



Crl.O.P.(MD)No.20856 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20856 of 2024

and

Crl.M.P.(MD)No.12920 of 2024

Tamilarasi Murugan

... Petitioner

Vs.

1.State Rep. by,
The Inspector of Police,
Kadayam Police Station,
Tenkasi District.
(Crime No.239 of 2013)

2.M.Kesia Thilakawathi Murugan

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records and quash the charge sheet in C.C.No.554 of 2024 on the file of the 1st respondent Police in Crime No.239 of 2013, dated 10.06.2013 as against the petitioner herein on the file of the 1st respondent Police.

For Petitioner : Mr.P.P.Alwin Balan

For R1 : Mr.K.Sanjay Gandhi,
Government Advocate (Crl.Side)

For R2 : Mr.V.S.Kishok Kumar



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ORDER

This Criminal Original Petition has been filed, invoking Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the charge sheet in C.C.No.554 of 2024 on the file of the learned Judicial Magistrate, Tenkasi.

2.The case of the prosecution is that the house property in D.No.57 at Keelakadayam Village, Tenkasi Taluk belongs to the grandmother of the defacto complainant and she executed a settlement deed in favour of the defacto complainant and her brother and since they are minors, their mother / petitioner herein was appointed as guardian. While being so, there was a huge loss in the chit business conducted by the petitioner. Therefore, she mortgaged the property in favour of the 2nd accused and thereafter, executed a sale deed in favour of the 2nd accused. Based on the same, on 10.06.2013 at about 12.00 pm., when the defacto complainant and her brother were at home, the accused persons 1 to 6 trespassed into the house and pressurized them to vacate the house. When they denied to do so, the accused persons abused them with filthy language and pulled them out of the house and threatened that if they enter into the house, they will kill them. Hence, the complaint has been registered against the accused persons.



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3.The learned counsel appearing for the petitioner would submit that the defacto complainant had not made any complaint against her mother / petitioner and initially, the case has been registered only for the offences under Sections 143, 448, 294(b) and 506(ii) IPC and Section 4 of TNPHW Act. After investigation, at the time of filing charge sheet, the 1st respondent included the petitioner and altered the offences into Sections 143, 448, 294(b), 506(ii), 406 and 420 IPC r/w Section 4 of TNPHW Act. Insofar as the sale of the property by the petitioner to the 2nd accused is concerned, it is now the subject matter in a civil Suit and to circumvent the same and extract the possession from the defacto complainant and her brother, the petitioner has been arrayed as an accused and nowhere it is the case of the defacto complainant that her mother cheated them. Hence, the charge sheet may be quashed as against the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the 1st respondent would submit that the petitioner has been appointed as a guardian to the property and due to loss in the chit business, initially, she had mortgaged the property and thereafter, executed a sale deed in favour of the 2nd accused and thereafter, had not vacated the property by using her daughter / defacto complainant, who lodged a complaint against the accused persons 1 to 6. The



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entire case originates based on the sale deed executed by the petitioner. Hence, the petitioner had been arrayed as an accused.

5.The learned counsel appearing for the 2nd respondent / defacto complainant would submit that the 2nd respondent had not lodged complaint against her mother / petitioner. She had lodged complaint only against the accused persons 1 to 6, who had trespassed into the house of the 2nd respondent and attempted to throw away them from the property. Therefore, the defacto complainant has no objection to quash the proceedings against the petitioner.

6.Heard the learned counsel on either side and perused the materials available on record.

7.Admittedly, the property belongs to minors / defacto complainant and her brother and knowing the same only, the 2nd accused purchased the property from the petitioner, who is the guardian / mother of the minors and only after filing the civil suit by the defacto complainant, the case has been turned around and the petitioner has also been included as 7th accused in this case. The right of the 2nd accused with regard to the property would be decided only in the civil suit and filing the criminal case against the defacto complainant's mother will not serve any purpose.



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8.In view of the above, this Criminal Original Petition is allowed and the charge sheet in C.C.No.554 of 2024 on the file of the learned Judicial Magistrate, Tenkasi is quashed as against the petitioner alone. Consequently, connected miscellaneous petition is closed.

29.11.2024

NCC : Yes / No

Index : Yes / No

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To

- 1.The Judicial Magistrate, Tenkasi.
- 2.The Inspector of Police,
Kadayam Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

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