



Crl.OP.No.3093 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3093 of 2024

and

Crl.M.P.Nos.2262 and 2263 of 2025

Mohammed Musthapa

..... Petitioner

Vs

1.The State Rep by,
The Inspector Of Police,
District Crime Branch,
Tiruppur District.

2.S.Jeganathan

..... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records final report pertaining to CC No.333 of 2023 pending on the file of the Judicial Magistrate, Palladam and quash the entire proceedings as against the petitioner.

For Petitioner	: Mrs.Preethi Baskar
For R1	: Mr.R.Vinoth Raja Government Advocate (Crl.Side)
For R2	: Mr.J.Jawahar



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.333 of 2023 pending on the file of the Judicial Magistrate, Palladam, thereby taken cognizance for the offences under Sections 120B, 419, 467, 468, 471, 109 of IPC, 1860 read with Section 82(d) of the Registration Act, 1908.

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

3. The case of the prosecution is that there exists a cultivating tenancy agreement No.127/1911 dated 24.01.1911, executed between the defacto complainant's ancestor Muthu Gounder and the 1st accused's grandfather and father, viz., Beer Sahib and Mytheen Sahib, who were the original holders of the property admeasuring 8 acres and 60 cents, situated at Narayanapuram Village, Palladam Taluk, Tiruppur District. Subsequent to the demise of Muthu Gounder, his legal heirs, viz., Chenniappan Gounder, Ramasamy Gounder and the defacto



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complainant's grandfather Karupana Gounder obtained Ryotwari patta through the Gopi Settlement Tahsildar. After due enquiry, patta was granted on 11.07.1967.

4. It is further alleged that the said property was subsequently subdivided among the legal heirs of Muthu Gounder and “A” Schedule property admeasuring 2 acres 30 cents was allotted to Cheniyappan Gounder, “B” Schedule property admeasuring 2 acres was allotted to Ramasamy Gounder and “C” Schedule property was allotted to the defacto complainant's father Subha Gounder. It is further alleged that A1, being the great-grandson and legal heir of Beer Sahib and Mytheen Sahib, along with other legal heirs induced A2 and A3 to execute a power of attorney in their favour vide Document No.10/1997 dated 16.05.1997 by creating a forged document.

5. Further, it is alleged that A2, under the guidance of A3 and A4, executed a fake and fabricated sale deed by impersonating as Manimaran (shown as witness) in Document No.1806/1997. Using this fraudulent



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sale deeds, A3 and A4 executed another forged sale deed in their favour registered as Document No.2485/1999. Subsequently, A3 and A4 issued a General Power of Attorney in favour of A1 and A5 vide Document No.551/2005 dated 26.05.2005, which was later cancelled by A3, without the knowledge of A4, due to a money dispute between them, vide Document No.989/2009, dated 04.08.2009.

6. It is also alleged that A3 forged a driving license and impersonated as A4 in order to fraudulently cancel the said power of attorney through Document No.1071/2009, dated 20.08.2009. A6 and A7 are stated to have signed as witnesses to this cancellation, and the entire document was allegedly prepared by A8. Further, it is alleged that A3 misrepresented himself as A4 and executed a power of attorney in favour of A9, pertaining to a land extent of 8 acres and 30 cents, including 30 cents of Government land, vide Document No.1112/2009, dated 28.08.2009 and the same was signed by A6, A7 and A8 as witnesses.



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7. Finally, the defacto complainant filed a complaint, which was registered as FIR in Crime No.27 of 2013 before the Tiruppur Land Grabbing Cell. A3 subsequently filed a petition in Crl.O.P.No.26720 of 2014 before this Court and the same was dismissed and this Court directed the prosecution to file a charge sheet against the accused. It is further alleged that A3 executed a fabricated power of attorney in favour of A.Dhanapal and R.Rasu and A.Jeyaraj and P.Kannan have allegedly signed as witnesses in Document No.5803/2020, dated 25.06.2020. Based on the same, the prosecution filed the impugned charge sheet in C.C.No.333 of 2023.

8. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.27 of 2013 for the offences under Sections 120B, 419, 467, 468, 471, 109 of IPC read with Section 82(d) of the Registration Act. After completion of investigation, the first respondent filed final report and the same was taken cognizance in C.C.No. 333 of 2023 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

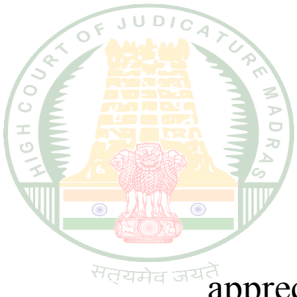


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9. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)*** while dealing with the petition to quash the entire criminal proceedings held that under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, 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 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

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



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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.

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 constitute 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 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.



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12. 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.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.333 of 2023 on the file of the Judicial Magistrate, Palladam. Considering the age of the petitioners, 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 furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.



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14. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is also closed.

19.03.2025

Index: Yes/No

Internet: Yes/No

Vv

To

1.The Judicial Magistrate,
Palladam

2.The Inspector Of Police,
DCB (ALGSC) Police Station,
Tiruppur-641 601.

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



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G.K.ILANTHIRAIYAN, J.

Vv

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