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Crl.O.P.(MD)No.1816 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.1816 of 2022
and
Crl.M.P.(MD)Nos.1328 and 1329 of 2022

Suresh Babu

... Petitioner/A3

Vs.

1.State Represented by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
Crime No.22 of 2006

... 1st Respondent/Complainant

2.Chidambaram

... 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.33 of 2012 on the file of the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli, dated 17.12.2020 and quash the same against the petitioner alone.

For petitioners : Mr.T.A.Ebenezer

For R-1 : Mr.S.Manikandan
Government Advocate (Crl. side)

For R-2 : Mr.Suresh Manikam
for Mr.R.J.Karthick



ORDER

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This petition has been filed seeking to quash the proceedings in C.C.No.33 of 2012 on the file of the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli.

2.The case of the prosecution is that the defacto complainant's father one Ambalavanapillai purchased the property in dispute from the coparcener of A1, by name, Thirumalaiappa Mudhaliyar in the year 1960 for a sum of Rs.200. The said Ambalavanapillai has two sons, namely, Gandhimathinathan and the defacto complainant and he purchased the above property in the name of his son Gandhimathinathan. Thereafter, the said Gandhimathinathan relinquished his rights over the above property to his father on 22.04.1974. After the demise of his father, the defacto complainant is in possession and enjoyment of the above property since 1990. Subsequently, A1 conspired with A2, sold the defacto complainant's property to A3. Hence, the second respondent made a complaint before the Superintendent of Police. Pursuant to which, the respondent Police registered a case in Crime No.22 of 2006 and the respondent Police conducted the investigation and on completion of investigation, the charge sheet has been filed before the learned Judicial Magistrate No.I, Tirunelveli and the learned Judicial Magistrate has



taken cognizance in C.C.No.27 of 2009 for the alleged offences under Sections 465, 467, 468, 420 and 120B of IPC. Thereafter, due to the constitute of special courts, the above case was transferred to the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli and renumbered as C.C.No.33 of 2012.

3.The learned counsel appearing for the petitioner would submit that originally the property was owned by one Thirumalaiappa Mudhaliyar. The said Thirumalaiappa Mudhaliyar had two daughters and one son, by name, Chellammal, Kalyani and Kumarasay. The defacto complainant purchased the property from the said Thirumalaiappa Mudhaliyar's daughter, viz., Kalyani and thereafter, the said Kumarasay's son Thirumalaiyappan/A1 executed a sale deed in favour of the petitioner. However, the learned counsel for the petitioner filed an affidavit before this Court, wherein, the petitioner undertakes that he will not continue the suit and he will not claim the property through any process of law and already the possession is with the second respondent and he will never disturb their possession and he will not interfere in the possession of the defacto complainant.



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4.The learned counsel for the petitioner would further submit that the second accused filed a quash petition in Crl.O.P.(MD)No.18170 of 2013 before this Court and the same was allowed on 06.06.2018 and during the pendency of the trial, A1 was also died. He would further submit that since A1 and A2 have already died, the proceedings against the petitioner may be quashed by accepting the said undertaking affidavit and that the petitioner is ready to give evidence before the Sub Registrar with regard to the suit property and accordingly, he prayed for allowing this petition.

5.The learned counsel appearing for the defacto complainant would submit that this Court may record the affidavit filed by the petitioner before this Court and issue a direction to the Sub Registrar, Kadayam, Tenkasi District, to record the evidence of the petitioner and remove the encumbrance in the manner known to law.

6.The learned Government Advocate (Crl. side) appearing for the first respondent would submit that now the case is transferred to the learned Judicial Magistrate No.I, Tiruenelveli and renumbered as C.C.No.1069 of 2023.



7. When such a situation arose in similarly placed matters in

CrI.O.P.(MD) Nos.406, 530 and 864 of 2016 (Prabu and others vs. State Rep. By The Inspector of Police and others), decided on 28.01.2016, this Court considered the various decisions rendered by the Hon'ble Supreme Court in this regard in several cases, namely, Gian Singh vs. State of Punjab and another [(2012) 10 SCC 303], B.S.Joshi vs. State of Haryana [(2003) 4 SCC 675], Nikhil Merchant vs. CBI [(2008) 9 SCC 677], Narinder Singh and others vs. State of Punjab and another [(2014) 6 SCC 466] and State of Madhya Pradesh vs. Manish and others [(2015) 8 SCC 307] and observed as under:

“11. If the offences against women and children and the IPC offences falling under the categories, like, murder, attempt to murder, offence against unsound mind, rape, bribe, fabrication of documents, false evidence, robbery, dacoity, abduction, kidnapping, minor girl rape, idol theft, preventing a public servant from discharging of his/her duty, outrage of woman modesty, counterfeiting currency notes or bank notes, etc., are allowed to be compounded, it will surely have serious repercussion on the society, as the above mentioned list is only illustrative and not exhaustive. Similarly, any compromise between the victim and the offender in relation to the offences clubbed with Special Enactment, like Arms Act, the Prevention of Corruption Act, TNPPDL Act, TNPID Act or the offences committed by Public Servants while working in that capacity, etc., cannot provide for any basis for quashing criminal proceedings involving such offences. As held by the Apex Court, insofar the offences arising out of matrimonial dispute, relating to dowry or the family disputes where the wrong is basically private or personal in nature, are concerned, the possibility of conviction is remote and bleak, in case the parties resolve their entire disputes amicably among



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themselves. This Court feels that there cannot be any compromise in respect of the heinous and serious offences of mental depravity and in that case, the Court should be very slow in accepting the compromise. If the compromise is entertained mechanically by the Court, the accused will have the upper hand. The jurisdiction of this Court may not be allowed to be exploited by the accused, who can well afford to wait for a logical conclusion. The antecedents of the accused have also to be taken into consideration before accepting the memo of compromise and the accused, by means of compromise, cannot try to escape from the clutches of law.

8.Taking note of the judgments referred to supra, considering the nature of allegations and in view of the undertaking affidavit filed by the petitioner, this Court is of the opinion that no useful purpose would be served in keeping the matters pending. Therefore, the entire proceedings in C.C.No.1069 of 2023 on the file of the learned Judicial Magistrate No.I, Tirunelveli, in respect of the petitioner alone, is hereby quashed.

9.In view of the settlement arrived at between the parties, the petitioner is directed to give evidence to the Sub Registrar, Kadayam, Tenkasi District and after recording the same, the Sub Registrar shall remove the encumbrance in the said property based on the petitioner's evidence, since A1 and A2 also died and not in a position to cancel the document.



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10. Accordingly, this Criminal Original Petition is allowed on the basis of the undertaking affidavit filed by the petitioner. The said undertaking affidavit shall form part of this order.

01.02.2024

Index : Yes/No
Internet : Yes/No
Sji

To

1. The Judicial Magistrate No.I, Tirunelveli.
2. The Special Judicial Magistrate,
Special Court for Land Grabbing Cases, Tirunelveli.
3. The Inspector of Police,
District Crime Branch,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Sub Registrar, Kadayam, Tenkasi District.



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M.DHANDAPANI. J.

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