



Crl.O.P.No. 11123 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM:

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

Crl.O.P.No.11123 of 2025

and

Crl.M.P.Nos.7360 & 7361 of 2025

M.Kaliyamurthy

.... Petitioner

Vs

1.The State rep. by
Inspector of Police,
District Crime Branch,
The Prevention of Land Grabbing,
Perambalur, Perambalur District.
Crime No.2 of 2012

2. K.Nallu

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and quash the charge sheet filed by the respondent police in C.C.No.251 of 2023 against the petitioner (A6) pending on the file of the Judicial Magistrate No.I, Perambalur.

For Petitioner : Mr.S.Selvaraj

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



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ORDER

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This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.251 of 2023 pending on the file of the Judicial Magistrate No.I, Perambalur.

2. The case of the prosecution is that the second respondent purchased a Plot No.13, admeasuring 2808 sq.ft in Survey No.384/6, situated at Elambalur Village, Perambalur District, by a registered sale deed dated 12.12.1996 document No.2969 of 1996. The land originally belonged to one Karumba Gounder, who sold it to Natesa Gounder. After his demise, the property was enjoyed by his legal heirs, including Muthusamy Gounder. On his demise, his wife Vasantha and their sons Subramnaian and Dhanabal, appointed one Thayumanavar as their power of attorney. The said Thayumanavar also obtained power from one Thailammal and later sold the plot to the second respondent.

3. Subsequently, one Pachamuthu (A1) fraudulently created a power of attorney executed by Thailammal. In fact, she had not executed such a power. A1 impersonated Thailammal using another woman, Pushpavalli @ Oppaiyee and obtained her thumb impression in



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the place of Thailammal and the same was registered. Based on the power of attorney, A1 sold Plot No.13 to one Palanimuthu. Hence, the complaint.

4. The learned Counsel appearing for the petitioner would submit that the petitioner is arrayed as A6, who is working as office assistant under A5/Sub Registrar. He further submitted that the petitioner is innocent and he has not committed any offences as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.2 of 2012 for the offences under Sections 120(B), 419, 420, 423, 465, 467, 468 and 471 of IPC as against the petitioner and the same has been taken cognizance in C.C.No.251 of 2023 on the file of the Judicial Magistrate No.I, Perambalur. Hence he prayed to quash the same.

5. The learned Government Advocate (Crl. Side) would submit that the trial has already been commenced and out of the ten listed witnesses, four witnesses have been examined in this case.



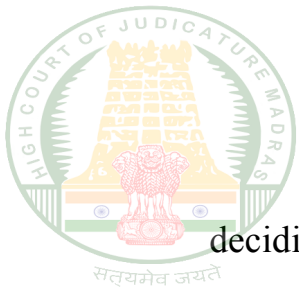
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6. Heard the learned Counsel appearing on either side

and perused the materials placed on record.

7. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.2 of 2012 for the offences under Sections 120(B), 419, 420, 423, 465, 467, 468 and 471 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.251 of 2023 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

8. 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



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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 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. 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 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. 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 constitute certain

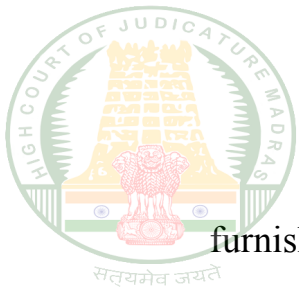


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offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute 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.

11. Further this Court cannot observe at this stage that whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.251 of 2023 on the file of the Judicial Magistrate No.I, Perambalur. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of



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furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment.

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

16.04.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp

To

1.The Judicial Magistrate No.I,
Perambalur.

2.The Inspector of Police,
District Crime Branch,
The Prevention of Land Grabbing,
Perambalur, Perambalur District.

3.The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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