

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-8-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.9523 of 2014
M.P.Nos.1 and 2 of 2014

Gajendran .. Petitioner (A-5)

Vs.

1. The State of Tamil Nadu,
rep.by Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Cell),
Vellore, Vellore District.
2. N. Saraswathi ... Respondents (Complainants &
Defacto Complainant)

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the entire records in C.C.No.28 of 2013 on the file of the Judicial Magistrate No.II, Vellore, Vellore District and quash the same.

For Petitioner : Mr.M.Sathish Kumar
For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor
For 2nd Respondent : Mr.V.Prabhu
for Mr.R.Bharath Kumar

O R D E R

Heard Mr.M.Sathish Kumar, learned counsel for the petitioner; Mr.C.Emalias, learned Additional Public Prosecutor for the first respondent; and Mr.V.Prabhu, learned counsel for the second respondent.

2. It is the case of the prosecution that the land in question measuring 4275 sq.ft belonged to Katpadi Co-Operative Township Society, which had allotted the land to the mother of one V.K.Balasubramaniam. The mother of V.K.Balasubramaniam died and therefore in her place the allotment was made in the name of V.K.Balasubramaniam. Whiles, Kanchana (A-1), who was the Secretary of Katpadi Co-Operative Township Society sold the said land on 11.10.2010 to Balaji @ Balasubramani (A-3), as if A-3 was the original allottee V.K.Balasubramaniam. In other words, Balaji @

Balasubramani (A-3) got allotment of the land in his name, posing himself as V.K.Balasubramaniam, the original allottee, with the connivance of A-1. Immediately within two days, i.e., on 13.10.2010, Balaji @ Balasubramani (A-3) gave power of attorney to Suresh (A-2), a realtor, in respect of the said land. Within one month, i.e., on 12.11.2010, Suresh (A-2) sold the land to Jagannathan (A-4), who is none other than his own brother. Jagannathan (A-4) in turn sold the land to Saraswathi/defacto complainant on 24.10.2010. When Saraswathi wanted to construct a house in the said land, the original V.K.Balasubramaniam came to know about that and intervened. Only then, it came to light that A-1 to A-4 have conspired together to cheat V.K.Balasubramaniam by creating false documents in respect of his land. When this matter came to light, Suresh (A-1) and Jagannathan (A-4) promised Saraswathi that they will cancel the sale deed, and they agreed to pay a total sum of Rs.72,78,735/-. When Saraswathi came to the Registrar's Office for execution of cancellation deed, A-2 and A-4 gave her a bag saying that it contains Rs.50 lakhs, but actually it contained only Rs.34,26,000/-. At that time, Gajendran (A-5)/petitioner herein, who is the brother of A-2 and A-4 had intimidated Saraswathi into acceptance, and fearing her life, she signed the cancellation deed.

3. Mr.M.Sathish Kumar, learned counsel appearing for Gajendran (A-5) submitted that there are no allegations against the petitioner, except that he is the brother of A-2 and A-4. At the first blush, this Court was impressed with the said submission. But on a closure scrutiny of facts it is seen that A-2 to A-4 are real estate brokers, and knowing full well that the land in question does not belong to A-3, they dealt with the land and sold it to Saraswathi/defacto complainant. As stated above, when the entire fraud came to light, the accused promised to settle the defacto complainant, and in the Registrar's Office, they paid her a very less amount and obtained her signature by intimidation. Thus, there is prima facie material against Gajendran (A-5)/petitioner herein, inasmuch as he was present in the Registrar's Office with his brothers A-2 and A-4 when the cancellation deed was executed on 14.7.2011. Therefore, this is not a fit case to quash the prosecution against the petitioner herein.

4. It is represented by the learned Additional Public Prosecutor that Gajendren (A-5)/petitioner herein along with Suresh (A-2) and Jagannathan (A-4) have filed Cr.M.P.No.2708 of 2013 in C.C.No.28 of 2013 on the file of Judicial Magistrate No.II, Vellore under Section 239 Cr.P.C. for discharge and without mentioning the same, this quash petition has been filed.

5. Mr.M.Sathish Kumar, learned counsel appearing for the petitioner fairly submitted that the party suppressed this fact. This Court accepts the explanation offered by Mr.M.Sathish Kumar, learned counsel. However, it is the duty of the party to properly appraise his counsel and he cannot be allowed to play truant by

concealing facts to his counsel. Therefore, in view of the fact that this Court has held that there is prima facie material against Gajendran, Cr.M.P.No.2708 of 2013 in C.C.No.28 of 2013 pending on the file of Judicial Magistrate No.II, Vellore is dismissed as against Gajendran (A-5).

6. In the result, this Criminal Original Petition is dismissed. Connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vr

To

1. The Inspector of Police, District Crime Branch,
(Anti Land Grabbing Cell), Vellore, Vellore District.
 2. The Judicial Magistrate No.II, Vellore.
 3. -do-thro' The Chief Judicial Magistrate, Vellore.
 4. The Public Prosecutor, High Court, Madras.
- +1 cc to Mr.R.Bharathkumar, Advocate, sr.44656

Cr1.O.P.No.9523 of 2014

rj(co)
kra(1/9)

सत्यमेव जयते

WEB COPY