said Singaravelu, who is the owner of the property had executed a Will in favour of his son, who is the father of A1 to A4 to an extent of 1.90 acres instead of 1.34 acres. Knowing fully well that A1 to A4 are entitled only for 1.34 acres, they executed sale deed in favour of these petitioners for an extent of 1.90 acres and thereby for the entire property, they created forged documents. Therefore, he lodged a complaint before the 1st respondent and the 1st respondent registered the case and thereafter, they conducted investigation and the prima facie materials are available and thereby, the petitioners have to face the trial



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and the present petition is liable to be dismissed.

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5. The learned Additional Public Prosecutor appearing for the 1st respondent would contend that the 2nd respondent gave a complaint as against the accused and based on the complaint, FIR has been registered in Cr. No.12 of 2014 for the offences under Sections 120-B, 420, 468, 471, 447 and 427 of IPC. Thereafter, they investigated the case and filed final report. Based on the final report, the trial Court has taken cognizance and the case is pending in C.C. No.67 of 2020. As per the investigation, prima facie materials are available as against the petitioners to proceed with the case. Hence, it is the matter of trial to decide the issues. Therefore, the petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. The prosecution case is that these petitioners along with other accused have forged sale deeds and thereafter, created forged documents



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for the purpose of cheating and also trespassed into the said property.

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Originally, the property in S.F. No,479/2 to an extent of 1.59 acres belongs to one Singaravelu. The said Singaravelu sold the property to an extent 0.25 cents in the year 1958 to one Kandasamy and the remaining extent of 1.34 cents only belongs to him. While so, the said Singaravelu executed a Will in favour of his son namely Sivagnanasambantham to an extent of 1.90 acres. Thereafter, the said Sivagnanasambantham died leaving behind his legal heirs namely his wife Saradha and his elder son Gowrishankar Singaravelu and Srinivasan. The said Saradha and Gowrishankar had sold the property to these petitioners by suppressing the other legal heirs namely Singaravelu and Srinivasan.

8. According to the prosecution, the Singaravelu had a right of property only to an extent of 1.34 cents, but taking advantage of the Will, the accused have executed sale deed to a larger extent of 1.90 cents to these petitioners. Therefore, the petitioners have been charged for the said offences. In fact, these petitioners are only the purchasers of the property and no any allegations are levelled against these petitioners for



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the offences under Sections 468 and 471 of IPC. As far as the other offences in respect of trespass and damages are concerned, according to the petitioners, they purchased the property and the defacto complainant attempted to encroach the property. Therefore, the title of the property has to be decided by the competent Civil Court. When the title itself is in question and the petitioners have also purchased the property, the question of trespass would not arise. Even as per the complaint and the charge sheet, there are no specific allegations in respect of damages of the property and as far as the other offences are concerned, they will attract only to other accused and not these petitioners. Therefore, there are no any ingredients to constitute the offences under Sections 120-B, 420, 468, 471, 447 and 427 of IPC against these petitioners. Therefore, the respondent police have failed to consider the above said aspects. The trial Court also at the time of taking cognizance failed to consider that these petitioners are only purchasers and no any ingredients to constitute any offence as against these petitioners.

9. On careful perusal of the judgments relied upon the learned



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counsel appearing for the petitioners in (i) ***Gorige Pentaiah vs. State of A.P. and Ors. reported in 2009 CRI.L.J. 350;*** (ii) ***Sheila Sebastian vs. Jawaharaj and another reported in (2018) 7 Supreme Court Cases 581. and (iii) B. Chandravarma and 3 others vs. State in Crl. O.P. No.11885 of 2018,*** it is clear that charge of forgery cannot be imposed on / sustained against a person, who is not the maker of false document in question. Making of a document is different than causing it to be made. In order to attract the Section 464 of IPC, it is imperative that a false document is made and the accused person is maker of the same, otherwise the accused person is not liable for offence of forgery. Also, it is clear that the High Court, in order to prevent abuse of process of any Court or otherwise to secure the ends of justice, can exercise Section 482 of Cr.P.C.

9.1. In the case on hand also, these petitioners are only the purchasers and they are not the makers of alleged forged documents and there is no any materials to attract the provisions of Sections 120-B, 420, 468, 471, 447 and 427 of IPC. Without any materials, the respondent



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police have filed charge sheet and based on the charge sheet, the trial Court also has taken cognizance of the case as against the petitioners and other accused for the offences under Sections 120-B, 420, 468, 471, 447 and 427 of IPC.

10. Therefore, as discussed above, this Court is of the opinion that the pending proceedings as against these petitioners in C.C. No.67/2020 on the file of the Judicial Magistrate Court No.II, Tindivanam are liable to be quashed.

11. Accordingly, the Criminal Original Petition is allowed and the proceedings in C.C. No.67/2020 on the file of the Judicial Magistrate Court No.II, Tindivanam as against these petitioners alone, are quashed. No costs. The connected miscellaneous petitions are closed.

25.10.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

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1. The Judicial Magistrate Court No.II, Tindivanam.
2. The Public Prosecutor, High Court, Madras.
3. The Sub-Inspector of Police, Anti-Land Grabbing Cell, District Crime Branch, Villupuram, Villupuram District..

P.DHANABAL,J

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