



Crl.O.P.(MD)No.8347 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.8347 of 2022
and Crl.M.P. (MD) No.5624 of 2022

Bhuvaneswari

... Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch,
Karur District.
Crime No.13 of 2013

... 1st respondent/
complainant

2.Dhanalakshmi

... 2nd respondent/
Defacto complainant

3.Saraswathi
(R3 impleaded vide order of this
Court dated 07.03.2024 in
Crl.M.P.(MD) No.2866 of 2024)

... respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in C.C.No.35 of 2021 on the file of Judicial Magistrate No.1, Karur and quash the same.

For Petitioners : Mr.R.Prasanna Vinoth



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For Respondents : Mr.B.Thanga Aravindh
Government Advocate for R1

ORDER

This petition has been filed to quash the proceedings in C.C.No.35 of 2021 pending on the file of the learned Judicial Magistrate No.1, Karur.

2.The second respondent gave a complaint to the first respondent police to the effect that the petitioner and her husband forged and created a registered Will dated 21.12.2001 whereby, the petitioner's husband claimed that the grandmother namely, Chinnammal had bequeathed the property in favour of the petitioner's husband. Thereafter, by using this forged Will, the husband of the petitioner executed a settlement deed in favour of the petitioner on 04.01.2013. This document is said to have been created by the petitioner and her son.

3.Heard the learned counsel for the petitioner, the learned Government Advocate appearing on behalf of the first respondent. The defacto complainant died in this case and her daughter has been



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impleaded as the third respondent. The third respondent has been served with notice and the name of the third respondent has also been printed in the cause list and no one appeared either in person or through counsel.

4.The crux of the issue in the present case is as to whether the Will dated 21.12.2001 is a forged and fabricated document. The second issue is as to whether this Will came into existence during the life time of Chinnammal. If the answer to these two questions is determined, there will be some purpose in proceeding further in this case before the Court below.

5.The first issue is as to whether the Will dated 21.12.2001 is a forged and fabricated document. The defacto complainant has stated that the property absolutely belonged to one Periasamy Pandaram, who had four daughters and one son. The defacto complainant is claiming a share in this property and her grievance is that the petitioner's husband knocked off the entire property by virtue of the alleged Will that is said to have been executed by Chinnammal dated 21.12.2001.



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6. On carefully going through the materials, it is seen that the Will in question is a registered document. The investigation officer has not taken any effort to test the genuineness of the Will by sending the Will for forensic analysis. That apart, the investigation officer has also not taken any effort to record the statement of the Sub-Registrar who had registered this Will. What is available is only the *ipse dixit* of the defacto complainant who claims that the Will dated 21.12.2001 is a forged document. The genuineness or otherwise of the document cannot be tested by a mere oral statement. This is more so since the Will in question is a registered document.

7. The connected issue is the second issue where this Court must see as to whether this Will came into existence during the life time of the said Chinnammal. For this purpose, the death certificate has been relied upon and the officer who issued the death certificate has been examined and his statement has also been recorded. The death certificate that was given by him also forms part of the final report. On going through the same, it is seen that the said Chinnammal died on 23.03.2002. Therefore, it is quite evident that the Will dated 21.12.2001



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was executed during the life time of the said Chinnammal.

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8.In view of the above, the offence of cheating, criminal breach of trust and forgery have not been made out. The defacto complainant, who ought to have agitated her rights before the competent civil Court, has chosen to take the path of criminal proceedings which is now proving to be counterproductive. The genuineness or otherwise of the Will cannot be decided by the mere oral statement of the defacto complainant. This is made so since the Will is a registered document in this case and it has to be necessarily acted upon. As per the Will, the property was bequeathed to the husband of the petitioner. He, in turn, had executed a settlement deed in favour of the petitioner and thereby, the petitioner is claiming to be the owner of the property.

9.In fine, a dispute which is purely civil in nature has been attempted to be given a criminal colour in this case and the continuation of the criminal proceedings against the petitioner will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.



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10.In the result, the proceedings in C.C.No.35 of 2021 on the file of Judicial Magistrate No.1, Karur, is hereby quashed and the Criminal Original petition stands allowed. Consequently, connected miscellaneous petition is closed.

26.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

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



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N.ANAND VENKATESH,J.

PKN

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