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CrI.O.P.No.28364 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2026

CORAM:

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

CrI.O.P.No.28364 of 2022 and
CrI.MP.No.17416 of 2022

1.G.K.Babu

2.D.Komalavathy

... Petitioners

Vs.

1.State represented by
Inspector of Police,
District Crime Branch,
Chengalpattu
(crime No.1 of 2020)

2.M.Kumaresan

3.T.Duraisamy

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records relating to CC.No.774 of 2022 from the file of the learned Judicial Magistrate No.II, Chengalpattu and quash the same in the interest of justice.

For Petitioners : Mr.R.Vijayakumar

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.K.P.Anantha Krishna



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ORDER

This criminal original petition has been filed praying to quash the proceedings in CC.No.774 of 2022 on the file of the learned Judicial Magistrate No.II, Chengalpattu.

2. The case of the prosecution is that respondents 2 & 3 owned property to an extent of 23.46 acres situated in Mullikolathur Village, Thirukazhukundram Taluk, Chengalpattu District. They tried to sell the same. The first accused undertook to purchase the entire land by paying valid sale consideration. Believing his words, the second and third respondents handed over all the xerox copies of the documents of the subject land. They also agreed to sell the said land at Rs.67,50,000/- per acre. However, the first accused delayed the process and while being so, he tagged one of the partners of BLB Real Estate Company. Thereafter, it was represented that already the subject land was laid out into house plots i.e. 382 house plots and obtained approval. The second respondent questioned that without his consent and permission and without any power, how approval was obtained. Thereafter, the second respondent agreed to sell the same by house plots and the first accused and a partner of the said BLB Real Estate Company assured that the house plots will be sold out. The said partner by name Kannappan also stated that huge sum



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was also already paid to the first accused to purchase the subject land.

However, even till 2016, they had purchased only 202 plots and thereafter they failed to purchase the remaining plots. The first accused had received huge amount more than the sale consideration. Further, the first and second accused had put up a construction for school, that too without any approval and without any title over the property. Therefore, they committed the offence of breaching trust. On a complaint, the first respondent registered FIR in crime No.1 of 2020 for the offence punishable under Section 465, 468, 471, 406 & 420 of IPC. After completion of investigation, the first respondent filed final report for the offence punishable under Sections 406 & 447 of IPC.

3. The learned counsel for the petitioners would submit that there is oral agreement between the petitioners and the second respondent in respect of the property to sell. Accordingly, the first petitioner arranged parties to purchase the plots. Even now, they are ready to purchase all the plots in their name and to pay the cost for the same. He further submits that insofar as the second petitioner is concerned, she has been implicated as the second accused belatedly and she has absolutely no role to play in this case. Mere her presence in the subject property would not amount to trespass.



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4. The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that trial has already been commenced and some of the witnesses have been examined in this case. Hence, he prayed for dismissal of this criminal original petition.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On perusal of the records and also on the submissions made by the learned counsel appearing on either side, it is revealed that there are totally two accused. Though the first respondent registered FIR in crime No.1 of 2020 for the offence punishable under Section 465, 468, 471, 406 & 420 of IPC, after completion of investigation, final report was filed only for the offence under Sections 406 & 447 of IPC. Admittedly, the second respondent is also owner of the subject property. While he was trying to sell the subject land, the first petitioner assured that he will sell the land and he also brought a third party to purchase the land and laid out the same. From the lay out, the third party had purchased some of the plots and paid the sale consideration. However, the remaining plots have not been sold out so far. The petitioners had received a huge sum as



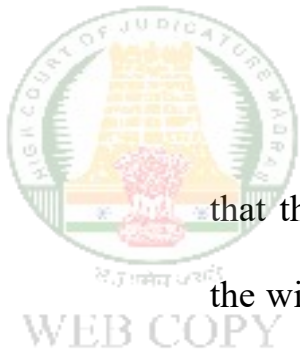
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commission from the purchaser i.e. more than the value of the plots' cost.

That apart, without any approval, permission and without any title over the property, accused 1 and 2 trespassed the subject property and attempted to put up a construction for school. Already the second petitioner is running a school in the name “Jeeva Memorial Public School”. That apart, there is money transaction between the second petitioner and the second respondent. They also filed suit in OS.No.57 of 2019 on the file of the District Munsif cum Judicial Magistrate, Thirukazhukundram for permanent injunction against the second and third respondents and others in respect of the very same subject property. Accused 1 and 2 specifically averred that they are in possession and enjoyment of the subject property. However, except the oral arrangement, no other documents are produced to show that they were given possession of the subject property and they have right over the property. Therefore, prima facie case is made out for the offence under Sections 406 & 447 of IPC.

7. 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

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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.

8. 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.

9. 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



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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.

10. Further this Court cannot observe at this stage as to 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 petitioners to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

11. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. The petitioners are at liberty to raise all the grounds before the trial Court. The personal appearance of the second



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petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the second 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.

12. With the above direction, this criminal original petition stands dismissed. Consequently, connected miscellaneous petition is closed.

06.04.2026

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

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1.The learned Judicial Magistrate No.II, Chengalpattu

2.State represented by
Inspector of Police,
District Crime Branch,
Chengalpattu

3.The Public Prosecutor,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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