



Crl.R.C.No.2207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.2207 of 2023

S.Kaliyaperumal (late)
S/o.Samykannu

K.Karthikeyan
S/o.S.Kaliyaperumal

... Petitioner

Vs.

1. The State,
Represented by the Inspector of Police,
Udayarpalayam Police Station,
Ariyalur District.

2. J.Mahiyarasan
S/o.Jayaraman

3. G.Kalidoss
S/o.Ganesan

4. M.Rajasekar
S/o.Marimuthu

5. B.Govindhasamy
S/o.Balaguru



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6. G.Mutursamy,
S/o.Govindhasamy

7. P.Venkatesan
S/o.Periyasamy

... Respondents

(Substitute petition is allowed as per order dated 24.11.2023 in Crl.M.P.No.18515 of 2023 in Crl.R.C.SR.No.53565 of 2023)

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the code of Criminal Procedure, to set aside the impugned order passed by the learned Judicial Magistrate Court No.II at Jayankondam in Crl.M.P.No.1197 of 2023 and further direct the first respondent to register the criminal complaint.

For Petitioner : Mr.E.R.Suresh

For Respondents : Mr.A.Gopinath
Government Advocate for R1

ORDER

The criminal revision is filed, challenging the order, dated 30.03.2023 passed in Crl.M.P.No.1197 of 2023 by the learned Judicial Magistrate Court No.II at Jayankondam.



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2. The facts which are to be noticed for the disposal of the revision is that, certain properties in S.No.513/1 belong to the family of the petitioner and the petitioner also possess patta in his father's name. However, the respondents 2 to 7 had fraudulently executed a document in Document No.2307/2022 and obtained patta in the name of the fifth respondent, namely, Govindhasamy creating encumbrance of the property belonging to the petitioner's family. With respect to the said issue, the petitioner's father made a complaint in Udayarpalayam Police Station on 18.02.2023 in person and through registered post on 20.02.2023. However, no action has been taken on the complaint. Therefore, the petitioner's father filed Crl.M.P.No.1197 of 2023 on the file of the learned Judicial Magistrate No.II, Jayankondam seeking action against the respondents by the Police.

3. The said Crl.M.P.No.1197 of 2023 was dismissed by the learned Judicial Magistrate No.II, Jayankondam stating that there was a property dispute between the petitioner therein and the respondents and that, in order to give criminal colour to a civil dispute, the petitioner has purposely



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filed Crl.M.P. Accordingly, the learned Judicial Magistrate No.II, Jayankondam dismissed the said petition, against which, the present criminal revision has been filed.

4. During the pendency of the above proceedings, the original complainant, namely, Kaliyaperumal died and his legal heir one Karthikeyan, has filed the present criminal revision challenging the dismissal of the said Crl.M.P.No.1197 of 2023.

5. The learned counsel appearing for the petitioner challenges the impugned order on the ground that the learned Judicial Magistrate No.II, Jayankondam ought to have considered the complaint entirely and the criminality committed by the proposed accused. The learned counsel also submits that due to the fraudulent execution of the document, the valid title to the property of the petitioner has been infringed and the learned Judicial Magistrate has not gone into the question of the serious criminal offence committed by the accused and has been merely turned it as a civil dispute



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which ought not to have been done. Accordingly, the learned counsel for the petitioner prays for setting aside of the order passed by the learned Judicial Magistrate No.II, Jayankondam and to allow the present criminal revision.

6. The learned Government Advocate appearing for the first respondents submitted that the petitioner herein is not a complainant before the criminal Court and his father was the original complainant who died during the pendency of the proceedings. In order to grab the property, the petitioner has filed the present revision, which is unsustainable.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent and perused the materials placed before this Court.

8. It is seen that there has been a property dispute between the petitioner's father and the private respondents with respect to the execution of the document. However, the petitioner's father without seeking remedy



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before the civil Court has approached the criminal Court seeking registration of a complaint against the private respondents. The trial Court after going through the facts on record has relied on the judgment of the Hon'ble Supreme Court in the case ***Govind Prasad Kejriwal Vs. State of Bihar & another***, came to a conclusion that while holding or conducting an inquiry under Section 202 of Cr.P.C, the learned Magistrate is required to consider whether even a *prima facie* case is made or not and whether the criminal proceedings initiated are an abuse process of law and whether the dispute is purely of a civil nature.

9. It is seen that the learned Judicial Magistrate has arrived at a *prima facie* satisfaction that it was a civil dispute which was tried to be given a criminal colour and that cannot be allowed as it is an abuse process of law, accordingly the learned Judicial Magistrate dismissed the said Crl.M.P.No.1197 of 2023. This Court after going through the facts and materials placed on record does not find any reason to interfere with the order passed by the learned Judicial Magistrate No.II, Jayamkondan.



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10. Accordingly, this Criminal Revision Case is dismissed.

24.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Judicial Magistrate No.II,
Jayankondam.
2. The Inspector of Police,
Udayarpalayam Police Station,
Ariyalur District.



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M.DHANDAPANI, J.

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