IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case Nos. 336, 337 and 338 of 2015

Mohammed Raffiq .. Petitioner in all the Cases

Versus

1. State represented by
   Inspector of Police
   District Crime Branch
   Krishnagiri .. 1st Respondent in all the Cases

2. Parveen Taj .. 2nd Respondent in Crl.RC 336

3. Jayrina .. 2nd Respondent in Crl.RC 337

4. Samuyullahkhan .. 2nd Respondent in Crl.RC 338

Criminal Revision Cases filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the common order dated 10.04.2014 passed by the Judicial Magistrate No.1, Krishnagiri in Crl.M.P. No. 1090, 1092 and 1091 of 2014 respectively in C.C. No. 175 of 2013 discharging the second respondent herein from the criminal case.

For Petitioner : Mr. N.R. Anantha Rama Krishnan in all the Cases

For Respondent : Mr. Mohammed Riyaz, Government Advocate (Crl.side) for R1 in all the Cases

Mr. V. Rajamohan for R2 in all the cases

COMMON ORDER

As the issue involved in all the three Criminal Revision Cases arise out of the common order dated 10.04.2014 passed by the court below besides that common arguments have been advanced by counsel on either side, all the three Criminal Revision Cases are taken up together for final disposal.

2. The defacto complainant has come forward with these Criminal Revision Cases questioning the correctness of the common order dated 10.04.2014 passed by the learned Judicial Magistrate No.1, Krishnagiri whereby the second respondent in these cases, who are arrayed as accused No. 4, 3 and 6 respectively were discharged from the purview of criminal prosecution.

3. The case of the prosecution is that the second accused is the son of the first accused. The third accused is the wife of the second accused. The fourth accused is the sister of the third accused. The fifth accused is the brother in law of the second accused. The eighth accused is the friend of the second accused. According to the case of the prosecution, the first accused was the absolute owner of the land comprised in Survey No. 49/1B measuring an extent of 5989.5 square feet in Kattiganapalli Village, Krishnagiri District. This property was gifted in favour of the first accused by means of a gift deed dated 23.12.2003 registered as document No. 1814 of 2003. According to the prosecution, the defacto complainant evinced interest to purchase this property from the first and second accused and the sale consideration was fixed at Rs.15 lakhs. The defacto complainant paid a sum of Rs.4,00,000/- as advance. Thereafter, accused Nos. 1 and 2 have executed a general power of attorney in favour of the defacto complainant and upon execution of such general power of attorney, the defacto complainant paid a further sum of Rs.10,00,000/- and agreed to pay the balance sale consideration of Rs.1,00,000/- at the time of registration of the sale deed. It was informed that the documents of title relating to the property are mortgaged with the bank and upon redeeming the mortgage, the accused 1 and 2 would execute the sale deed in favour of the defacto complainant. After receiving the major sale consideration, according to the prosecution, the accused 1 to 8 have entered into a criminal conspiracy to cheat and defraud the defacto complainant and in that context, they have created and fabricated certain documents to deprive the right of the defacto complainant as an agreement holder. Pursuance to such criminal conspiracy entered into between the accused 1 to 8, a sale deed dated 05.07.2007 was executed in document No. 2266 of 2007 by the second accused in favour of the fifth accused in respect of a portion of the property for which the power of attorney was executed in favour of the defacto complainant. In respect of the remaining portion of the property, a sale deed dated 05.07.2007 was executed by the second accused in favour of the third accused registered as document No. 3088 of 2007. The third accused in turn executed a sale deed dated 19.11.2007 registered as document No. 3520 of 2007 in respect of the land measuring 19680 square feet in the above survey number in favour of the eighth accused. The third accused also registered another sale deed dated 08.04.2008 registered as document No.1316 of 2008 in favour of the fourth accused in respect of the remaining extent of land measuring 2070.75 square feet. Therefore, according to the prosecution, the accused 1 to 8 have cheated the defacto complainant after receiving the sale amount from him and thereby they have committed the offence punishable under Section 465, 468, 471 and 420 of IPC.

4. During the course of trial, the Accused No. 4, 3 and 6 have filed Crl.M.P. No. 1090, 1092 and 1091 of 2014 respectively in C.C. No. 175 of 2013 to discharge them from the Criminal case. The trial Court, by the common order dated 10.04.2014 allowed the Petitions filed by A-4, A-3 and A-6 respectively and discharged them from the purview of criminal prosecution on the ground that there are no material or evidence or strong presumption that the discharge petitioners would have committed. There is no evidence to show the criminal conspiracy or other offence committed by them. It is also stated by the trial Court that the discharge petitioners have purchased the land after obtaining encumbrance certificate which do not reflect any transaction

between the defacto complainant and the accused and therefore, it cannot be said that the sale transactions have taken place to defraud the defacto complainant.

5. The learned counsel appearing for the petitioner/defacto complainant would contend that the petitioner has paid the entire sum of Rs.14 lakhs towards sale price and it was also acknowledged by the accused 1 and 2 by executing a general power of attorney deed dated 29.03.2007 registered as document No. 199 of 2007 on the file of Sub-Registrar, Krishnagiri. Further, the accused 1 and 2 have also executed a cash receipt for having received the sum of Rs.14 lakhs from him. However, after receipt of the amount and after executing the power of attorney in favour of the defacto complainant, the accused have entered into a criminal conspiracy and executed sale deeds to defeat the right of the petitioner as an agreement holder. The accused are all related to each other and they knew fully well about the right of the defacto complainant to get the sale deed in respect of the land in question. In the meanwhile, the accused 1 and 2 have cancelled the general power of attorney on 25.10.2007 registered as document No. 519 of 2007 executed in favour of the defacto complainant. Such cancellation was made without even notice to the petitioner and therefore the cancellation deed itself is bad. The sale transactions between the accused 1 to 8 had deprived the petitioner of his right over the land. While so, the plea of the accused 3, 4 and 6, as if they have no knowledge about the transaction with the petitioner or they are not in any way connected with the said transaction have filed the petition for discharge. The trial court failed to take into consideration that A-3 is none other than the wife of the second accused and therefore it could not be gainsaid that she does not have any knowledge of the transaction her husband/A-2 had with the petitioner. Similarly, A-4 is the sister of A-3 and A-8 is a friend of the A-2. Even though the prosecution has made out a prima facie case for proceeding against the accused with the charge, the trial court, without any reasons has discharged the Accused 3, 4 and 6 and it needs to be interfered with by this Court.

6. On the contrary, the learned counsel appearing for the second respondent in all these Criminal Revision Cases would contend that the trial court taken note of the fact that a prima facie case has not been made out against the second respondent herein to proceed further with the criminal case. The accused 3, 4 and 6 are bona fide purchaser for valuable sale consideration. There is no criminal intention on the part of the accused 3, 4 and 6 to engage in the sale transaction to defeat the right of the defacto complainant. Even the power of attorney executed in favour of the defacto complainant was cancelled by a deed of Cancellation dated 25.10.2007 while so, the defacto complainant has no right, whatsoever, to contend that his right as an agreement holder is defeated by reason of the execution of the sale deeds between the accused.

7. The learned Government Advocate appearing for the prosecution would only contend that for framing of charge, existence of prima facie case is sufficient. In this case, admittedly, the accused have received the amount from the defacto complainant, executed power of attorney in his favour and consequently they have also created encumbrance over the land by executing sale deed among themselves. The accused are related

to each other and they ought not to have engaged in such transaction. The prosecution has clearly made out a case to proceed against the accused, however, the trial court, by over looking the existence of a prima facie case, has allowed the petitions for discharge and he prayed for allowing the Criminal Revision Cases.

8. I heard the counsel on either side and perused the materials placed on record. At the outset, it has to be stated that for framing of a charge against an accused, it is sufficient that the prosecution makes out a prima facie case for consideration. Whether the prosecution has made out a prima facie case against the second respondent in these criminal revision cases has to be seen.

9. The relationship between the accused is admitted. The accused 1 and 2 are father and son. The third accused is the wife of the second accused. The fourth accused is the sister of the third accused. The fifth accused is the brother-in-law of the second accused. The eighth accused is the friend of the second accused. It is also an admitted fact that the defacto complainant intended to purchase the land in question from the accused 1 and 2 for which purpose he has paid the entire sale price of Rs.14 lakhs. This amount of Rs.14 lakhs was acknowledged by the accused 1 and 2 by executing a receipt. The accused 1 and 2 have also executed a general power of attorney deed dated 29.03.2007 which was registered as document No. 199 of 2007 on the file of Sub-Registrar, Krishnagiri. After executing the general power of attorney, A-2 executed a sale deed dated 05.07.2007 in favour of his wife/A-3 in respect of a portion of the land which was the subject matter of the power of attorney executed in favour of the petitioner. On the same day, A-2 executed another sale deed in favour of A-5. Thereafter, the accused 1 and 2 have cancelled the general power of attorney deed dated 29.03.2007 by executing a deed of cancellation dated 25.10.2007. This cancellation, according to the petitioner, was without his knowledge or without any notice. In any event, the second accused ought not to have executed the sale deeds dated 05.07.2007 in favour of A-3 and A-5 when the power of attorney was in force at that time. As mentioned above, A-3, who is the wife of A-2, in turn executed a sale deed dated 19.11.2007 in favour of A-6 and another sale deed dated 08.04.2008 in favour of A-4, thereby she alienated the property purchased by her. On coming to know the above sale transactions, the petitioner has given the complaint on 28.01.2009 based on which the case in Crime No. 3 of 2009 came to be registered. Upon investigation, the charge sheet was filed on 16.06.2013. It is also to be noted that in the sale deed dated 19.11.2007 in favour of A-6, the sale price was made by cash and not by cheque.

10. From the above facts, it is evident that there are documentary evidence made available by the prosecution in the form of sale deeds and power of attorney executed by A-2 in favour of the defacto complainant. These documents throw much light on the case of the prosecution to prima facie prove the allegations relating to criminal conspiracy especially when the accused are related to each other. While so, it has to be held that the prosecution has made out a prima facie case to proceed against the accused in this case and such prima facie case is sufficient to frame a charge against them.

11. In the result, all the Criminal Revision Cases are allowed setting aside the common order dated 10.04.2014 passed by the Judicial Magistrate No.1, Krishnagiri in Crl.M.P. No. 1090, 1092 and 1091 of 2014 in C.C. No. 175 of 2013.

rsh

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1 The Judicial Magistrate No.1
Krishnagiri

2 The Chief Judicial Magistrate,
Krishnagiri

3 The Public Prosecutor,
High Court, Madras

4 The Inspector of POlice,
District Crime Branch,
Krishnagiri District

+1 C.C. to MR.N.MOHIDEEN BASHA, Advocate in Sr.44419

+1 C.C. to MR.N.MOHIDEEN BASHA, Advocate in Sr.44420

+1 C.C. to MR.N.MOHIDEEN BASHA, Advocate in Sr.44421

+2 CCS to Mr.N.R.Anantha Rama Krishnan, Advocate, sr.44387 (09/10/2015)
+2 CCS to Mr.N.R.Anantha Rama Krishnan, Advocate, sr.44386 (09/10/2015)
+2 CCS to Mr.N.R.Anantha Rama Krishnan, Advocate, sr.44385 (09/10/2015)

Crl.RC Nos. 336 to 338 of 2015

RSK(CO)
sd : 05/10/2015