



CrI.O.P.No.30937 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

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

CrI.O.P.No.30937 of 2022

and

CrI.M.P.No.18938 of 2022

1. Habibullah Wavoo
Managing Director,
Ramky Wavoo Developers Pv. Ltd.
2. S.Paramaiah,
Executive Director,
Ramky Wavoo Developers Pv. Ltd.

... Petitioners

Versus

1. State rep. by
Inspector of Police,
CCB, Forgery Investigation Wing,
Team-27, Vepery, Chennai.
(Crime No.245 of 2022)
2. Mohsin Sheriff
rep. by Power Agent Umesh

... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records, quash the First Information Report in Crime No.245 of 2022 on the file of the Inspector of Police, CCB-Forgery Investigation Wing, Vepery, Chennai for offences under Sec.420, 465, 471 and 120-B I.P.C.

For Petitioners : Mr.A.Ramesh,
Senior Advocate for
Mr.Mohammed Fayaz Ali

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

Mr.N.R.Elango,
Senior Advocate for
Mr.A.S.Aswin Prasanna for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the F.I.R. in Crime No.245 of 2022 on the file of 1st respondent police.

2. Heard both sides.



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3. The petitioners are ranked as accused 1 and 2 in the F.I.R. in Crime No.245 of 2022 registered for an offence under Sec.420, 465, 471 and 120-B of I.P.C. based on the complaint given by the 2nd respondent/defacto complainant.

4. Brief facts of the case is as follows :-

The 1st petitioner is the Managing Director and the 2nd petitioner is the Executive Director of M/s. Ramky Wavoo Developers Pvt. Ltd. respectively and they are third parties to the title dispute between defacto complainant and his family members. He would submit that the petitioners are renowned builders and they have identified a property situated in Door Nos. 421, 422, 423 and 424 of the Pantheon Road, Egmore, Chennai and entered into a Joint Development Agreement with Naunihal Begum and 16 others (i.e. owners of the property). Subsequently, they have developed the property by obtaining approval from the appropriate authority and constructed the apartment, thereby sold the flats to third parties. He would submit that they are only



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promoters, constructed the apartment in the property belong to one Hajee Mohamed Abdul Azeez Sahib and his family members. However, there was a partition held between his legal heirs on 31.05.1945, whereby the said property was allotted to second wife late Mahboob Bi. After several decades, now the 2nd respondent/defacto complainant claimed himself as grandson of one of legal heirs of Mahaboob Bi through the second wife late Fathima Bi. The 2nd respondent/defacto complainant along with other legal heirs of Abdul Khader, who is son of Mahboob Bi through his second wife late Fathima Bi have filed a civil suit in C.S.No.334 of 2015. Immediately the other legal heirs have filed a petition to reject the plaint as it was filed after 71 years of partition and already the partition deed was also acted upon. So, on the basis of those facts, the plaint was rejected and the same was confirmed by the Division Bench of this court in O.S.A.No. 124 of 2017 and as on date, the said order is in force. Thereafter, he filed a Writ of Mandamus praying to consider the petitioner's representation relating to the genuineness of three documents, based on which the properties are grabbed stating that non-availability of Rs.1000/- face value stamp paper at the relevant point of time and not



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obtained any traceable certificate and forging the signature. The prayer in W.P.No. 17076 of 2022 was dismissed by this court as such is not maintainable on 07.07.2022. Thereafter, nearly after four months later, the 2nd respondent filed the present complaint against the petitioners and others and rejected the 2nd respondent's lawful claim over the property as if they fabricated documents and cheated him.

5. The learned counsel for petitioners would submit that these petitioners are only promoters and they are no way connected with the alleged title dispute between legal heirs of Md.Abdul Azeez Sahib. They have also produced the copy of agreement dated 15.11.2012 entered between them with the owner of property and with other legal heirs, in which all the legal heirs of H.A.G.Dastagir Sheriff have signed. Admittedly, the said H.A.G.Dastagir is one of son of second wife of original owner Hajee Mohamed Abdul Azeez Sahib and Mahboob Bi. Thereafter, a partition deed was also executed among them in the year of 1970. The learned counsel also content that in the year of 1945 by way of partition deed, the properties were allotted on 21.02.1945, in which the



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defacto complainant's father-in-law was also allotted property and the same was detailed while filing the suit in C.S.No.334 of 2015. If at all, any illegal partition was effected, they ought to have challenged the partition deed much earlier, but nearly about 71 years later, they agitated before the court in the year of 2015 and the same was rejected by the Division Bench of this court in O.S.A.No. 124 of 2017. So as on date, the order passed by the Division Bench of this Court is in force. Subsequently, F.I.R. was lodged based on the complaint of 2nd respondent/defacto complainant, who is one of plaintiff in the earlier suit stating that there was a fabrication of document among the family members and also added that with the collusion of builders/petitioners, the other legal heirs fabricated the document and cheated the buyers of flats as if they have valid title over the property and that subsequent partition was effected in Rs.1000/- face value stamp paper in the year of 1970, but during that period, according to the 2nd respondent/defacto complainant, no such stamp paper was under circulation. The said allegation was objected by the petitioners' counsel by relying ratio laid down by this court in the authority in ***Crl.O.P.Nos.8068, 10291 of 2021***



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dated 24.06.2022 in the case of Leela Radhakrishnan and others vs.

Assistant Commissioner of Police, Central Crime Branch and others,

wherein this court held as follows:-

“Criminal – Quashing of F.I.R. - Seeking to quashing of F.I.R. registered against petitioners, petitioners were before court with these petitions – whether petitioners had made out case for quashing of FIR registered against them. Held, it was seen that prime duty of respondent No.1 investigating agency was that to collect evidence – In this case, investigation proceeds, otherwise, trying to somehow rope in entire family of petitioners into case, despite Tahsildar categorically giving finding as well as reports received from India security press, Nasik – Further, treasury officer in yet another communication clearly state that it could not be conclusively said that during which period documents were in circulation or not and they did not maintain any record for same – Having collected these information and coming to know about all these facts, still steps were taken, to project as if petitioners created forged document primarily by using non-judicial stamp papers with Rs.1000/- face value which was not in use at relevant period – It was seen from records that non-judicial stamps



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papers with Rs.1000/- face value was in use at relevant point of time – In view of same, court find that allegation of defacto complainant that petitioners created forged documents, get sale deed executed in their favour, could not be countenanced, that too for transaction, which took place 50 years back and it was clear abuse of process of law – Petition allowed.”

Thus from the year of 1962 itself, Rs.1000/- face value stamp paper is under circulation. So, he prayed to quash the proceedings initiated against the petitioners as if they are innocent builders and they are no way connected with the alleged title dispute between the 2nd respondent/defacto complainant and his family members.

6. By way of reply, the learned Government Advocate (Crl. Side) appearing for 1st respondent would submit that at the instigation of these promoters, the alleged owners have entered into a joint development agreement by fabricating the document, thereby they promoted the property without valid title. Therefore, with regard to fabrication of document, it needs detailed investigation.

7. Admittedly, on bare perusal of earlier order passed by the Division Bench of this Court, the partition was effected long back in the



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year of 1945 and thereafter the partition was acted upon and one of the share was allotted to grandfather of 2nd respondent/defacto complainant and if at all, any unequal partition, he ought to have raised objection much earlier, but after 71 years, objection raised by the 2nd respondent/defacto complainant along with other legal heirs cannot be taken into consideration and the same would clearly shows that after rejection of plaint, the criminal complaint was lodged, which is a clear case of abuse of process of law. Moreover, the petitioners have entered into a joint development agreement in the year of 2012 based upon the execution of partition deed of the year 1945 and 1970 as submitted by the petitioners counsel. Therefore, if at all, any unequal partition and title is under dispute between the 2nd respondent/defacto complainant and the other legal heirs of his family, he is entitled to work out his remedy as per manner known to law, in which the petitioners, who are only promoters/3rd parties to family dispute, no way concerned with them. Hence, there is no basic ingredient to prosecute these petitioners under Sec.420, 465, 471 and 120B of I.P.C. and also there is no proof that these petitioners were acted with malafide intention to defraud the claim of 2nd



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respondent/defacto complainant in respect of his family properties.

Therefore, the proceedings initiated against the petitioners is liable to be quashed. Furthermore, the authority relied on by the petitioners' counsel held by this court in ***Crl.O.P.Nos.8068, 10291 of 2021 dated 24.06.2022 (MANU/TN/4865/2022)*** in the case of ***Leela Radhakrishnan and others vs. Assistant Commissioner of Police, Central Crime Branch and others*** is squarely applicable to the facts of instant case. Accordingly, this Criminal Original Petition is allowed and the proceedings initiated in F.I.R. in Crime No.245 of 2022 on the file of 1st respondent police as against these petitioners (A1 and A2) alone ordered to be quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

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To

1. Inspector of Police,
CCB, Forgery Investigation Wing,
Team-27, Vepery, Chennai.



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2. The Public Prosecutor,
High Court, Madras.

T.V.THAMILSELVI, J.

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