



Crl.O.P.(MD) No.19618 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM

**THE HON'BLE MRS.JUSTICE R.HEMALATHA**

**Crl.O.P.(MD) No.19618 of 2021**

and

**Crl.M.P.(MD) No.10978 of 2021**

R.Neelakandan

... Petitioner

Vs.

1.The Inspector of Police,  
District Crime Branch,  
Thanjavur District.

2.D.Thiyagarajan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.3 of 2014 on the file of the Judicial Magistrate Court No.II, Thanjavur and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.P.Vadivel

For R1 : Mr.M.Sakthi Kumar  
Government Advocate (Crl. Side)

For R2 : No appearance

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Crl.O.P.(MD) No.19618 of 2021

## **ORDER**

Seeking to quash the final report in C.C.No.3 of 2014 on the file of the Judicial Magistrate Court No.II, Thanjavur, the present Criminal Original Petition is filed by accused 2.

2. The case of the prosecution in a nutshell is as follows:

(i) One V.Jayakumar (A1) was allotted a house in HIG-399 at Thanjavur by the Tamil Nadu Housing Board. One of the conditions mentioned in the Sale-cum-Agreement entered into between V.Jayakumar (A1) and the Tamil Nadu Housing Board is that the allottee i.e., V.Jayakumar (A1) should not alienate the property until the execution of Sale Deed in his favour by the Tamil Nadu Housing Board.

(ii) However, the said V.Jayakumar (A1) executed an unregistered sale deed in respect of his house site in favour the second respondent (*de facto* complainant) in the year 1998 and also a registered Power of Attorney in favour of one K.Ashok Kumar who is the brother-in-law of the second respondent (*de facto* complainant) on 16.12.1998 registered as document No.547/1998 on the file of the District Registrar Office, Thanjavur. The said



Crl.O.P.(MD) No.19618 of 2021

K.Ashok Kumar in turn executed a registered sale deed on 19.03.2009 in favour of the second respondent (*de facto* complainant) registered as document No.1316/2009 on the file of the District Registrar Office, Thanjavur.

(iii) In the meanwhile, the Tamil Nadu Housing Board executed a sale deed in favour of V.Jayakumar (A1) on 26.11.2010 registered as document No.6960/2010, based on which, the said V.Jayakumar (A1) executed a registered sale deed on 29.12.2010 in favour of the present petitioner (A2) Neelakandan suppressing the earlier unregistered sale deed and registered Power of Attorney executed by him in favour of the second respondent (*de facto* complainant) and K.Ashok Kumar respectively.

(iv) Based on the complaint given by the second respondent (*de facto* complainant), the first respondent, Inspector of Police, District Crime Branch, Thanjavur District, registered an F.I.R. in Crime No.18 of 2011 against 4 accused including the present petitioner for the offences punishable under Sections 406, 468, 420 of IPC r/w. Section 109 of IPC and the first respondent after concluding investigation laid a final report in C.C.No.3 of 2014 before the the Judicial Magistrate No.II, Thanjavur against the accused for the aforesaid offences.



Crl.O.P.(MD) No.19618 of 2021

WEB COPY 3. Mr.P.Vadivel, learned counsel for the petitioner would submit that the petitioner is a *bona fide* purchaser for value and he was not aware of earlier transactions between V.Jayakumar (A1) and the second respondent (*de facto* complainant) and his brother-in-law K.Ashok Kumar. He also drew attention of this Court to Section 161(3) Cr.P.C. statement of the second respondent, wherein, he had stated that V.Jayakumar (A1) had executed a sale deed in favour of the present petitioner (A2) suppressing the earlier transactions between him (A1) and the second respondent (*de facto* complainant) and K.Ashok Kumar. In such circumstances, according to him, the present petitioner (A2) cannot be fastened with the criminal liability and that too for offences punishable under Sections 406, 468, 420 of IPC r/w. Section 109 of IPC.

4. Per contra, Mr.M.Sakthi Kumar, learned Government Advocate (Crl. Side) appearing for the first respondent would contend that V.Jayakumar (A1) and the present petitioner (A2) are residing in the same village and the present petitioner (A2) knew the earlier transactions between V.Jayakumar (A1) and the second respondent and K.Ashok Kumar, brother-in-law of the second respondent (*de facto* complainant)



Crl.O.P.(MD) No.19618 of 2021

and therefore, the final report filed by the first respondent police cannot be quashed.

5. The second respondent though was served with notice did not appear before this Court and his name was also printed in the cause list.

6. It is pertinent to point out that V.Jayakumar (A1) had got the title to the property in HIG-399 only on 26.11.2010 since the Tamil Nadu Housing Board executed a sale deed in his favour on that particular date. Though A1 on the basis of allotment in year 1993 had entered into an unregistered sale agreement dated 16.12.1998 with the second respondent and executed a Power of Attorney in favour of Ashok Kumar, the same would not confer any title upon the second respondent and Ashok Kumar for the following reasons:

- (i) Sale deed in respect of immovable property which is more than Rs.100/- is to be compulsorily registered.
- (ii) On the date of passing of title in favour of second respondent (*de facto* complainant), V.Jayakumar (A1) did not have any valid title over the property.



Crl.O.P.(MD) No.19618 of 2021

(iii) No person can pass a better title over a property than what

WEB COPY he has.

7. A1 also executed a Power of Attorney in favour of K.Ashok Kumar who in turn had executed a sale deed in favour of the second respondent. The second respondent and K.Ashok Kumar should have verified the documents before entering into a contract with A1. In any event, A1 had clearly committed the offence of cheating on the second respondent (*de facto* complainant) and K.Ashok Kumar.

8. As far as the present petitioner (A2) is concerned, he has got a registered sale deed executed on 29.12.2010. According to the learned counsel for the petitioner, he is a professor and Head of Department in Tamil University at Thanjavur and V.Jayakumar (A1) is residing at Chennai. It is pertinent to note that even in the statement recorded by the police under Section 161(3) Cr.P.C., the second respondent had stated that the sale deed was executed in favour of the present petitioner (A2) by A1 suppressing the previous unregistered sale deed and General Power of Attorney. Thus, even according to the second respondent, the present petitioner (A2) was not in know of the earlier transactions.



Crl.O.P.(MD) No.19618 of 2021

WEB COPY 9. In the circumstances, the final report filed against the present petitioner (A2) cannot be sustained and the same is quashed as far as the present petitioner (A2) is concerned.

10. Accordingly, this Criminal Original Petition is allowed.  
Consequently, connected Miscellaneous Petition is closed.

22.02.2024

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

JEN

To:

- 1.The Judicial Magistrate No.II,  
Thanjavur, Thanjavur District.
- 2.The Inspector of Police,  
District Crime Branch,  
Thanjavur District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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*Crl.O.P.(MD) No.19618 of 2021*

**R.HEMALATHA, J.**

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Crl.O.P.(MD) No.19618 of 2021 and  
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