



CrI.O.P.(MD) No.5990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.03.2024

PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P (MD) No.5990 of 2023

and

CrI.M.P.(MD) Nos.5257 and 5259 of 2023

Gunasekaran

...Petitioner

vs

**1.The Inspector of Police,
District Crime Branch,
Tirunelveli District.
Crime No.6 of 2018**

2.Sumathi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to CC.No.249 of 2021 pending on the file of the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Tirunelveli and quash the same against the Petitioner alone.

For Petitioner : Mr.G.Karuppasamy Pandian

For R1 : Mr.B.Thanga Aravindh

Government Advocate (CrI.side)

For R2 : Mr.K.Sudalaiyandi

ORDER



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This Criminal Original Petition is filed by the second Accused in C.C.No.249 of 2021, pending on the file of the learned Judicial Magistrate – Special Court for Land Grabbing Cases, Tirunelveli, now transferred to the learned Judicial Magistrate No.I, Tirunelveli, and renumbered as C.C.No. 1136 of 2023. The learned Counsel for the Petitioner submits that he had filed this Petition seeking to quash the charge sheet.

2.The learned Counsel for the Petitioner submits that the origin of the case is relating to civil dispute between the Petitioner and the Defacto complainant, regarding a suit in O.S.No.149 of 2017 before the Subordinate Judge, Valliyoor. Till date, the case is pending. The subject matter relates to the property involved in this criminal case, therefore, after institution of the suit in the year 2017, ie. after 6 years, the Defacto complainant had given a complaint to the Anti Land Grabbing Police, Tirunelveli. On investigation, the Police also came to know about the pendency of the suit. Still, they proceeded with the investigation and filed the final report. Therefore, civil dispute shall be converted into criminal case.

3.The learned Counsel for the Petitioner invite the attention of this Court to the orders passed by the learned Judicial Magistrate taking



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cognizance of the offence without applying mind. The averments in the final report reads as follows:

“This case taken on file on 05.05.2021. Issue fresh summons to accused. Call on 05.06.2021.”

4. Therefore, taking cognizance by the learned Judicial Magistrate itself was non application of mind. The Civil dispute has been converted into criminal case, mechanically accepting the final report laid by the Investigation Officer and without application of mind. Therefore, he seeks to quash the final report pending on the file of the then learned Judicial Magistrate–Special Court for Land Grabbing Cases, Tirunelveli, in C.C.No. 249 of 2021, now with the learned Judicial Magistrate No.I, Tirunelveli, and renumbered as C.C.No.1136 of 2023.

5. The learned Government Advocate (CrI.side), on instruction of the first Respondent would submit that the *defacto* Complainant's maternal grandfather had settled the property in favour of his daughter, the mother of the *defacto* Complainant. The properties were under S.Nos.313/4, 313/5 and 314/9, measuring an total extent of 7.98 acres. After the death of the maternal grandfather, Aalwar Reddiar, the property devolved on his



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daughter as per the document executed by the maternal grandfather, Aalwar Reddiar, vide Doc.No.683/1969. The mother of the *defacto* Complainant enjoyed the property till her death. After her death, the said property was enjoyed by the father of the *defacto* Complainant and the *defacto* Complainant. They were in continuous possession. Subsequently, the father of the *defacto* Complainant died on 12.05.2008. Thereafter, the property was enjoyed by the *defacto* Complainant and her brother, Ravikumar.

6.As per the complaint, the accused in this case, who has no right or title over the property, had misusing the fact that the *defacto* Complainant is not residing in the village grabbed the property. The accused had collusively created the documents and registered the same with the Sub Registrar Office. The properties in Patta No.219, 1536, 402, 1551 and 60 belong to the *defacto* Complainant. The accused in this case had by fraudulent conduct entered their names along with the name of the mother of the *defacto* Complainant, as though they are in possession of the properties. They had also obtained the loan for Rs.9,00,000/- after executing the mortgage deed bearing Reg.No.1753/2017 from Axis Bank. Even though they have created documents, the possession is still with the *defacto*



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Complainant and her brother, Ravikumar. Therefore, the *defacto* Complainant seeks to dismiss this petition as having no merits.

7.The learned Counsel for the second Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the *defacto* Complainant/the second Respondent is the resident of Kerala. The ancestral property of the *defacto* Complainant was grabbed by the Petitioner herein and his vendors by creating forged document, as though the *defacto* Complainant had executed deeds in favour of the Petitioner herein. It is to be noted that the District Registrar had himself preferred the complaint with the first Respondent regarding the conduct of the accused mentioned in the FIR, among whom the Petitioner herein is arraigned as A2. The Sub Registrar, Radhapuram, is the *defacto* Complainant.

8.As per the contents of the FIR in Crime No.6 of 2018, the accused in this case had created forged documents and filed registered deeds with the Complainant, the Sub Registrar. The deeds were not registered as there were doubts regarding the origin of the deeds executed between the



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accused. The accused in this case are alleged to have created false and forged documents bearing Doc.No.1764 of 1992 and also misrepresented those facts before this Court and obtained appropriate orders. The District Registrar, Palayamkottai had sent a report to this Court regarding the documents cited by the accused. On verification of the registers maintained by the Sub Registrar, Radhapuram, it was found out that Doc.No.1764 of 1992 was created by the accused only to obtain favorable orders from this Court. The District Registrar, Palayamkottai, had submitted a report to this Court that Doc.No.1764 of 1992 is a fraudulent document. Also, the same document contained forged seal. Since the registers maintained in the Sub Registrar Office were burned in a communal clash, the original documents had been destroyed. The document bearing No.1764 of 1992 was presented before this Court, thereby the accused obtained favorable orders from this Court.

9.The learned Counsel for the second Respondent/*defacto* Complainant invited the attention of this Court to the sale deed alleged to have been created by the accused. The Petitioner herein had created forged document bearing Doc.No.2240 of 2012, wherein the Petitioner herein claims to be the power of attorney agent of Mrs.Subbulakshmi,



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W/o.Krishnan. When the original owner of the property is living in Kerala, exploiting the circumstances in his favour, the Petitioner herein had created the documents and sold the property claiming to be the power of attorney agent of the true owner, Subbulakshmi.

10.The learned Counsel for the second Respondent/*defacto* Complainant also invited the attention of this Court to the earliest deed, a settlement deed in favour of the mother of the *defacto* Complainant, Amaravath and the patta for the same stands in the name of Amaravathi. While so, knowing fully well that the second Respondent/*defacto* Complainant is living in Kerala and not residing in the property given to her by her father, the accused in this case are colluded, created, forged the documents and misused the same in a Court of law, particularly before this Court and obtained favorable orders. The Sub Registrar, Radhapuram himself had given a complaint based on the records of the Sub Registrar Office and based on non production of the original documents sought by the Sub Registrar to register the document created by the accused.

11.Also, it is the contention of the learned Counsel for the second Respondent that the civil dispute mentioned by the Petitioner herein in



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O.S.No149/2017 pending on the file of the learned Subordinate Judge, Valliyoor was instituted by the plaintiff/the Petitioner. Knowing fully well that if the trial in the suit proceeds, the suit will be dismissed, the Petitioner herein had left the suit for dismissal for non prosecution. As per the reported ruling of the Hon'ble Supreme Court in the case of ***Swaroop Rani -vs- M.Hari Narayana reported in (2008) 5 SCC 765***, there are cases involving fraudulent deeds, misusing the official seal of the Government Officials and creating false and forged documents, which may attract even the civil cases and criminal cases. When the civil cases and the criminal cases overlapped for the same cause of action, criminal case can be prosecuted regarding the offence under Sections 120B, 420, 423, 465, 468 and 471 IPC. It need not be quashed, as it is to be proved during trial. Just because a civil suit had been instituted by the accused as Plaintiff, the contention of the learned Counsel for the Petitioner/Accused that the defacto Complainant had attempted to convert the civil dispute into criminal dispute is unacceptable. By the conduct of the accused, the valuable right of the defacto Complainant is to be protected. This petition has no merits and it has to be dismissed, as the suit had been dismissed for default.



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12.The point for consideration is whether the final report laid before the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Tirunelveli in CC.No.249 of 2021 is to be quashed.

13.The learned Counsel for the Petitioners submitted that there had already been a civil dispute pending between the Petitioners and the defacto Complainant in O.S.No.149 of 2017. The suit is still pending trial on the file of the learned Sub Judge, Valliyoor. While so, as an after thought, the complaint was given by the *defacto* Complainant in the year 2018 for the offences under Sections 120B, 420, 423, 465, 468 and 471 IPC. If the petition is dismissed, it will result in the parties, who are not sure of winning a case before the civil Court, will attempt to convert the civil cases into criminal cases, which is against the ruling of the Hon'ble Supreme Court in the case of ***State of Haryana vs.Ch.Bhajan Lal*** reported in ***(AIR) 1992 SC 604***), where guidelines had been issued to the trial Courts to see that the power of the civil Courts are not exercised by the Criminal Court. Further, if the petition is dismissed, it will result in the Criminal Court gives a finding, which will be always in conflict with the civil case. Also, it amounts to usurp the powers of the civil Court regarding the status of a



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person, which will result in miscarriage of justice as the criminal Court has no means to decide the possession and title of the properties. When there is a dispute between the parties in the suit, one among the said party in the suit pending before the civil Court had approached the Criminal Court by filing a complaint with the Respondent Police.

14.The learned Counsel for the Petitioner relied on the ruling of the Hon'ble Supreme Court in the case of ***D.Emmanuel and another Vs. State of Tamil Nadu, represented by the Inspector of Police and another*** reported in ***(2022) 1 ML8J (Crl) 415***, wherein it had been stated as under:-

“5.I carefully considered the rival contentions and went through the materials on record. I will assume for a moment that the first petitioner without even an iota of title had executed the settlement deed dated 14.05.2009 (Document No.716 of 2009) in favour of his wife, namely, the second petitioner herein. The question is whether such an act on the part of the first petitioner will amount to the offence of cheating and forgery. The Hon'ble Supreme Court in the decision reported in (2009) 8 SCC 751 (Md.Ibrahim and Others Vs. State of Bihar and Another) had extensively dealt with this issue. The Hon'ble Supreme Court had categorically held as follows:-

“17.When a document is executed by a person



claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under [section 464](#) of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither [section 467](#) nor [section 471](#) of the Code are attracted.

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.”

15. As per the contents of the FIR, the *defacto* Complainant's maternal grandfather had executed the settlement gift deed in favour of the mother of the *defacto* Complainant. After the death of the mother of the *defacto* Complainant only, the accused in this case had created documents, as though the accused is the owner along with the mother of the *defacto* Complainant. The Revenue Authorities had issued joint patta in the name of



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the mother of the *defacto* Complainant and the accused.

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16.Considering the submission that the civil Court is seized of the matter, after full trial the civil Court may arrive at a conclusion that one of the parties in the suit had indulged in creating documents by fraudulent means. Only if the civil Court gives such a finding, the criminal law is set in motion by the affected party or by the direction issued by the Judge while pronouncing judgment in the civil case regarding forged document. Only after investigation in such circumstances, the Criminal Court can conduct the trial and punish the accused. Till such time, the charge sheet pending on the file of the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Tirunelveli cannot at all be retained.

17.Apart from that, the learned Counsel for the Petitioner submitted that the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Tirunelveli before ever taking the petitions on file shall apply the mind to the facts of the case. Only then, he/she can take cognizance of the offences. Here, the learned Judicial Magistrate (Special Court for Land Grabbing Cases), Tirunelveli, had taken the case on file without applying



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the law and without considering the facts of the case. The learned Counsel for the Petitioner pointed out the adjudication recorded that the case taken on file on 05.05.2021. Issue fresh summons to accused. Call on 05.06.2021.

18.On perusal of the FIR, it is found that the Sub Registrar, Radhapuram had approached the first Respondent and preferred a complaint based on the enquiry conducted by the District Registrar regarding registration of the documents by the accused in this case without producing prior title deeds, parent deeds. On verification of the registers during the enquiry, the District Registrar had arrived at a conclusion that the accused had colluded together and created the documents. The fraudulent documents were presented before this Court and obtained favourable orders. Therefore, it is a serious issue.

19.The learned Judicial Magistrate, Anti Land Grabbing Cases had committed an error by not taking cognizance of the offences. The learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Tirunelveli is directed to peruse the records and apply the mind into the facts of the case and take cognizance of the offences alleged in the charge



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sheet, whether the offence mentioned in the charge sheet is maintainable and cognizance shall be taken in accordance with the provisions of Cr.P.C. regarding the offences mentioned in the charge sheet. Only then, the final report can be taken up. Otherwise, the trial itself will be vitiated. Therefore, the order passed by the learned Judicial Magistrate as '**case taken on file, issue summons to the accused is set aside.**' Instead, consider the Section 161 Cr.P.C. statements of all the witnesses and the provisions quoted by the Investigation Officer in the final report regarding the offences whether made out or not. Accordingly, he/she is directed to take cognizance of the offences and not mechanically as “final report taken on file. Issue summons to the Accused.”

20.The contention of the learned Counsel for the Petitioner/accused cannot at all be considered at this stage, as the matter involves civil and criminal litigation. The incriminating material available as per the FIR is shocking. The Petitioner had illegally occupied the properties belonging to the parties, who are not residing in Tamil Nadu, whose ancestors were in the same village. To eke out their livelihood, they have left the native village and are residing in Kerala. Those circumstances had been exploited by



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professional land grabbers, as per the submission of the learned Counsel for the *defacto* Complainant. In certain cases, the criminal conduct of the parties may also attract criminal case along with civil case, that is pending before the Civil Court. Therefore, both the cases can be proceeded side by side, as per the reported ruling of the Hon'ble Supreme Court in ***Swaroop Rani -vs- M.Hari Narayana*** reported in ***(2008) 5 SCC 765*** wherein it was stated by the Hon'ble Supreme Court as follows:

“It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

21.Under those circumstances, this petition has no merits. What is claimed in the petition is to be treated as valuable defense available to the accused/the Petitioner in this case. There is no fault on the Investigation Officer in filing the final report. The non application of mind of the learned Judicial Magistrate is set aside now. The learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Tirunelveli is directed to take cognizance of the offence and issue fresh summons to the accused.



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Otherwise, if even there is conviction, it gives rise to acquittal. This is a case, where the Registrar had claimed that the accused is alleged to have being professional land grabbers misusing, creating false revenue records and false seal of the Officials in Government service. Therefore, this Petition has no merits and it has to be dismissed.

22.In fine, *this Criminal Original Petition stands dismissed*. The order passed by the learned Judicial Magistrate, (Special Court for Land Grabbing Cases), Tirunelveli as '**investigation report taken on file, issue summons to the accused**' is set aside. For the error committed by the learned Judicial Magistrate ignoring the provisions of law, the *defacto* Complainant cannot be made to suffer. Instead, the learned Judicial Magistrate is directed to peruse the statements, FIR, statements of the witnesses under Section 161 Cr.P.C., and the draft charge sheet, apply the laws to the facts of the case and find out what are the incriminating offences committed by the accused, whether the offences as alleged in the charge sheet are made out or not. This is the procedure for taking the charge sheet on file. The charge sheet will not be taken on file. It is the offences taking cognizance of the offences by the learned Judicial Magistrate and not



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mechanically as '**charge sheet taken on file, issue summons to the accused**'. Therefore, the order passed by the learned Judicial Magistrate as

'charge sheet taken on file, issue summons to the accused' is set aside.

The learned Judicial Magistrate, (Special Court for Land Grabbing Cases), Tirunelveli is directed to take cognizance of the offence and issue fresh summons to the accused. Consequently, connected Miscellaneous Petitions are closed.

Internet :Yes./No
Index :Yes/No
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26.03.2024

To

- 1.The Inspector of Police,
District Crime Branch,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
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