



Crl.O.P (MD) No. 22581 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

CORAM:

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

Crl.O.P (MD) No.22581 of 2024

and

Crl.M.P (MD) Nos.14082 and 14084 of 2024

Ajitha Benslin

..... Petitioner

Vs

1.State of Tamil Nadu
The Inspector of Police
District Crime Branch
Nagercoil, Kanyakumari District
Crime No.2090/2011

2.Dhaya Packai Singh

..... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in C.C. No.118 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil.

For Petitioner : Mr.K.P.Narayanakumar

For Respondent : Mr.K.M.D.Muhilan for R1
Government Advocate(Crl.side)
No appearance for R2



Crl.O.P (MD) No. 22581 of 2024

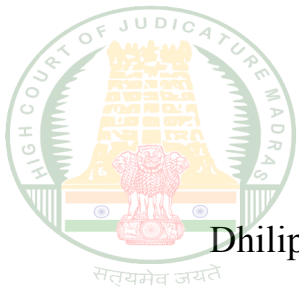
ORDER

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This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.118 of 2020 pending on the file of the Judicial Magistrate No.I, Nagercoil, thereby taken cognizance for the offences under Sections 120(B), 167, 406, 415, 420, 468, 471, 474 and 506(1) of IPC.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent. Perused the materials available on record.

3. The case of the prosecution is that the defacto complainant entered into a sale agreement with A1 for purchasing a property comprised in re-survey Nos.776/1, 776/2A, 776/2B, 774/1, 776/5A admeasuring 10 acres 43 cents. The defacto complainant had also paid an advance amount for the same. Subsequently, it was found that 6.5 acres of the said property fell within a classified private forest area. After excluding that portion, an extent of 3 acres and 9 cents was conveyed to one Asir Packiya Singh through a registered Power of Attorney dated 20.05.2010, executed before Thuckalay Sub Registrar Office. Subsequently, the power holder executed a sale on the next day in favour of the defacto complainant and his business partners viz.,



Crl.O.P (MD) No. 22581 of 2024

Dhilip, Joseph John, Ramdhas Gopinath, Arul Anthony, and Sygigoli

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Thalhe. Thereafter, with respect to the remaining portion of the property, measuring 78.5 cents, A1 executed a sale deed in favour of A2 on 20.08.2010. The accused persons, by misusing the situation, attempted to grab the property belonging to the defacto complainant by creating another sale deed. Hence, the present case was registered.

4. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A1. Only after deducting the subject land, A2 had executed the sale deed . Therefore, no offence is made out as against the petitioner.

5. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.2090 of 2011 for the offences under Sections 120(B), 167, 406, 415, 420, 468, 471, 474 and 506(1) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.118 of 2020 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

6. 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



Crl.O.P (MD) No. 22581 of 2024

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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 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

7. Fruther, 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.

8. 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



CrI.O.P (MD) No. 22581 of 2024

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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.

9. Further this Court cannot observe at this stage 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.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.118 of 2020 on the file of the Judicial Magistrate No.I, Nagercoil. 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



Crl.O.P (MD) No. 22581 of 2024

he shall be represented by a counsel after filing appropriate application.

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However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS 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.

11. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are also closed.

04.04.2025

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

To

1.The Judicial Magistrate No.I,
Nagercoil.

2. The Inspector of Police
District Crime Branch
Nagercoil, Kanyakumari District

3.The Public Prosecutor,
High Court, Madras.



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Crl.O.P (MD) No. 22581 of 2024

G.K.ILANTHIRAIYAN, J.

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Crl.O.P(MD)No.22581 of 2024

04.04.2025