



Crl.O.P.No.2199 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.2199 of 2023

and

Crl.M.P.Nos.1240 and 1241 of 2023

1. Padmavathi

2. Visalaachi

3. Annaporni

4. Arumugam

5. Prabahkaran

... Petitioners

Vs

1. The Sub Inspector of Police,
District Crime Branch,
Villupuram.

2. Balu @ Jayabalan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.69 of 2018 on the file of the Learned Judicial Magistrate at Vanur, Villupuram District and quash the same.



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Crl.O.P.No.2199 of 2023

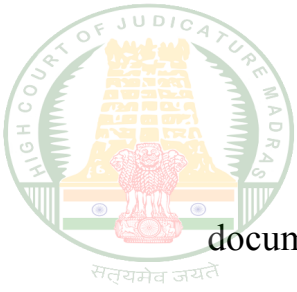
For Petitioners : Mr.J.Suresh

For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side) (for R1)

ORDER

This petition has been filed to quash the proceedings in C.C.No.69 of 2018 on the file of the Learned Judicial Magistrate at Vanur, Villupuram District.

2. The case of the prosecution is that the original disputed property, to an extent of 4 acres and 48 cents, belongs to one Srinivasan. The said Srinivasan is the father of the first to third petitioners herein. Out of the said 4 acres and 48 cents, the father of the first to third petitioners executed a Will in favor of his wife, viz., Maragathammal, to an extent of 1 acre 48 cents. Based on the said Will, the mother of the first to third petitioners herein executed a general power of attorney in favour of one Anbarasu, vide Document No. 162 of 2006, dated 10.04.2006. Based on the said power of attorney, Anbarasu executed a sale in favour of one Anbumani, vide Document No. 3716 of 2007, dated 01.06.2007. In the said sale deed, the first accused, viz., Paragunan, endorsed as one of the witnesses in the said



Crl.O.P.No.2199 of 2023

document. Knowing that her mother had already executed a sale deed in favour of the de facto complainant, the first accused, along with other accused (A3 to A5), executed a general power of attorney, which was registered as Document No. 400 of 2009 on 17.07.2009. Thus, the accused persons created a fabricated document to enrich themselves with an illegal motive and thereby caused monetary loss to the de facto complainant. Hence, the complaint.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any basis, the first respondent police registered a case in Crime No. 14 of 2010 for the offences under Sections 420, 467, 468, 120(B) r/w 34 of IPC against the petitioners, and the same has been taken cognizance in C.C. No. 69 of 2018 on the file of the Learned Judicial Magistrate at Vanur, Villupuram District. Hence, he prayed to quash the same.



Crl.O.P.No.2199 of 2023

4. The learned Government Advocate (Crl. Side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials placed on record.

6. On a perusal of the records, it reveals that the petitioners are arrayed as A3 to A7. The mother of petitioners 1 to 3 owned the subject property and had executed a power of attorney in favour of the second respondent's vendor. In turn, the power of attorney had executed a sale deed in respect of half of the property in favour of the second respondent. After purchasing, the principal, viz., the mother of petitioners 1 to 3, had cancelled the power of attorney and subsequently died. Suppressing the said facts, once again petitioners 1 to 3, along with other legal heirs, executed a power of attorney in favour of the fifth petitioner herein to deal with the property.



Crl.O.P.No.2199 of 2023

WEB COPY

7. That apart, the first to third petitioners and A1 and A2 filed a suit in O.S. No. 51 of 2011 against the second respondent for a declaration declaring that the sale deed executed in his favour is null and void. Therefore, it is clear that petitioners 1 to 3 had absolute knowledge about the sale deed executed in favour of the second respondent, and immediately after the demise of their mother, once again they executed a power of attorney in favour of the fifth petitioner herein. Therefore, there are materials to attract the offences under Sections 420, 467, 468, 120(B) r/w 34 of IPC.

8. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.14 of 2010 for the offences Sections 420, 467, 468, 120(B) r/w 34 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.69 of 2018 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioners filed the present petition.



Crl.O.P.No.2199 of 2023

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9. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, (*Crl.A.No.579 of 2019 dated 02.04.2019*) while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 161 of Cr.P.C.

10. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, (*Crl.A.No.1572 of 2019 dated 17.10.2019*) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 482 of Cr.P.C.



Crl.O.P.No.2199 of 2023

WEB COPY 11. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr***, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that consititue certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not consititue the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

12. Further, this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this state. The same is required to be considered at the conclusion of the trial. Therefore, the

Page 7 of 10



Crl.O.P.No.2199 of 2023

WEB COPY

ground raised by the petitioners to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.69 of 2018 on the file of the Learned Judicial Magistrate at Vanur, Villupuram District. The petitioners are at liberty to raise all the grounds before the trial Court. The personal appearance of the second and third petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the second and third petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

14. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

11.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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Page 8 of 10



Crl.O.P.No.2199 of 2023

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To

1. The Sub Inspector of Police,
District Crime Branch,
Villupuram.
2. The Judicial Magistrate at Vanur,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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Crl.O.P.No.2199 of 2023

G.K.ILANTHIRAIYAN. J.

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Crl.O.P.No.2199 of 2023

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