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Crl.RC No.1685 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2024

PRONOUNCED ON : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1685 of 2024

Pavankumar Harlalka ... Petitioner/Defacto Complainant

Vs.

1. The Inspector of Police,  
K-4, Anna Nagar Police Station,  
Chennai – 600 040.  
(Crime No.699 of 2019)

2. Narendra Harlalka

3.Mrs.Urmila Harlalka

4.Ms.Rashmi Harlalka

5.Mr.Rakesh Harlalka ... Respondents

*[Respondents 2 to 5 impleaded as per orders dated 22.10.2024 in  
Crl.M.P.No.14468 of 2021 in Crl.R.C.No.1685 of 2024]*

PRAYER: Criminal Revision Case filed under Sections 438 r/w 442 of  
the BNSS, to set aside the order dated 05.02.2024 in R.C.S.No.1/2024 on  
the file of learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.M.Mohammed Rafi

For Respondents : Mr.V.J.Priyadarsana (for R1)

Government Advocate (Crl.Side)

Mr.R.Srinivas, Sr.Counsel (For R2 to R5)

for Mr.M.Santhanaraman



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## ORDER

The Criminal Revision Case has been filed challenging the order dated 05.02.2024 in R.C.S.No.1 of 2024 on the file of the learned V Metropolitan Magistrate, Egmore, accepting the final report filed by the 1<sup>st</sup> respondent, by which the 1<sup>st</sup> respondent had closed the case as 'mistake of fact'.

2. The brief facts leading to the filing of the above revision are as follows:

(i) The petitioner and the 1<sup>st</sup> accused in the complaint filed by the petitioner, are brothers. The Accused Nos.2, 3 and 4 are A1's wife, daughter and son, respectively. According to the petitioner, he moved out of the country and settled at Australia with his wife and children in the year 2004; that he was a karta of HUF by the name Pavan Kumar Harlalka HUF and he purchased several properties in the name of his wife, mother and also in his name; that since he was in Australia, he could not personally supervise the properties and taking advantage of the same, the accused had transferred two of his properties in their names



and his mother Damyanthi Harlalka was shown as the releasor and thereafter, they sold the properties to private individuals in the year 2012-13 and that later he came to know that the accused had forged his signature in a document called 'Confirmation of Oral Family Arrangement', dated 24.04.2003, wherein the petitioner is said to have relinquished his right in respect of Property in Item No.2 of Schedule-A mentioned properties in the said 'Confirmation of Oral Family Arrangement', which is a land measuring 5 acres and 73½ cents in various Survey Numbers in favour of his mother Mrs. Damyanthi Harlalka, on receipt of a sum of Rs.14,75,000/-;

(ii) It is further the case of the petitioner that it is on the basis of this forged document that the accused had obtained a Release Deed from the mother and thereafter executed Sale Deeds in favour of third parties. The petitioner gave a complaint, which was registered in Cr.No.699 of 2019 on the file of the 1<sup>st</sup> respondent for the offences under Sections 195, 192, 19, 196, 209, 405, 406, 415, 420, 463, 464, 466, 467, 468, 470, 471, 472, 474 and 120B of the IPC.

(iii) According to the petitioner, he had obtained handwriting



expert opinion from three experts in the year 2017-18; that those experts have certified that the signature contained in the 'Confirmation of Oral Family Arrangement', dated 24.04.2003, is forged; and hence, there was a delay in lodging the complaint.

(iv) The 1<sup>st</sup> respondent had filed the final report on 26.06.2023 by stating that the investigation revealed that there is no evidence to attract the offence alleged and the allegations are civil in nature and hence, the case may be closed as 'mistake of fact'.

(v) Thereafter, the learned Magistrate by the order dated 05.02.2024 had accepted the final report and closed the case as 'mistake of fact'. The learned Magistrate had also observed that though notice was served on the defacto complainant, he was called absent.

3. (i) Mr.M.Mohammed Rafi, the learned counsel for the petitioner would submit that the petitioner had sent the document along with the admitted signature to three different forensic labs and all of them had uniformly stated that the signatures are dissimilar and therefore, the report of the 1<sup>st</sup> respondent ought not to have been accepted by the



learned Magistrate.

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(ii) The learned counsel also pointed out that even in the report of the Tamil Nadu Forensic Science Department, relied upon by the 1<sup>st</sup> respondent, there is an observation, there is a variation in the handwriting characteristics though they had ultimately stated that it is not possible to offer an opinion.

(iii) The learned counsel further submitted that the trial Court had also not given any proper opportunity to the petitioner to put forth his case; that since he had to travel to Australia for his wife's treatment and there he met with an accident, he could not travel to India; and hence, the petitioner may be given an opportunity to put forth his case before the learned Magistrate.

4. Mr.V.J.Priyadarsana, the learned Government Advocate (Crl.Side) reiterated the contents of the final report of the 1<sup>st</sup> respondent and submitted that the petitioner had received a sum of Rs.34.75 lakhs for releasing his share in the property pursuant to an Oral Family Arrangement; that all the siblings of the petitioner had confirmed the said fact and infact the petitioner's mother herself had acted upon the oral partition and executed documents in favour of A1; and that therefore the



petitioner's case that his signature was forged is an afterthought and even assuming that his signature is forged, when all the parties concerned have acted upon an Oral Family Arrangement, then it is for the petitioner to approach the civil Court, if he is aggrieved by any act of his mother or his siblings in denying his share in the property.

5. (i) Mr. R.Srinivas, the learned senior counsel appearing for the respondents 2 to 5, the accused in the complaint filed by the petitioner submitted that the complaint of the petitioner is nothing but an abuse of process of law; that all the siblings of the petitioner and the mother of the petitioner are aware of the Oral Family Arrangement, and the siblings have stated that the petitioner has been paid Rs.34,75,000/- for the release of his share in the property in favour of his mother; and that the present attempt of the petitioner is to extract money from the respondents 2 to 5 and from the subsequent purchasers, because the land price has increased.

(ii) The learned senior counsel also pointed out that the petitioner had filed two suits viz., (i) C.S.No.229 of 2017, which is pending on the file of this Court for partition and also for declaration of the release deed



in favour of the brother of the petitioner executed by the mother in respect of the disputed property as null and void; and (ii) O.S.No.12 of 2020, which is pending on the file of the learned Principal District Judge, Kanchipuram, for declaring that the petitioner is the absolute owner of the properties described in the schedule to the said suit.

(iii) The learned senior counsel also submitted that a similar complaint was initially filed in the year 2016 before the Kanchipuram Taluk Police Station and on enquiry, the said complaint was closed; that thereafter, the petitioner had filed another complaint before the CCB, Chennai in the year 2017 and the same was also closed by the report dated 07.12.2017; that thereafter, the petitioner filed Crl.O.P.No.26551 of 2017 and pursuant to the directions of this Court, the Land Grabbing Cell attached to Kanachipuram District conducted enquiry and they had given a detailed report on 23.09.2019, closing the case as 'mistake of fact'; and that suppressing all the earlier complaints, the petitioner had given the instant complaint in 2019, which is motivated and an abuse of process of law and hence the complaint has been rightly closed as 'mistake of fact'.



6. I have considered the rival submissions made on either side and perused all the materials available on record.

7. From the above narration of facts, it is clear that earlier similar complaints filed by the petitioner had been closed by atleast three investigating agencies viz., (1) The Inspector of Police, Kanchipuram (2) The Inspector of Police, CCB, Chennai on 19.07.2017 and (3) The Land Grabbing Cell, Kanchipuram on 10.03.2018.

8. In all the reports, it can be seen that the police have stated that on investigation, they came to know that a sum of Rs.34,75,000/- was paid by the petitioner's mother pursuant to which the petitioner had agreed to release his right in the disputed property by an Oral Family Arrangement. The CCB, Chennai police have also stated that the petitioner had not produced the admitted signature for the purpose of comparison.

9. The third investigating agency had also recorded the fact that the petitioner had filed a civil dispute before this Court to declare the release deed executed by the mother of the petitioner in favour of one of his siblings, as null and void and that the said suit is pending.



WEB COPY 10. The complaint before the 1<sup>st</sup> respondent is the fourth attempt made by the petitioner to get his complaint registered. In the said complaint, the petitioner had not stated about his earlier attempts and the closure of the complaints. The petitioner has determined the jurisdiction for the complaints and lodged them in different police stations. Finally, he managed to get the FIR Registered by the 1<sup>st</sup> respondent. The FIR accuses respondents 2 to 5 of having committed as many as twenty offences as detailed earlier.

11. The sum and substance of the allegation is that in the 'Confirmation of the Oral Family Arrangement' the petitioner's signature was forged. However, it can be seen from the final report filed by the 1<sup>st</sup> respondent that the oral family arrangement has been confirmed by all the siblings of the petitioner and it is only the petitioner who has disputed the oral family arrangement. The mother of the petitioner had acted upon the oral family arrangement and had executed a release deed in favour of one of the siblings of the petitioner. The petitioner had gone to the extent of even accusing his mother. The witnesses who were



examined by the 1<sup>st</sup> respondent have all uniformly stated that a sum of Rs.34,75,000/- was paid to the petitioner through the mother of the petitioner in consideration of his releasing his right in the disputed property. When the oral family arrangement has been confirmed by the respondents 2 to 5 and the witnesses examined by the police, the 'Confirmation of the Oral Family Arrangement', is only a record of past transactions. The question as to whether the parties had acted upon the oral family arrangement, cannot be gone into by the police, which is pending consideration in the civil suits and they had therefore correctly referred the case as a 'mistake of fact', by observing that since the civil suits are pending and the complaint discloses only a civil dispute. The essential ingredient in any property offence of either 'dishonestly' or 'fraudulently', is not found in this case, as could be seen from the report of the police.

12. Apart from the merits of the case, as stated earlier, this is the fourth complaint by the petitioner. The petitioner has misused the process of law by filing the complaints in different police stations according to his whims and fancies and not disclosing the fate of the earlier complaints in the subsequent complaints. Above all, the



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petitioner had not chosen to appear before the learned Magistrate, though notice was served. The reason stated in the grounds of the revision that the petitioner was out of the country, is not substantiated. In any case, there is no reason why the petitioner could not engage a lawyer to seek time for his presence.

13. Therefore, for all the above reasons, this Court is of the view that the petitioner's action in misusing the process of law is condemnable and the revision is liable to be dismissed. Accordingly, the order dated 05.02.2024 in R.C.S.No.1 of 2024 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai, is confirmed and the Criminal Revision Case stands dismissed.

**03.12.2024**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral citation: Yes/No.  
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To

1. The V Metropolitan Magistrate,  
Egmore, |Chennai.
2. The Inspector of Police,



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K-4, Anna Nagar Police Station,  
Chennai – 600 040.

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3. The Public Prosecutor,  
High Court, Madras.



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SUNDER MOHAN, J.

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Pre-delivery order in  
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