



Crl.O.P.(MD) No.5150 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2024

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THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.5150 of 2021

and

Crl.M.P.(MD) Nos.2948 & 2949 of 2021

1. Subbulakshmi

2. Sethuraj

... Petitioners

Vs.

Pandi

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the final report in C.C.No.736 of 2019 on the file of the Judicial Magistrate No.5, Madurai and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.S.Ramsundarvijayraj
for M/S.Veera Associates

For Respondent : Mr.R.Manoharan



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ORDER

This Criminal Original Petition is to quash the Private Complaint in C.C.No.736 of 2019 on the file of the Judicial Magistrate No.5, Madurai filed by the respondent herein.

2. The petitioners are accused 2 and 3 in the said petition. The offences alleged against them are under Sections 147, 448, 427, 406, 420 and 379 I.P.C.

3. The case of the respondent in a nut shell is as follows.

The property bearing Plot No.47 in Survey No.127 of Narasingam Village originally belonged to the father and mother of the one Pandi. They executed a settlement deed in favour of Pandi's sister Pandiselvi on 04.04.1997. The said Pandiselvi executed a General Power of Attorney dated 18.07.2007 in favour of the first petitioner, namely, Subbulakshmi, who in turn executed a sale deed in favour of her husband Sethuraj (second petitioner) on 24.10.2007.



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4. It is the case of the respondent/complainant that his sister Pandiselvi died on 14.08.2007 and though the first petitioner Subbulakshmi, the power of attorney holder was in know of the said fact, had executed a sale deed in favour of her husband Sethuraj based on the power of attorney. It is his further contention that on 05.08.2016, the present petitioners along with two others came down to his house and had stolen several household articles worth Rs.2,00,000/- (Rupees Two Lakh only) and in this regard, he lodged a complaint with the Inspector of Police, Appanthirupathi Police Station, Madurai. However, the Police had closed the said complaint treating the same 'as mistake of fact'. Aggrieved over the same, he filed a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate Court No.5, Madurai.

5. The learned counsel appearing for the petitioners would contend that in the private complaint as well as in the complaint before the police, the respondent/complainant had not mentioned the date of alleged theft of household articles. It is his further contention that the first petitioner had executed the sale deed in favour of her husband Sethuraj, only on the



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power of attorney executed by Pandiselvi and Sethuraj in turn had executed a power of attorney in favour of one Balasubramanian. His further contention is that the dispute between the parties is purely civil in nature and therefore, he sought for quashing the private complaint.

6. Per contra, Mr.R.Manoharan, learned counsel appearing for the respondent/complainant would contend that the present petitioners even after knowing the death of Pandiselvi on 14.08.2007 had created a sale deed on 24.10.2007 and further, encumbered the property by executing a power of attorney in favour of Balasubramanian. It is his further contention that though the date of alleged commission of offence of theft of the articles is not specifically indicated in the private complaint, it is the consistent case of the complainant that on the date of lodging a complaint with the police i.e., 05.08.2016, the alleged occurrence took place and in any event, the delay in F.I.R cannot be a ground to quash the private complaint. Therefore, he prayed for dismissal of the present petition.

7. At the outset, it may be observed that Pandiselvi though had executed a General Power of Attorney on 18.07.2007, died on 14.08.2007.



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The alleged sale deed in favour of the said Sethuraj was executed by the power of attorney holder only on 24.10.2007. It is not the case of the present petitioners that they were not aware of the death of Pandiselvi. Moreover, in the complaint, there are specific averments to the effect that the present petitioners along with two others entered into the premises of the respondent and had stolen household articles worth Rs.2,00,000/- (Rupees Two Lakh only). The learned Judicial Magistrate No.5, Madurai has taken cognizance of the offence and charges had also been framed against all the accused. It is specifically contended by the respondent/complainant that after the death of her sister, their parents executed another settlement deed in his favour on 14.07.2008 and that the property in Survey No.127 of Narasingam village absolutely belongs to him.

8. In the facts and circumstances, there is a *prima facie* case against the present petitioners for the offences punishable under Sections 147, 448, 427, 406, 420, 379 I.P.C. The truth or otherwise of the allegations made in the private complaint can be gone into only at the time of trial. Accordingly, this Criminal Original Petition stands dismissed.



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Consequently, connected miscellaneous petitions are closed.

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA, J.

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