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Crl.O.P.(MD)No.1814 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.1814 of 2022

and

Crl.M.P.(MD).Nos.1326 & 1327 of 2022

1.D.R.Paulraj

2.J.Vidhiyaprakash

..petitioners

Vs.

1.State represented by its,
the Inspector of Police,
District Crime Branch,
Kanyakumari District.
(In C.C.No.79 of 2021)

2.Kezhson

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.79 of 2021 on the file of the learned Special Judicial Magistrate, Tirunelveli and quash the same in respect of the petitioner as illegal.

For petitioner

: Mr.G.Anto Prince

For R-1

: Mr.S.Manikandan,

Government Advocate

(Criminal Side)

For R-2

: Mr.L.George Paul Anto



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ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C.No.79 of 2021 on the file of the learned Special Judicial Magistrate, Tirunelveli.

2. The case of the prosecution is that the petitioners along with two other accused persons had forged the documents pertaining to the land owned by the second respondent, worth about more than Rupees One Crore. It is the further case of the prosecution that the second respondent, who is in possession of the land to an extent of 10 Acres, 93 Cents and 330 links in Aralvoimozhi Village at Re.Survey No.813/1A, has purchased the said land by way of two sale deeds vide Sale Deed No.733/2014 to an extent of two Acres and in respect of sale deed No.734/2011 to an extent of 8 Acres 53.330 square links (3 Hectares 61 Ares) dated 10.05.2011. Thereafter, the second respondent applied for sub division as well as change of name in patta with respect to the above said land and while measuring the land for the purpose of sub division, he came to know that the above said land has been illegally grabbed by the petitioners along with other accused persons through forged documents. Thereafter, the second respondent approached the petitioners and other accused persons and sought for making necessary corrective



measures, so that, the records of the land belonging to him are made proper. However, the same was declined by the petitioners herein.

Hence, the second respondent made a complaint before the first respondent Police on 16.07.2012, but, no action has been taken by the respondent Police. Thereafter, the second respondent has filed a petition before this Court in Crl.O.P.(MD).No.3334 of 2014 seeking for a direction to the respondent Police to register FIR regarding the above said matter and subsequently, the said FIR was closed as the case was “civil in nature”. Again, the second respondent has approached this Court seeking for a direction to the respondent Police for filing of FIR and the same was granted to him. Subsequent to the order of this Court, the First Information Report came to be filed by the first respondent Police as against the accused persons in the year 2014 in Crime No.22 of 2014 for the alleged offences punishable under Sections 420, 467, 468 and 471 IPC. The respondent Police, thereafter, has conducted investigation and after completing investigation, charge sheet has been filed before the learned Special Judicial Magistrate, Tirunelveli in C.C.No.79 of 2021. Challenging the same, the present petition has been filed.



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3. The learned counsel appearing for the petitioners would submit that though this is not a case of land grabbing, the first accused, viz., Thinakar, who is the owner of the property to an extent of 2 Acres and 15 cents, acquires the property from one Lasar through a sale deed No.1568/2009 and the first petitioner sold the above said property to the second petitioner. He would further submit that there is no dispute with regard to the land owned by both parties and they are enjoying their property individually. He would further submit that Accused No.1 has wrongly mentioned the boundary number, for which, the second respondent made a complaint before the respondent Police, is not sustainable one. Merely wrong quoting of the boundaries in the sale executed by Accused No.1 will not attract the penal provision and the respective parties have enjoyed their respective lands as per the sale deed. The mistake arisen is simply due to some misunderstanding with regard to the boundaries of the land held by the accused persons. Hence, necessary ingredients required under Sections 420, 467, 468 and 471 IPC will not attract against the petitioners in the present case.

4. The learned counsel appearing for the petitioners would further submit that for the very same issue, the second respondent has already filed a civil suit in O.S.No.24 of 2014 before the concerned Court



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and the said suit also decreed in his favour declaring the boundaries mentioned in the sale deed as null and void, as against which, the petitioners have filed an appeal before the Lower Appellate Court in A.S.No.86 of 2017 and the said Appeal was partly allowed, against which, the petitioners preferred a Second Appeal before this Court in S.A.(MD).SR.No.3340 of 2020. He would further submit that when the similar issue is already pending before this Court and at the same time, no criminal prosecution is running concurrently which is non-est in the eye of law and it is impermissible one. He would further submit that in the present case, the second respondent has approached the Civil Court for appropriate remedy, in which, he succeeds and the same was partly modified by the Lower Appellate Court, against which, the petitioners herein filed Second Appeal before this Court and for the very same set of allegations, the respondent Police cannot conduct a parallel proceedings under Cr.P.C., which is not permissible one and accordingly, he prays for allowing the petition.

5. The learned counsel appearing for the second respondent would submit that admittedly, the petitioners are the owners of the property, however, in respect of the sale deed executed by A1 in favour of the first petitioner by mentioning wrong boundary number will deprive



the rights of the second respondent to enjoy the property, for which, the second respondent made a complaint before the respondent Police for the above said offence and the respondent Police has conducted the investigation and filed a charge sheet which cannot be interfered with and further, the prosecution has to prove the case beyond reasonable doubt before the trial Court. He would further submit that all those points raised before this Court are triable issues, which cannot be canvassed before this Court and it can be canvassed only at the time of trial.

6. The learned Additional Public Prosecutor appearing for the State has adopted the arguments of the learned counsel appearing for the second respondent.

7. It is seen that admittedly, the petitioners are the owners of the property in Survey No.813 / 1A to an extent of 2 Acres 15 cents, whereas, the second respondent is the owner of the property to an extent of 10 Acre, 93 Cents and 330 links by way of two sale deeds and the second respondent has purchased the property through the power of attorney, whereas, the first petitioner purchased the property from Accused No.1 and Accused No.1 purchased the property from one Lasar.



8. This Court perused the complaint and it reveals that

Accused No.1 wrongly mentioned the boundaries in the sale deed which was executed in favour of the first petitioner, for which, the second respondent made a complaint for attracting the above said penal provision. In order to decide the above issue, it is necessary to refer to the decision rendered by the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***.

9. As per the guidelines issued by the Hon'ble Apex Court, it is clear that the issue in between the parties is civil in nature the aggrieved parties have to work out their remedy before the appropriate Civil Court. Keeping in mind the above said guidelines issued by the Apex Court, admittedly, for the very same allegations, the second respondent has approached the Civil Court and the Civil Court also decreed in his favour, against which, the petitioners preferred an Appeal and the Lower Appellate Court partly allowed the matter and again, the petitioners have approached this Court by way of Second Appeal and the Second Appeal is pending before this Court at SR stage. When the Civil Court already seized of the matter and rendered its findings, for the very same issue, the respondent Police cannot conduct a parallel proceedings under Cr.P.C. which is impermissible one.



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10. At this juncture, the learned counsel appearing for the petitioner would submit that, at the time of filing this petition, the matter was pending before the learned Special Judicial Magistrate, Tirunelveli and now, it is transferred and re-numbered as C.C.No.985 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil.

11. In view of the above, the proceedings in C.C.No.985 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil, is quashed and this Criminal Original Petition is allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

26.02.2024

Index : Yes/No
Internet : Yes/No
TSG

To

1.The Special Judicial Magistrate, Tirunelveli.

2.The Judicial Magistrate No.I, Nagercoil.

3.The Inspector of Police,
District Crime Branch,
Kanyakumari District.

4.The Additional Public Prosecutor,



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Madurai Bench of Madras High Court,
Madurai.

M.DHANDAPANI. J.

TSG

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