



WEB COPY



Crl.O.P.No.4112 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.4112 of 2022
and
Crl.M.P.Nos.2033 of 2022

Dr. J.Jebarani,

... Petitioner

Versus

1. The State of Tamil Nadu,
rep. by its Inspector of Police,
Central Crime Branch,
Team-18, Chennai-600 007.

2. Usha

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.4300 of 2021 on the file of XI Metropolitan Magistrate, Egmore, Chennai and to quash the same in so far as the petitioner is concerned.



Crl.O.P.No.4112 of 2022

WEB COPY

For Petitioner : Mr.S.Subbiah,
Senior Advocate for
Mr.Elizabeth Ravi

For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

Mr.Sarath Chander,
for Ms.P.Sumathi for R2

ORDER

The petitioner had filed this Criminal Original Petition praying to quash the proceedings in C.C.No. 4300 of 2021 on the file of XI Metropolitan Magistrate, Egmore, Chennai in so far as this petitioner concerned against the respondents 1 and 2.

2. Heard both sides.

3. The 1st respondent is Inspector of Police, Central Crime Branch, Chennai. The 2nd respondent is the alleged wife of defacto complainant Johnraj. The learned counsel for petitioner would submit that she was a



CrI.O.P.No.4112 of 2022

WEB COPY

retired Deputy General Manager of Aavin. At the time of superannuation in the year of 2020, she was falsely implicated as accused in this case as if she along with other accused created forged document with the intention to grab the property belongs to original defacto complainant Johnraj. Based upon the complaint given by Johnraj/her maternal uncle, the case was registered against herself and 3 others under Sec. 406, 420, 466, 468 and 471 r/w 34 I.P.C. She had already filed a petition to quash the F.I.R. in CrI.O.P.No.202024 of 2019 and during the pendency of the petition, final report was filed. Therefore, that petition was dismissed.

4. After filing the final report, again she approached this court to quash the proceedings initiated against her in C.C.No.4300 of 2021 on raising the following grounds :-

- (a) When there is a valid order or decree granting letters of administration passed by this Court or any other court, having the powers to deal with the grant of such proceedings and also any other decree or order passed by a competent civil court, whether it is fraudulent or not, can be decided only if such an application is moved before this Court to revoke the order granting letters of administration on 24.01.2000, but not in any manner, that too, by process



WEB COPY



CrI.O.P.No.4112 of 2022

under Code of Criminal Law or under any other Law for the time being in force.

- (b) The learned Metropolitan Magistrate rather without applying his mind on the final report submitted by the first respondent, mechanically issued the summons to the petitioner and others and such an order issuing summons under Sec.200 to 204 of Code of Criminal Procedure, hereinafter referred to as the said Code, whereas, the learned Magistrate ought to have seen whether he is competent and has got jurisdiction to determine the nature of the offences, as alleged by the first respondent in his final report.
- (c) Once an order granting probate or letters of administration is an order in Rem, is binding on all concerned, with reference to the truth, and the genuineness of the Will and the bequests made thereunder, and no court can enter into the correctness or otherwise of the order in rem granting either the Probate or the Letters of Administration and so, the very filing of the charge sheet on the complaint made by the said P.Johnraj, now joined by the 2nd respondent is nothing but an abuse of the process of law.



WEB COPY



CrI.O.P.No.4112 of 2022

(d) The first respondent has absolutely no power or jurisdiction whatsoever to go into the allegations made by the petitioner and others, in any judicial proceedings, that too purely of civil nature, and it is for the competent civil court, more particularly by this Court, on its testamentary jurisdiction to decide as to whether, the petitioner and others have come out with the truth or not and that could be decided, only when, an application could be filed by the 2nd respondent to revoke the grant of letters of administration in T.O.S.No. 35 of 1987 on 24.01.2000 and as such, the taking and registration of the offence is nothing but an abuse of process conferred upon them.

(e) The entire dispute as raised by the said P.Johnraj, as if that he came to know about the same only on 25.04.2017 without explaining his whereabouts and dealing with the property from the year 1972 and 1973 onwards, cannot be resolved decided or adjudicated by a criminal court, and the entire dispute on all the aspects is purely a civil dispute and nature, the same could not be taken on file and registered as a case by the first respondent, and be not proceeded with, as it is only for this court to revoke the letters of administration dated 24.01.2000 passed in T.O.S.No. 35 of 1987, if he could make out and also it is for the civil court



WEB COPY



CrI.O.P.No.4112 of 2022

to decide about the non-binding nature of the sale upon the 2nd respondent, and for the grant of possession that the said property, more so, when the properties had already been parted away, even in the year 2001 under the sale deed dated 20.09.2001.

(f) Even according to the complaint, as registered by the first respondent, the said property was sold by the said society in the name of his mother, after his admission that this vacant and was allotted to his father late J.Ponnusamy, during his life time, by the said society, and so, once it is admitted that the property was allotted to J.Ponnusamy and he put up the construction, during his life time, the property is only that of the separate and personal property of J.Ponnusamy, and as such, any such sale deed dated 03.04.1973 could only be for the benefit of the legal heirs of deceased J.Ponnusamy, but it could not be considered to be that of the separate property of Daisy Ponnusamy.

(g) Even otherwise, the real owner of the property, when the property was allotted in the name of J.Ponnusamy and when the entire consideration was paid by him for such allotment and also after taking possession, he alone put up the constructions in the vacant land, and the said property was



WEB COPY



Crl.O.P.No.4112 of 2022

only the separate property of the deceased J.Ponnusamy, with all the rights to dispose of the same, in any manner including under testamentary or non-testamentary instruments.

(h) More so, when the said owner of the land, viz., J.Ponnusamy executed the Will dated 03.06.1969 by giving out all the minute details regarding the family status, more so when he expressed his displeasure and dissent in the attitude of the 2nd respondent, in not marrying after the life time of his first wife, and also expressing very clear that the property should only go to all his grandchildren, including that of the children born to his son, P.Johnraj, provided that the children was born to him, marrying a girl of same caste and creed viz., Christian nadar community and when it was made further clear that none of the children, if born to the 2nd respondent, on the marriage with some other girl of another community, his children born so, would not be entitled to inherit or entitled to any share.

(i) The Will dated 03.06.1969 cannot be said to be unnatural, especially when the testator J.Ponnusamy, bequeathed his properties to all his grand children, born through his daughter and son and the only exclusion clause was that in the event of the marriage of the said P.Johnraj with any



WEB COPY



Crl.O.P.No.4112 of 2022

other girl of any community, his children born so, would not be entitled to inherit or entitled to any share.

(j) The Will dated 03.06.1969 cannot be said to be unnatural, especially when the testator J.Ponnusamy, bequeathed his properties to all his grand children, born through his daughter and son, and the only exclusion clause was that in the event of the marriage of the said P.Johnraj with any other girl of any community, other than that of the Christian nadar neither himself to enjoy the property during his life time, nor his children would be entitled to any share.

(k) The said P.Johnraj himself had admitted that the letters of administration had been granted to the petitioner as well as to her sister Ponrani and brother Samuel Selvapandian, and so, when the letters of administration had been granted to the petitioner pursuant to an order dated 24.01.2000 in T.O.S.No. 35 of 1987 the only remedy available to the 2nd respondent could only to file appropriate petition to revoke the grant of letters of administration, on any grounds available to him under Sec.383 of Indian Succession Act.

(l) Even on the allegations made in the charge sheet as if that the Will dated 06.03.1969 executed by the Testator



WEB COPY



CrI.O.P.No.4112 of 2022

J.Ponnusamy and produced by the petitioner along with her other beneficiaries before this court in O.P.No. 503 of 1986, later converted into testamentary suit as T.O.S.No. 35 of 1987 was one that of a fraudulent one, whereas there is no materials whatsoever had been produced by the 1st respondent, along with the charge sheet to show as to how the said Will dated 06.03.1969 was a fraudulent one.

(m) The original Will dated 06.03.1969 had been produced only in the above O.P.No. 503 of 1986 later marked as an Exhibit during the trial of the converted suit in T.O.S.No.35 of 1987, the original Will itself had not been requested to be sent to him from the Registry of this Court as the original Will produced for the grant of either probate or letters of administration would be kept only in the custody of the Registrar (Original Side) and if it is so, it was not at explained either by the original defacto complainant or by the Investigation Officer, as nothing has been reflected in the charge sheet, as to how, it was branded as a fraudulent one.

(n) Furthermore, the first respondent has not at all, even otherwise, sent the signatures as appearing in the above said original Will dated 06.03.1969 for any Forensic Science



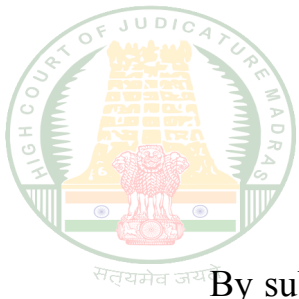
WEB COPY



CrI.O.P.No.4112 of 2022

examination by comparing with any other admitted or proved signatures of the testator J.Ponnusamy and if it is so, the very charges based upon the false complaint made by the original defacto complainant, and now the 2nd respondent herein in her statement cannot in any matter be dealt with as if that the said Will dated 06.03.1969 is a fraudulent one.

- (o) The petitioner denies the stand taken by the 1st respondent that the legal heir certificate (but not detailed in the charge sheet) was one that of a bogus one, there was no specific charge as to what as that bogus legal certificate said to have been produced by the petitioner, whereas there was no such certificate produced by the petitioner and others, whereas the above O.P.No. 503 of 1986 had been filed by the petitioner along with others as early as September 1984 itself and if it is so, it is futile to contend that a bogus certificate came to be produced and also especially when the original petition had been filed only for the grant of the letters of administration on the basis of the admitted relationship in between the parties and also that the letters of administration had not been issued by this court on the basis of any such legal heir certificate.



Crl.O.P.No.4112 of 2022

WEB COPY

By submitting the above grounds, the learned counsel for petitioner argues that the charges levelled against this petitioner is unsustainable one, thereby the cognizance taken by the learned Magistrate based upon the final report submitted by the 1st respondent as such is nothing, but abuse of process of law. Accordingly, she prayed to quash the charges levelled against her.

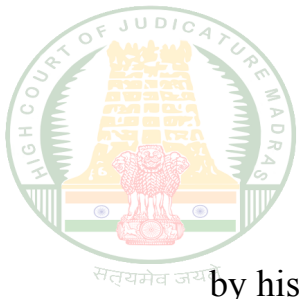
5. The learned Government Advocate (Crl. Side) appearing for 1st respondent would submit that as per the complaint given by the original defacto complainant viz., Johnraj, the F.I.R. was lodged. Thereafter, proper investigation conducted by Investigation Officer and on considering the evidence on record, the final report was filed and the petitioner is bound to face the trial. So, the submissions made by her to quash the proceedings are unsustainable one, which needs oral and documentary evidence, without which, the final report cannot be quashed. Therefore, he prayed to dismiss this petition as no merit.



CrI.O.P.No.4112 of 2022

WEB COPY

6. The learned counsel for 2nd respondent would submit that after the death of Ponnusamy/father of defacto complainant, the legalheirship certificate was obtained on 14.10.1991 by showing his daughter Josphine Pandian as only legal heir and not even shown wife of Ponnusamy viz., Daisy Pandian nor shown the defacto complainant, who is son of said Ponnusamy as legal heir. Suppressing the other legal heirs, the said legalheirship was obtained by this petitioner itself shows their fraudulent intention to grab the plot situated at No.C84 and 85, Ashok Nagar, Chennai and to defraud the right of defacto complainant. Based on that, they have subsequently fabricated all the records in their favour and consequently, they have also filed a petition to probate the Will in T.O.S.No.35 of 1987. Suppressing the real facts as well as other legal heirs of Ponnusamy, they have obtained probated order nor executed the unregistered Will said to be executed by Testator Ponnusamy, father of defacto complainant without giving any right and share to his son/defacto complainant. Based on that order, they have entered into a joint venture agreement and constructed housing plots and sold to various parties without knowledge of defacto complainant, who is real owner of property as per settlement deed executed



WEB COPY

by his mother Josphine Pandian. Having come to know about the fraudulent activities of accused, he gave a complaint. Based on that, a final report was filed and to evade the proceedings, she came forward with false grounds to quash the proceedings as such is unsustainable one. Accordingly, she prayed to dismiss this petition as no merit.

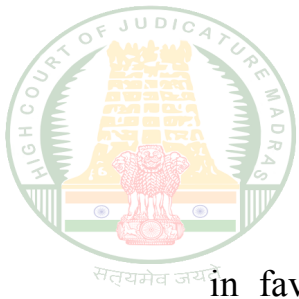
7. Considering both side submissions, the fact reveals that one Ponnusamy and Daisy had son and daughter viz., Johnraj and Josphine. Josphine got married to one Soundarapandian and they begotten three children Jebarani (A1), Ponrani (A2) and Samuel Selvapandian, who died as unmarried and Ponnusamy's son Johnraj (defacto complainant) herein got married to one Saroja and she died in the year 1966. Thereafter, he remained as Widower. During the life time, the petitioner's maternal grandfather/father of defacto complainant Ponnusamy executed a Will on 06.03.1969, thereby he bequeathed his movable and immovable properties equally to all his grandchildren born through his daughter Josphine and his son Johnraj and given life interest to his wife Daisy, his daughter Josphine and his son Johnraj. Ultimately, the property should go equally to all



Crl.O.P.No.4112 of 2022

WEB COPY

grandchildren, provided condition was imposed to original defacto complainant/Johnraj that he should marry a girl from their community Christian nadar and if they begotten any children, they would entitle share along with other grandchildren. But, the said Johnraj/defacto complainant not married a girl from Christian nadar, whereas he married one Usha, 2nd respondent herein from Kerala. Futhermore, during the life time of the said Ponnusamy, he was the member of Madras Commercial Tax Official Cooperative Building Society as he was in Government service and that society entered into agreement with the Tamil Nadu Housing Board. Accordingly, the vacant site was allotted to its member on payment of consideration and consequently, they would execute the sale deed, thereby a plot situated in Old R.S.No. 69 (part) with an extent of 1 ground and 2137 sq.ft. of Kodambakkam village with new T.S.No.40/52 was allotted to Ponnusamy by the said society and vacant possession was also handed over to him. Thereafter, according to the petitioner, he put up a residential house and resided there till his demise in the year 1970. Before that, he executed a Will through which he bequeathed his property, but life interest was given to his wife Daisy. Subsequently, society executed a sale deed on 03.04.1973



CrI.O.P.No.4112 of 2022

WEB COPY

in favour of Daisy Ponnusamy. According to the petitioner, thereafter, maternal uncle Johnraj obtained a settlement deed on 19.05.1973 without the knowledge of other legal heirs and created a mortgage deed. Without discharging the mortgage deed, he flew away to Mangalore and his whereabouts was not known to members. Thereafter, to probate the Will, the petition in T.O.S.No.35 of 1987 was filed by the petitioner and others against their mother and their maternal uncle Johnraj and others. After due enquiry, the petition was allowed by probating the Will, thereby the beneficiaries of the Will dated 06.03.1969 sold some of properties to third parties, they entered into agreement to promote the property and converted the same as residential apartments long before in the year 2001 onwards. But, in the year 2017, the defacto complainant Johnraj issued a notice to all the beneficiaries of the Will as if he came to know about fraudulent activities of petitioner and others stating that he gave his property to his mother Josphine for maintenance, but during his absence, the documents were fraudulently created, thereby the present complaint was came into force.



WEB COPY

8. Considering both side submissions, as rightly pointed out by the learned counsel for petitioner by relying the alleged legalheirship certificate, they have not initiated any proceedings while filing the petition before this court in T.O.S.No.35 of 1987, wherein she had included the petitioner's mother, defacto complainant and others as parties to the proceedings and prayed to grant letter of administration with the Will annexed to and in favour of D.J.Soundarapandian, father of petitioners as the administrator in respect of Will executed by Ponnusamy. The copy of petition was enclosed in the typed set of papers to show that the petitioners/accused elaborately stated about the facts and circumstances for the execution of the said Will by the testator Ponnusamy as well as averred about the conduct of defacto complainant Johnraj and they are not claiming Josphine alone is the daughter of Ponnusamy, that apart, the said alleged legalheirship certificate not produced before the court of Testamentary jurisdiction. If at all, the defacto complainant Johnraj aggrieved by the order of probate, he has to challenge the said order as per manner known to law under the Indian Succession Act. The letter of probate was granted on 24.01.2000. But as on date, the defacto complainant has not taken any



CrI.O.P.No.4112 of 2022

WEB COPY

steps to challenge the said order. Therefore, the said probation order granted by the competent court is still in force in respect of the Will said to be executed by the Testator Ponnusamy. As per F.I.R. allegation, he came down in the year 2017 and came to know that structures of the building was changed. But in the year 2001 itself, the 1st accused and others entered into joint venture agreement and converted into residential house. Nearly about 17 years later, the defacto complainant gave the complaint as if just now he came to know about those facts as such is unbelievable and there is no reason offered by him for such a long unimaginable delay on his side nor he has taken steps to set aside the order passed by letter of administration. Therefore, the Will was probated by the competent court and if at all, the defacto complainant considers that it is fraudulent one, he has to approach a civil forum as per manner known to law to disprove the genuineness of the Will. But, as on date, the original defacto complainant Johnraj is no more and his alleged wife 2nd respondent alone contested the matter. If at all, Johnraj is having valid right over the property, he has to approach the civil forum even now his legal heirs. On the other hand, he filed a complaint against the petitioner and others for the alleged fabrication of the Will of



CrI.O.P.No.4112 of 2022

WEB COPY

the year 1969. All these years, there is various circumstances go across by both parties, now the property was sold to third party and converted into residential house. Therefore, the allegation levelled against the petitioner as such is baseless and purely it is a civil in nature, which cannot be given a criminal colour. Therefore, the final report submitted against the petitioner is clear case of abuse of process of law and the grounds submitted by the petitioner to quash the proceedings as such is sustainable one. Accordingly, this Criminal Original Petition is allowed and against this petitioner, the proceedings initiated in C.C.No.4300 of 2021 on the file of XI Metropolitan Magistrate, Egmore, Chennai is ordered to be quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

19.03.2025

Index: Yes/No
Internet: Yes/No
rpp

To

1. XI Metropolitan Magistrate, Egmore, Chennai.
2. Inspector of Police, Central Crime Branch, Team-18, Chennai-600 007.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.4112 of 2022

T.V.THAMILSELVI, J.

rpp

CRL.O.P.No.4112 of 2022

19.03.2025