



Crl.R.C(MD).Nos.547 & 816 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023
Pronounced on : 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)Nos.547 & 816 of 2023

and

Crl.M.P(MD)Nos.7795 & 7796 of 2023 and 11000 &11001 of 2023

Crl.R.C(MD)No.547 of 2023:

1. S.Dashlin Jeno

2. S.Ashlin Jeno

3. K.Vasanth Kumari

.. Petitioners/Petitioners/
Accused 1 to 3

Vs.

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
ALGSC/DCB,
At Nagercoil,
Kanyakumari.
(Cr.No.53 of 2014)

.. Respondent/Respondent/
Complainant

2. R.Bennet Stephenson

.. Respondent



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(R2 is impleaded as per order of the Court dated
07.08.2023 in Crl.M.P(MD)No.11264 of 2023 in
Crl.R.C(MD)No.547 of 2023)

PRAYER: Criminal Revision Petition has been filed under Section 397
r/w 401 of Cr.P.C., to call for records relating to the impugned order
passed by the Special Court for Trying Cases of Land Grabbing,
Tirunelveli in Crl.M.P.No.7328 of 2022 in C.C.No.389 of 2021 dated
13.02.2023 and set aside the same.

For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R1

: Mr.S.C.Herold Singh
for R2

Crl.R.C(MD)No.816 of 2023:

Devaraj

.. Petitioner/4th Petitioner/
Accused No.4

Vs.

The Inspector of Police,
District Crime Branch,
Anti-Land-Grabbing Special Cell,
Kanniyakumari District.
(Cr.No.53 of 2014)

.. Respondent/Respondent/
Complainant



Crl.R.C(MD).Nos.547 & 816 of 2023

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records pertaining the order in Crl.M.P.No.7328 of 2022 in C.C.No.389 of 2021 dated 13.02.2023 on the file of Special Judicial Magistrate/Land Grabbing Cases Special Court, Tirunelveli and set aside the same.

For Petitioner : Mr.R.Devaraj

For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.Side)

COMMON ORDER

Since these two revision cases are arising out of the same occurrence, these two criminal revision cases are taken up together for hearing and disposed of by way of this common order.

2. The revision petitioners are the accused Nos.1 to 4 in C.C.No. 389 of 2021 on the file of the learned Special Judicial Magistrate/Land Grabbing Cases Special Court, Tirunelveli. Accused Nos.1 to 3 are the petitioners in Crl.R.C.(MD)No.547 of 2023 and Accused No.4 is the petitioner in Crl.R.C(MD)No.816 of 2023. The defacto complainant is impleaded as second respondent in Crl.R.C.(MD)No.547 of 2023.



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2.1. The learned counsel for the defacto complainant/impleaded respondent submitted that the defacto complainant lodged a complaint before the respondent police stating that the petitioners and other accused conspired together and created a false record relating to the properties of the petitioners, defacto complainant and his ancestors. The same was investigated and after completion of investigation, the investigating officer filed the final report for the offence under Sections 120 B, 420, 465, 468 and 471 IPC.

2.2. The investigation agency filed the final report and the same was taken on file by the learned Judicial Magistrate, Tirunelveli. Thereafter, the petitioners filed the discharge petition in Crl.M.P.No.7328 of 2022 in C.C.No.389 of 2021 and the same was dismissed by the learned trial Judge stating that there is evidence to show that the petitioners have knowledge about the earlier transaction between the parties and also they intentionally created the documents relating to the property namely, the defacto complainant's property. Challenging the same, the petitioners filed these revision petitions before this Court.



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3. The learned counsel for petitioners submitted that the whole issue is civil in nature. But the complaint was given by giving a criminal colour to the civil transaction. He further submitted that without filing the civil suit to set aside the document, he filed the present complaint and the same was erroneously investigated by the investigating agency and the final report was filed before the Court. Absolutely, there is no evidence to frame the charges for the offence stated in the final report. He relied the judgement of the Hon'ble Supreme Court reported in **2018 7 SCC 581**

4. The learned Counsel for the defacto complainant submitted that the petitioners have sufficient knowledge over the properties. Earlier all litigations ended in favour of the defacto complainant and his father. The same was within the knowledge of the petitioners and the investigating agency properly conducted investigation and filed the final report. In the said final report, there is sufficient evidence to show that the petitioners have the knowledge and also they conspired together to create the documents. In the said circumstances, the learned trial Judge correctly dismissed the petition.



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5. The learned Government Advocate (Criminal side), on instructions and upon perusal of the documents, specifically stated that all the litigations in the earlier round of civil proceedings ended in favour of the defacto complainant and his father. In the said circumstances, the petitioners have sufficient knowledge about the ownership of the defacto complainant. In spite of that, they created documents and hence, the investigating agency properly collected evidence and filed the final report. The learned trial Judge also considered the same. The learned Government Advocate (Criminal side) as well as the defacto complainant submitted the following authorities to dismiss these petitions **2022 (3) MWN Crl (1)** and **2008 5 SCC 113**.

6. This Court has considered the title documents, the rival submissions made by both side counsel and perused the impugned order and the documents filed by both the parties.

7. The prosecution case is that the defacto complainant and his family members are the owners of the property situated in the old survey No.1560F of the Killiyoor revenue village and the corresponding new



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Survey No.6/1. The defacto complainant's father is deceased Kuttynadar.

The grand father of the accused Nos.5 and 6 is Kunjuraiman. He and other persons claimed title over the property against Kuttynadar and the same was decided against the said Kunjuraiman. The said Kunjuraiman's son filed another suit in O.S.No.580 of 1970, against the Kuttynadar and the same was also decided in favour of the Kuttynadar. Another suit was also filed in O.S.No.505 of 1971 against the Kuttynadar and the same also ended in favour of him. Hence, the title of the Kuttynadar namely the father of the defacto complainant is confirmed. After the decision of the civil Court on 11.01.2010, the petitioner and the other accused created a document relating to the above property as if they are the owners of the said properties. The said document was styled as partition deed and the same was registered in the jurisdictional Sub Registrar Office, in document No.2073 of 2010 and document No.2293 of 2011. Therefore, the investigating agency conducted an investigation and filed the final report with sufficient material to prosecute the petitioner. The list witnesses clearly stated in their statements that the petitioners have sufficient knowledge about the said proceedings and they intentionally created the document without any title. The petitioners have knowledge



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about the said civil transaction and hence, the beneficiaries of the said documents, namely, the accused/petitioners are duty bound to explain during the course of the trial about their innocence. In the said circumstances, as held by the learned trial Judge, there is sufficient evidence to continue the prosecution against the petitioners.

8. The Hon'ble Supreme Court in the judgements reported in **2022 (3) MWN Crl (1)** and **2008 5 SCC 113** held that the Court has no jurisdiction to appreciate the evidence. The Court has no power to consider either sufficiency or insufficiency of evidence and also the reliability of the evidence at the stage of the discharge petitions. As held by the Hon'ble Supreme Court, it is duty of the Court to look into the sufficiency of the material to frame charges. L.W1 and L.W2, as stated by the learned trial Judge, specifically stated that the petitioners had knowledge about the earlier litigations and hence, the petitioners conspired together and created documents without any title.

9. The judgement relied by the learned counsel for the petitioners is not applicable to the facts of the present case. In this case, there is



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specific evidence regarding the knowledge about the title in favour of the defacto complainant. Further, they had conspired together to create a title deed without any title, knowing that the civil litigations ended against them. It is the specific defence of the petitioner that they had no knowledge about those facts. The said defence is to be established during the trial and hence, this Court is not inclined to accept the contention of the learned counsel for the petitioners and hence, in the considered view of this court, there is no perversity in the order of the trial Court dismissing the discharge petitions.

10. In the result, these criminal revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

11. After delivering the order in the open Court, the learned counsel for the petitioner seeks indulgence of this Court to dispense with the appearance of the petitioner before the trial Court.

12. This Court is inclined to accept the request of the petitioner. Hence, this petition is dismissed with the following directions:



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1. The learned Special Judicial Magistrate/Land Grabbing Cases Special Court, Tirunelveli, is directed to dispose the case in C.C.No.389 of 2021 within a period of six months from the date of receipt of a copy of this order.
2. The petitioner is directed to raise all the points before the trial Court.
3. The appearance of the petitioner is dispensed with before the trial Court on all hearing dates except the following hearings:
 - (i) The date of furnishing copies under Section 207 Cr.P.C, and initial questioning to answer the charges;
 - (ii) The date of questioning under Section 313 Cr.P.C;
 - (iii) On the date of Judgement.
- 3.1.** The petitioner is directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates.
- 3.2.** The petitioner shall not dispute the identity of the witnesses.
- 3.3.** The petitioner shall appear before the Court in the event his presence is insisted by the trial judge for the purpose of identification.



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3.4. If the petitioner adopt any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India in *State of Uttar Pradesh Vs. Shambunath Singh*, reported in 2001 (4) SCC 667.

09.01.2024

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

PJL/sbn

To

1. The Special Judge for Trying Cases of Land Grabbing,
Tirunelveli.
2. The Inspector of Police,
ALGSC/DCB,
at Nagercoil, Kanyakumari.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL/sbn

**Pre-delivery order made in
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and
Crl.M.P(MD)Nos.7795 & 7796 of 2023
and 11000 & 11001 of 2023**

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