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CRL O.P. No.24774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.24774 of 2022

and

CrI. M.P. Nos.15554 and 15555 of 2022

1. N. Manoharan S/o. Natesan Naicker
2. M. Yamuna W/o. Manoharan ... Petitioners / Accused
Vs.

1. G. Sivakumar S/o. Gangadharan 1st Respondent

2. The Superintendent of Police,
Kancheepuram District, Kancheepuram.

3. The Inspector of Police,
Land Grabbing Cell,
Kancheepuram Taluk,
Kancheepuram District. ... Respondents / Complainant

PRAYER :-This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in respect of Criminal case in C.C. No.584 of 2022 on the file of the Judicial Magistrate Court No.II, Chengalpattu and to quash the same.

For petitioner : Mr. Rupert J Barnabas for

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Mr. J. Selvarajan

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For Respondents : Mr. S. Raveekumar [for R1]

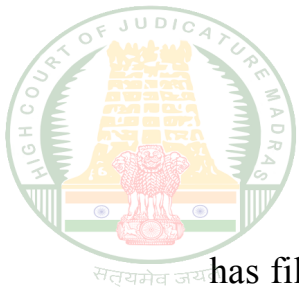
Ms. G.V. Kasthuri,
Additional Public Prosecutor
[for R2 and R3]

ORDER

This Criminal original petition has been filed to quash the proceedings in C.C. No.584 of 2022 on the file of the Judicial Magistrate Court No.II, Chengalpattu.

2. Brief facts of the case are as follows:-

The 1st respondent had given a complaint as against the petitioners before the 3rd respondent police and FIR was registered in Cr. No.26 of 2014 for the offences under Sections 420, 465, 471, 477(A) read with Sections 34 of IPC. The said FIR was challenged through Crl. O.P. No.11424 of 2015 for quashment and this Court quashed Section 420 of IPC alone and dismissed the petition for other offences through an order dated 27.02.2019. Thereafter, the 3rd respondent police has investigated the case and filed a final report by closing the case on 07.06.2019. Thereafter, the defacto complainant, who is the 1st respondent herein,

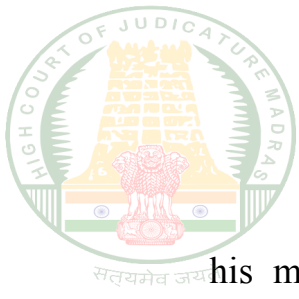


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has filed a protest petition and thereafter, the same was taken cognizance in C.C. No.584 of 2022 for the offences under Sections 465, 467, 471, 477(A) read with Section 34 of IPC. Now the petitioner has challenged the said proceedings.

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3. The learned counsel appearing for the petitioners would contend that the 1st respondent had lodged a complaint as against the petitioners and based on the said complaint, FIR has been registered in Cr. No.26 of 2014 and the same was challenged before this Court and this Court quashed the Section 420 of IPC and dismissed the petition for other offences. Thereafter, the 3rd respondent filed a final report by closing the case. However, the 1st respondent herein has filed a protest petition and thereafter, calendar case number was assigned and case was taken cognizance by the trial Court in C.C. No.584 of 2022 for the offences under Sections 465, 467, 471 and 477(A) read with Section 34 of IPC. The trial Court failed to consider the above materials to proceed with the case against the petitioners and after an elaborate investigation, the investigating agency has filed a negative report, but without applying



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In his mind, the learned Magistrate has taken cognizance. Further the learned Magistrate failed to consider that already civil issues are pending between the parties in respect of the land dispute. These petitioners are no way connected with the alleged offences referred in the said case. In the civil suit, in I.A. No.566 of 2012, the learned District Munsif has granted interim injunction and the property has not been classified as Grama Natham Poramboke upto 18.12.1995 till the the first patta was issued to the 1st petitioner's name on 19.12.1995. The 1st respondent without challenging the said order, lodged this false complaint and the matter is purely 'civil in nature'. This petitioner was appointed as Typist in the Revenue department at Madamabakkam, Kancheepuram District on 06.04.1992 and thereafter, on several promotions, he was transferred to Chengalpattu Special Tahsildar Social Security Scheme on 06.10.2014 and thereafter he retired as Personal Assistant to Collector, Chennai on 31.03.2024 and on the date of alleged occurrence, he was not working in the concerned village and false complaint has been lodged by the 1st respondent. Therefore, the pending proceedings are liable to be quashed.



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4. The learned counsel appearing for the 1st respondent / defacto complainant would submit that originally the property belongs to maternal ancestor of the 1st respondent and their predecessors were in possession and enjoyment of the same in Grama Natham Old Survey Nos.111/6, New Survey No.276/5 measuring to an extent of 325 sq.mt., They were also paying tax to the said property. The Chita Adangal revenue documents show that the predecessor of the 1st respondent was in possession of the property till 1968 and the names of the predecessors of the 1st respondent were in existence. Thereafter, the mother of the 1st respondent had given the property to her father and thereby, patta was transferred in the name of the father of the 1st respondent namely Gangadharan. While so, the father of the accused Late Natesa Naicker had executed a Will dated 02.06.1995 in favour of the 1st accused Manoharan in respect of the property at Thandalam Village. In the said Will, there is no reference about the property of the 1st respondent. Thereafter, the accused had obtained patta by misusing his official power on 19.12.1995. Thereafter, Patta was granted in the name of the 1st respondent on 29.07.1998. The 1st respondent, when he was working as



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Special Tahsildar, Kancheepuram District fabricated the documents of the revenue records ie., Adangal, Chitta for fasli 1388, 1392, 1393 and 1399 for the corresponding years 1979, 1983, 1984 and 1990 and attempted to encroach the property and to grab and also claimed ownership in favour of his wife, 2nd accused Yamuna, who is the owner of the above said property. The said Manoharan, based on the forged and fabricated patta, claimed ownership and pursuant to the said patta, executed a Settlement Deed in favour of his wife, the 2nd accused on 27.08.2004. Thereafter, the petitioner forged the above said Chitta Adangal and thereby, the defacto complainant lodged a complaint before the 3rd respondent police and they without conducting proper enquiry closed the case and thereafter, he filed a protest petition and now the learned Judicial Magistrate has taken cognizance satisfying that there are prima facie materials available to take cognizance of the offences. Therefore, the petitioners have to face the trial since so many documents are involved in this case, which needs elaborate trial and at this stage, the petition is liable to be dismissed.



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5. In support of his contention, the learned counsel appearing for the 1st respondent has relied upon the following judgments:-

(i) Indian Oil Corporation vs. NEPC India Ltd. and others reported in (2006) 6 Supreme Court Cases 736.

(ii) Sri Krishna Agencies vs. State of Andhra Pradesh and another reported in (2009) 1 Supreme Court Cases 69.

(iii) Trisuns Chemical Industry vs Rajesh Agarwal and others reported in (1999) 8 Supreme Court Cases 686.

(iv) Zunaid vs. State of U.P. & Others reported in 2023 LiveLaw (SC) 730.

6. The learned Additional Public Prosecutor would contend that the 1st respondent had given a complaint before the 3rd respondent and the 3rd respondent has investigated the case and closed the case by filing a negative final report as 'civil in nature' and thereafter, the 1st respondent has filed a protest petition and based on the protest petition, the trial Court has taken cognizance. Now the case is pending for trial. Therefore, the petitioners have to face the trial, since the trial Court has



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taken cognizance and hence this petition is liable to be dismissed.

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7. This Court heard both sides and perused the materials available on record.

8. In this case, it is an admitted fact that there is a civil dispute between the parties in respect of the title of the property. The main contention of the petitioners is that they are the owners of the properties. The allegations levelled against the petitioners are that they created Adangal, Chitta for the faslis 1388, 1392, 1393 and 1399 for the corresponding years 1979, 1983, 1984 and 1990. The respondent police, after elaborate investigation, closed the case as it is purely civil in nature. However, the 1st respondent filed a protest petition and in the protest petition, he has stated that though civil suit is pending, in respect of the title of the property, the allegations levelled against the petitioners are in respect of forging the chitta and adangal. Therefore, he filed a protest petition before the trial Court and the learned Judicial Magistrate by applying his mind found that there are prima facie materials available to proceed with the case as against the petitioners and taken cognizance for

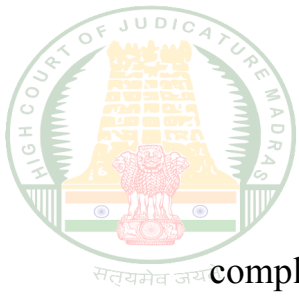


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the offences under Sections 465, 467, 471, 477(A) read with Section 34 of IPC. Since the allegations are serious in nature and as per the protest petition, there are serious allegations levelled against the petitioners to constitute the offences. Thereby, it needs elaborate trial. The title of the property can be decided by a competent civil Court. But at the same time, the allegations in respect of forgery of Adangal and Chittas, have to be decided through trial. Therefore, at this stage, this Court cannot invoke provisions of Section 482 of the Code of Criminal Procedure to quash the proceedings.

9. As far as the judgments relied on by the learned counsel appearing for the 1st respondent are concerned, *in Zunaid vs. State of U.P. and others reported in 2023 LiveLaw (SC) 730*, it is held that "On the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options - Firstly, he may decide that there is no sufficient ground for proceeding further and drop action - Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process - Thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original



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complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 - Even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report and the Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. The Magistrate while exercising his judicial discretion has to apply his mind to the contents of the protest petition or the complaint as the case may be".

In the case on hand also, the Magistrate has taken cognizance based on the protest petition, after applying his mind.

9.1. As far as the judgment in *Trisuns Chemical Industry vs Rajesh Agarwal and others reported in (1999) 8 Supreme Court Cases 686* is concerned, the Hon'ble Supreme Court has held that "Quashing of complaint or FIR in respect of cheating, criminal prosecution cannot be



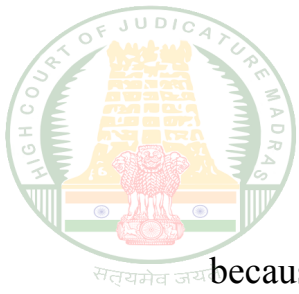
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thwarted merely because civil proceedings are also maintainable".

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9.2. In *Sri Krishna Agencies vs. State of Andhra Pradesh and another reported in (2009) 1 Supreme Court Cases 69*, the Hon'ble Supreme Court has held that "there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action". In the case on hand also, civil proceedings are pending in respect of the title of the property and now in this case, the allegations are in respect of forging of documents. Therefore, the present complaint is maintainable.

9.3. As far as the case law in *Indian Oil Corporation vs. NEPC India Ltd., and others reported in (2006) 6 Supreme Court Cases 736* is concerned, the Hon'ble Supreme Court has held that "disputes arising from breach of contract - civil remedy available and availed of - remedy under criminal law is not barred if the allegations disclose a criminal offence - allegations contained in the complaint, taken on their face value, disclose a criminal offence, complaint cannot be quashed merely



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because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed".

9.4. In this case, as per the complaint, there are ingredients to constitute the offences. The veracity of the allegations levelled in the complaint cannot be tested at this stage and once the learned Magistrate has taken cognizance based on the materials, it is not appropriate to interfere with the order of trial Court without any strong grounds. There are no grounds to quash the proceedings. Therefore, the petitioners have to face the trial and merely because, the investigation agency filed a negative report is not a ground to quash the proceedings. Moreover, there are no any procedural violations while taking cognizance by the learned Magistrate and the petitioners have to face the trial. Therefore, this petition has no merits and deserves to be dismissed.

10. In view of the above discussions, the Criminal Original petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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index: Yes/No
Internet: Yes/No
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P.DHANABAL,J

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To

1. The Judicial Magistrate Court No.II, Chengalpattu
2. The Public Prosecutor, High Court, Madras.
3. The Superintendent of Police, Kancheepuram District, Kancheepuram.
4. The Inspector of Police, Land Grabbing Cell, Kancheepuram Taluk, Kancheepuram District.

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