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Crl.OP.No.28432 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28432 of 2023

and

Crl.M.P.Nos.19758 & 19759 of 2023

K.G.Abraham

S/o.K.T.Varghese

... Petitioner

Vs.

1.State represented by

The Inspector of Police,
Central Crime Branch, Team-II,
Vepery, Chennai - 600 007.
Crime No.99 of 2012

2.Rajesh

S/o.Rajagopal

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for records and quash the proceedings in C.C.No.228 of
2023 pending on the file of Judicial Magistrate I, Poondhamallee,
Tiruvallur, in Crime No.99 of 2012 on the file of first respondent.

For Petitioner : Mr.R.John Sathiyar, Senior Counsel
for Mr.P.Divakar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor [R1]
Mr.A.Saravanan [R2]

ORDER



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This quash petition has been filed by A2 challenging the proceedings pending before the Court below in C.C.No.228 of 2023.

2. Heard Mr.R.John Sathiyan, learned Senior Counsel appearing for petitioner, Mr.A.Damodaran, learned Additional Public Prosecutor appearing for first respondent and Mr.A.Saravanan, learned counsel appearing for second respondent.

3. The second respondent gave a complaint to the effect that he had purchased a land through a registered sale deed dated 13.09.1993 and the patta was mutated in the name of the company. Thereafter, the company had sold various properties including the subject property of an extent of 44.5 cents through a registered sale deed dated 20.02.2003. The grievance of the second respondent was that one Pon Baskar claimed to be the husband of Sabeena Baskaran, who had purchased the property through sale deed dated 20.02.2003 and was claiming right over the property on the ground that the property was settled in his favour by his wife. On further enquiry, it came to be ascertained that the document has been fabricated by impersonation and the same property has been dealt



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with. Based on this complaint, a First Information Report came to be registered in Crime No.99 of 2012. On completion of investigation, a final report was filed before the Court below as against two accused persons and the Court below acted upon the final report and took it on file in C.C.No.228 of 2023 and cognizance was taken for offences u/s.465, 467, 468, 471, 420 r/w 120(b) IPC. The same has been put to challenge by the petitioner (A2) in this quash petition.

4. Learned Senior Counsel appearing on behalf of petitioner, apart from raising various grounds to the effect that there is no material against the petitioner, also canvassed that the Court below has taken rubber stamp cognizance without any application of mind.

5. Learned counsel for second respondent submitted that PW-1 was already examined as a witness and the case is already at the stage of trial. In view of the same, learned counsel sought for dismissal of this petition and to fix a time frame for completion of trial.



6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The Court below has taken cognizance in the following manner:

[illegible]



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8. This Court has, time and again, frowned upon rubber stamp cognizance being taken by the Magistrate's Court without any application of mind. The Court is expected to give *prima facie* reasons while taking cognizance since the act of taking cognizance is a judicial act which requires application of mind. The said application of mind will be revealed if some reasons are assigned by the Court while taking cognizance. In the instant case, there was a rubber stamp available before the Court and the gaps alone have been filled up. Obviously, the Court below has not applied its mind. On this ground alone, the cognizance order passed by the Court below is liable to be interfered by the Court below. The law on this issue was discussed in detail by this Court in ***Shanmugam and others v. Inspector of Police, Ariyalur Police Station*** [(2019) 3 MLJ CrL. 339].

9. In the light of the above discussion, the cognizance that was taken by the Court below is hereby set aside. The matter is remanded back to the file of the Judicial Magistrate I, Poonamallee. Learned Magistrate is directed to apply his mind on the final report and the materials furnished along with the report and pass the cognizance order.



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N.ANAND VENKATESH, J.

gm
This exercise shall be completed by learned Judicial Magistrate within a period of four (4) weeks from the date of receipt of a copy of this order. On such cognizance order being passed, it will be left open to the Court below to proceed further in accordance with law.

This Criminal Original Petition is allowed in the above terms.
Consequently, connected miscellaneous petitions are closed.

09.01.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Judicial Magistrate I,
Poondhamallee, Tiruvallur.

2.The Inspector of Police,
Central Crime Branch, Team-II,
Vepery, Chennai - 600 007.
Crime No.99 of 2012

3. The Public Prosecutor,
High Court, Madras.

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