



CrI.O.P.(MD)No.7682 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD) No.7682 of 2022
and CrI.M.P(MD).No.5242 of 2022

Natarajan

... Petitioner / Accused No.4

Vs.

1.The State rep.by
The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
Crime No.746 of 2017.

2.Radhakrishna Raja

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in C.C.No.77 of 2021 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same, insofar as the petitioner is concerned.

For petitioner : Mr.C.Mahadevan
for Mr.S.Balakarthick

For R-1 : Mr.P.Kottaichamy
Government Advocate
(Criminal Side)

For R2 : Mr.R.Anand for
Mr.D.Rajendra Singh Rama



ORDER

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This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.77 of 2021 on the file of the learned Judicial Magistrate, Rajapalayam, against the petitioner herein.

2. The case of the prosecution is that the defacto complainant's brother Jegannathan @ Jegannatha Raja died in a suspicious manner on 02.01.2016. On 01.08.2017, one Beemaraja approached the defacto complainant and stated that six months back, his brother's wife, namely, Chokkathai/A1 and daughter, namely, Priya/A2, created a forged Will as if Jegannathan executed the Will in favour of the children of the second accused, and obtained the signature of Beemaraja and Sangaiah as witnesses to this Will and the forged Will was registered in the office of the fourth accused/Notary Public/Advocate. Hence, the complaint was made by the second respondent before the first respondent Police, based on which, a case in Crime No.746 of 2017 was registered for the offences punishable under Sections 465, 467, 420, 120B, 294(b) and 506(1) and after completing the investigation, the first respondent Police filed a charge sheet before the learned Judicial Magistrate, Rajapalayam and the same was taken on file in C.C.No.77 of 2021 for the offences punishable



under Sections 109, 120B, 149, 294(b), 419, 420, 465, 467, 468, 471 and 506(1) IPC.

3. The learned counsel appearing for the petitioner submits that the petitioner is a Notary Public and one Jegannathan executed a Will in favour of his grand children, who are the children of the accused No.2, and the Will was executed on 10.09.2014 and thereafter, the beneficiary of the Will filed a Probate Original Petition No.1 of 2017 before the trial Court by impleading the second respondent/defacto complainant as one of the parties to prove the Will executed by Jegannathan in their favour. In order to harass the legal heirs of Jegannathan, the defacto complainant intentionally has made a vexatious criminal complaint before the Law Enforcing Agency implicating the petitioner who is a Notary Public and the respondent Police, without considering the Probate Original Petition filed between the parties, mechanically filed a charge sheet and the same was taken on file in C.C.No.77 of 2021 by the learned Judicial Magistrate, Rajapalayam. Challenging the same, this Criminal Original Petition has been filed.

4. The learned counsel appearing for the petitioner submits that under Section 13(1) of the Notaries Act, 1952, it has been provided that



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“no Court shall take cognizance of any offence committed by a notary in exercise or purported exercise of his functions under the Act save upon complaint in writing made by an Officer authorized by the Central Government by general or special order in this behalf”. The first respondent Police has not produced any document to show that he is an Officer Authorized under Section 13(1) of the said Act and only if a complaint has been filed by an authorised Officer, the learned Magistrate could have taken cognizance of the offence, as per Section 13(1) of the said Act. However, in the present case, the first respondent, who is not an Officer Authorised by the Central Government, has registered the complaint against the petitioner on the complaint made by the defacto complainant, who is none other than the brother of the deceased person, who has executed the Will in favour of his grand children and has given enjoyment of right to A1 and A2. In fact, the beneficiaries of the Will filed the Probate Original Petition before the trial Court. After filing of the Probate Original Petition, the second respondent/defacto complainant instituted criminal prosecution against the legal heirs of Jegannathan Raja. The petitioner notarized the Will and except this, there is no specific overt act against the petitioner and that he has no knowledge about the veracity of the Will. Hence, he prays for quashing of C.C.No.77 of 2021.



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5. The learned counsel appearing for the second respondent submits that this Court may quash C.C.No.77 of 2021 against the accused persons without rendering any opinion on the merits of the case and the Will executed by Jegannathan in favour of his wife and daughter, which is the subject matter of the Probate Original Petition pending before the trial Court. However, liberty may be given to the defacto complainant to file a fresh complaint, after the disposal of the Probate Petition.

6. Heard Mr.C.Mahadevan, learned counsel appearing for the petitioner, Mr.P.Kottaichamy, the learned Government Advocate appearing for the first respondent Police and Mr.R.Anand, the learned counsel appearing for the second respondent.

7. It appears that the defacto complainant has made a complaint before the first respondent Police stating that the accused Nos.1 and 2 created a forged Will as if Jegannathan executed the Will in favour of the children of the accused No.2 and the Will was notarized by the petitioner. For proving the Will executed by Jegannathan, the beneficiaries filed the Probate Original Petition before the trial Court and when it is pending before the trial Court, the second respondent has made a complaint before the first respondent Police. Taking into consideration the



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submission made by the learned counsel appearing for the second respondent that since the Probate Original Petition filed for proving the alleged forged Will is pending before the trial Court, he has no objection for quashing of C.C.No.77 of 2021 against all the accused persons, this Court, without expressing any opinion on the merits of the case and the Will executed by Jegannathan, is inclined to quash C.C.No.77 of 2021 in respect of all the accused persons. However, liberty is granted to the second respondent/defacto complainant to raise all the points before the trial Court, where the Probate Original Petition is pending and to file a fresh complaint, after the disposal of the Probate Original Petition. It is made clear that no one shall take advantage of this order before the trial Court where the Probate Original Petition is pending.

8. Accordingly, this Criminal Original Petition is allowed and C.C.No.77 of 2021 on the file of the learned Judicial Magistrate, Rajapalayam, is quashed in respect of all the accused persons. Connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
ssb



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To

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- 1.The learned Judicial Magistrate, Rajapalayam, Virudhunagar District.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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