IN THE HIGH COURT OF JUDICATURE AT MADRAS

Cav.on 22.9.2014

Dated : 27.04.2015

Coram

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

Crl.O.P.No.356 of 2014
MP.No. 1 of 2014

1.G.Malar Selvi
2.Rajeshwari
3.Vijitha Yoganandhini .. Petitioners

V..

1.State rep by
The Inspector of Police
Central Crime Branch
Salem

2.V.G.Balaji .. Respondents

Prayer :- Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in PR.No.10 of 2011 on the file of the Judicial Magistrate No.I, Salem and to quash the same.

For Petitioners : M/s.N.R.Elango, Sr.Counsel for R.Vivekananthan.

For Respondents : Mr.C.Emalias, APP for R1
Mr.N.Raja Sentoor Pandian for R2.

ORDER

The accused 4, 5 and 6 in Cr.No.38 of 2011 on the file of the first respondent/Inspector of police, CCB, Salem culminated as PR.No.10 of 2011 on the file of the Judicial Magistrate No.I, Salem are the petitioners herein.

2.The criminal proceedings in PR.No.10 of 2011 which is sought to be quashed herein is arising out of the FIR in Cr.No.38 of 2011 registered against the petitioners and five other named individuals arraying them as A1 to A8 and against unnamed individuals for the offences under Sections 120(b), 468, 471, 409, 420, 147, 148, 307, 506(ii), 409 and 420 IPC r/w. Section 3(1) of Tamil Nadu properties (Prevention of Damages and Loss) Act, 1992, on the basis of the complaint dated 12.08.2011 given by the second respondent herein. After investigation, charge sheet was filed on 12.10.2011 and the same was taken up on file for the offences under Section 120(b), 468, 471, 409, 420, 147, 148, 307, 307 r/w.149, 506(ii) IPC.

3.The complaint proceeds as if the defacto complainant is the owner of the property bearing Door Nos.41 and 42, Second Agragaram, Salem-1 and the defacto complainant along with the co-owners executed a sale agreement in respect of D.No.41 and two deeds of general power of attorney in respect of both the door numbers in favour of A1/Martin and in favour one S.B.Raju who is the brother-in-law of A1/Martin as security for the lottery business transaction between the defacto complainant and A1/Martin. The business transaction came to an end during 2007, due to ban for lottery business in Tamil Nadu and the accounts were verified and closed between the parties. Thereafter, the Defacto complainant had been repeatedly demanding A1/Martin to register the property in his name. But A1 had been evading to do so and had been by using the manpower threatening the tenant of the defacto complainant to vacate the premises. While so, A1 along with his brother in law S.B.Raju @ Benjamin and one Babu and Venkatesan belonging to Salem and his henchmen numbering 10 to 15 armed with deadly weapons, came to the shop at 10pm on 13.10.2010 and threatened to kill the Defacto Complainant, his wife and his son, on their failure to vacate the premises. A1 also attempted to assault the Defacto Complainant by using the iron rods and they also threatened the staff working in the tenant/shop and caused damages to the steps. Thereafter, the Defacto Complainant came to know about the sale deed executed on 18.02.2009 by A1/Martin in favour of one 1.Malarselvi, Chennai 2.Rajeswari, Salem, 3.Vijitha Yogananthini, Ramanathpuram and 4.Babu, Salem. Again A1 along with his henchmen came to the shop on 12.11.2010 and threatened to damage the property and threatened to kill the defacto complainant, his wife and his son and the Defacto Complainant along with his wife and son apprehending danger to their life, left their property and lodged the complaint. As the complaint given on 01.11.2010 regarding the occurrence on 13.10.2010 was not duly considered, the Defacto Complainant, his wife and the neighbour by name Siva/Auditor gave oral complaint on 12.11.2010 and again there was no further progress, as A1 was very politically influential person and the same compelled the Defacto Complainant to give fresh complaint to the Director General of Police on 24.10.2010 with copies marked to the Commissioner, Salem and Inspector, Town Police Station, Salem.

4. After investigation, the charge sheet was filed alleging that A1 to A4 have joined together and conspired to grab the property and in pursuance of the criminal conspiracy A1 to A8 created false documents and executed the sale deed for lessor sum and A1 and A2 as power agents sold the property to A4 to A7 without paying any amount to the defacto complainant and A8 assisted and abetted A1 to A7 in registering the sale deed and A1 to A7 have hence committed the offences punishable under Sections 120(b), 409, 420, 467, 468, 147, 148, 307, 506(ii) IPC and A8 also committed the offence of abetment. It is the further case of the prosecution that A1 & A2 committed criminal breach of trust punishable under Section 409 IPC. It is also their case that in pursuance of the criminal conspiracy, A8

created false documents by using the documents which were received on false promise that they will not be used for any other purpose except for the purpose of security, thereby committed the offence under Section 420 IPC r/w.120-B IPC. In furtherance of same transaction A1 to A8 armed with deadly weapons, came to the shop on 13.10.2012 at 10pm and A1 waved a iron rod with an intention to cause death and the defacto complainant escaped the same. In the course of same transaction, A2 and A4 to A8 threatened to do away with the defacto complainant or others and in order to create alarm in the mind of the witnesses caused damages to the steps worth about Rs.80,000/- using iron rod and crow-bar thereby committed the offences under Sections 307 r/w.149 and 506(ii) IPC and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992. It is also the case of the prosecution that A1 to A8 and some unidentified persons formed themselves to be unlawful assembly and committed the act of rioting and mischief by completely pulling down the building in the Door No.41 and 42 by using JCB vehicle. While doing so, A1 to A8 caused damages to the walls of the neighboring buildings to the tune of Rs.3,50,000/- and Rs.24,00,000/-, thereby committed the offences under Section 147 IPC and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992.

5. However the perusal of the order of the concerned Judicial Magistrate dated 12.10.2011 for taking cognizance of the case reveals that the same is taken up on file for the offences under Sections 120 (B), 468, 471, 409, 420 147, 148, 307, 307 r/w.149 and 506(ii)IPC. The Judicial Magistrate has not taken cognizance for the offences under section 467 and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992.

6.The petitioners/accused 4 to 6 have come forward with the present criminal original petition for quashing the proceedings initiated against them mainly on the ground that the allegations in the charge sheet do not disclose any prima facie case against the petitioners and no allegations are raised in the complaint or in the statement of the witnesses recorded on 12.08.2011 about the role played by the petitioners who are the subsequent purchasers of the property bearing D.Nos.41 and 42, Second Agragaram, Salem from A1 and about the power of attorney holders in creating any false documents and the same is lacking in particulars and in direct knowledge about the dispute between A1 and A2 on one hand and the defacto complainant on other hand or about their presence, involvement or participation in the occurrence allegedly taken place on 13.10.2010 and 12.11.2010 and the allegations raised in the charge sheet against the petitioners attracting various offences under IPC are based on the improved statement of the witnesses recorded on 15.08.2011 and thereafter. It is also argued before this court that in the absence of any other allegations about the role played by the petitioners in the alleged act of conspiracy, breach of trust and the act of assault and attempt to murder etc., and in the absence of any other legally permissible material to corroborate the allegations if any raised therein, the same cannot be allowed to sustain and no criminal prosecution can be permitted to go into the truthfulness or otherwise of such allegations raised against the petitioners. The learned counsel for the petitioners in the course of argument has also brought to the notice of this court contents of the affidavit filed by the defacto complainant before this Court in the earlier criminal original petition on 04.09.2011 and 15.09.2011 and the copy of the sale deed vide document No.3592 of 2011 dated 14.09.2011 executed by A7 who purchased ¾ shares from the petitioners herein in favour of the defacto complainant and others for the same property. Similar affidavit is filed by K.K.V.G.Prakash and V.G.P.Srividhya who are the brother and brother's wife of the defacto complainant and who are also the co-owners of the property in question and parties to the alleged forged sale agreement and deeds of power attorney along with the defacto complainant. It is also sought to be argued herein that the subsequent conduct of the parties in coming forward to settle the matter between themselves and in getting back the documents and the contents of the affidavit filed by them, if viewed in the light of the allegations raised in the complaint and in the earlier statement of the material witnesses, the same would reveal the lack of bonafide and the motive with which the complaint came to be filed.

7. Per contra, the petition is seriously opposed both by the official respondent and by the defacto complainant. According to whom, the charge sheet filed against the petitioners contains serious allegations against them and the same are to be necessarily gone into and decided on merits after full fledged trial and the proceedings cannot be dropped at this stage without subjecting the accused for proper trial.

8. Heard the rival submissions made on both sides and perused the records.

9. As far as the petitioners are concerned, they are arrayed as accused 4 to 6 in their capacity as the purchasers of the property from A1 and A2 on the basis of the right conferred on A1 and A2 by virtue of the sale agreement and general power of attorney executed by the defacto complainant and others. It is no body's case that the sale agreement in favour of A1 and the general power of attorney in favour of A2 and A3 were obtained by making any false promise, misrepresentation, coercion or compulsion or by exercising undue influence. The same were admittedly executed by the defcto complainant and his vagayara, when they had cordial business relationship between the parties. The complainant has come forward with the serious allegations against the petitioners and others about nearly a decade after the execution of the documents.

10. As far as the petitioners are concerned the petitioners along

with A8/Babu purchased the property by way of sale deed dated 18.10.2009 executed by A1/Martin, A2/S.B.Raju@Benjamin and A3/Manickam on the strength the sale agreement and general power of attorneys validly executed in their favour by the owner of the property. The sale deed was executed by the parties concerned only in their capacity as agreement holder and power of attorney holder and no act of impersonation involved therein. As rightly argued by the learned counsel for the petitioners the ingredients for the main offences for creation of false documents and for using any false document for the purpose of cheating etc. are either not made out or not supported by any legally permissible materials. Considering the length of interval between the date of execution of the power of attorney and date on which the business transaction between the two allegedly came to an end and the date of sale deed executed by A1 to A3 in favour of A4 to A6, no presumption regarding any act of conspiracy, cheating or criminal breach of trust arises in the present case. The nature of the allegations raised in the complaint also do not make out one such case in this regard. As no act of forgery is involved in executing such document, the sale deed executed by A1 to A3 in favour of A4 to A6 cannot be treated as false document as defined under Section 464 IPC. If that is so, any offence under Section 468 IPC for committing an act of forgery for the purpose of cheating and under Section 471 IPC for using the forged document as genuine, is not at all made out herein.

11.The Hon'ble Apex Court in paras 13 and 14 of the decision reported in (2009) 3 SCC (Cri) 929 (Mohammed Ibrahim and others v. State of Bihar and another) has clearly observed that "the condition precedent for an offence under Section 467 and 471 is forgery. The condition precedent for forgery is making a false document....... A person is said to have made a "false document", if (i)he made or executed a document claiming to be someone else or authorised by someone else; or (ii)he altered or tampered a document; or (iii)he obtained a document by practising deception, or from a person not in control of his senses". It is further observed in para 16 that "there is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property and a person executing a sale deed by impersonating the owner or false claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf....... But, to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed". Whereas, in the present case, the parties having executed the power of attorney and having executed the sale agreements in favour of A1 to A3, the sale deeds executed by A1 to A3 in favour of the petitioners herein on the strength of such power given to them, do not fall under the category of "false documents" as defined under section 464. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor 471 of the Code are attracted.

12.As far as the offence under section 420 is concerned, the Hon'ble Supreme Court in the same judgment, was of the view that "when a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. When it is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived, it cannot be said that by the act of executing the sale deeds in favour of the second accused by the first accused, neither of the accused by reason of their being the vendor, purchaser, witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner and the ingredients of cheating as stated in Section 415 are not found and there was no offence punishable under sections 417, 418, 419 or 420 of the code made out." The observation of the Hon'ble Apex Court in the above judgment is squarely applicable to the facts of the present case, insofar as the main offences alleged against the petitioner and others are concerned.

13. The defacto complainant and others having executed the documents with full consent and with full knowledge of the nature of the documents and also that of the contents of the same cannot be now permitted to raise any allegations as if the documents are forgedly created. In that event offences punishable under Sections 120(b), 468, 471 IPC cannot be said to be attracted insofar as the execution of the documents as above referred to. Once the materials made available herein do not disclose any ingredients for the main offences, the allegations raised for the other offences under sections 147, 148, 307, 307 r/w 149 and 506 (ii) IPC and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage and Loss) Act, are introduced only to give criminal colour to the civil dispute, if any, in respect of the property concerned.

14. As far as the allegations regarding the occurrence said to have been taken place on 13.10.2010 and 12.11.2010 are concerned, here again, the complaint which is the earliest document does not refer to the presence or involvement of the petitioners in the scene of occurrence. The earliest statement of material witnesses do not involve them in the same. The allegations raised against the petitioners accused regarding the occurrence allegedly taken place on 13.10.2010 and 12.11.2010 are also very vague, bald and general in nature and no specific overt act is attributed to either of them.

Even the statement of other witnesses do speak only about their presence in the place of the alleged occurrence on 12.11.2010, but no specific overt act is attributed to them in the alleged acts of assault, causing damage to the property and causing injury to the witness and in the act of criminal intimidation. Specific allegations are made by the witnesses only in their further statement as an after thought and for the purpose of raising criminal liability against the petitioners for the offences as alleged above.

15.There is also no explanation for the delay in lodging the complaint nearly 20 months after the execution of the sale deed. Though, the second respondent has in his complaint stated that he has already made three complaints on 24.11.2010, 12.11.2010 and 12.08.2011 the copies of the same are not produced before this court and the complaint arising out of which is the present criminal original petition is dated 12.08.2011 and received in the Office of the Inspector General of Police on 12.08.2011. Here also, there is no explanation for the delay in lodging the present complaint nearly one year after the alleged occurrence.

16.Above all, the manner in which the cognizance was taken by the lower court for the offences mentioned above in the order dated 12.10.2011 the copy of which is enclosed in the typed set of papers is totally contrary to the procedure laid down under the Act and is against the well laid down legal principles. When the charge sheet laid against the accused A1 to A8 is for different offences against the different accused and when all the accused are not charged for all the offences, the order taking cognizance simply says that the same is taken on file for the offences under Sections 120(b), 468, 471, 409, 420, 147, 148, 307, 307 r/w.149 and 506(ii) IPC. The order does not specify the nature of the offences for which each of the accused is charged. The manner in which the order is passed indicates as if all the accused are charged collectively for all the offences, which is not the case of the prosecution at all. That shows the non application of mind on the part of the learned Judicial Magistrate, while taking cognizance and the same vitiates the proceedings against the petitioners and also others.

17.Further, the defacto complainant and the accused A1 to A3 have already entered into compromise and the properties were already reconveyed to them and cheques and pronotes received by him were handed over to the defacto complainant and others. It is specifically stated by the defacto complainant in the affidavit filed in the earlier criminal original petition filed to quash FIR that he has no other claim or complaint against the petitioners therein/A1 and others. The defacto complainant has gone to the extent of saying that he has no objection in quashing the proceedings in Cr.No.38 of 2011.

18.The learned counsel for the petitioners has also drawn the attention of this Court to the supporting affidavit of K.K.V.G.Prakash and VGP.Srividhya W/o.K.K.V.G.Prakash submitted in WP.No.19630 of 2011 which is filed by A3 Manickam against the State of Tamil Nadu and 5 others (the defacto complainant herein is arrayed as the sixth respondent in the writ petition), wherein, it is stated that K.K.V.G.Prakash and V.G.P.Srividhya are the brother and brother's wife of the defacto complainant and they are the co-owners of the property bearing Door nos.41 and 42, II Agraharam, Salem-1 and they joined with the defacto complainant in executing two deeds of power of attorney dated 13.11.2000 and 23.8.2002. The affidavit proceeds to say that they were the owners of undivided 50% share each in the property above referred to and the sale agreement and power of attorney were executed by them voluntarily with full consent and knowledge of the same and the property was sold to the petitioners herein and A8 C.Babu by A1 to A3 with their knowledge and consent and the original title deeds of the property was handed over to the purchasers and the possession was delivered to the purchasers with full knowledge and consent of the original owners and they have no interest in the property and there was no claim or complaint against either of A1 to A3 and the defacto complainant started raising false dispute with A1 and A1 to A3 did not commit any offence to grab the property and the complaint filed by the defacto complainant against A1 and others is totally false and motivated etc. This Court is of the view that considering the nature of the relationship between the defacto complainant and the deponents of the affidavit and also considering their interest in the property concerned, the contents of their affidavit as referred to above require due weightage herein.

19.The factum and the nature of the settlement arrived at between the parties and the reconveyance of the property in favour of the second respondent/Defacto complainant by main accused and the petitioners herein is evident from the affidavit filed by the defacto complainant on 04.09.2011 and 15.09.2011 the copies of the same are enclosed in the typed set of papers dated 11.09.2014 filed by the petitioners. It is to be recollected at this juncture that the defacto complainant in his affidavit has categorically stated that he has no claim against any one and has no objection for quashing the proceedings. Even otherwise, the nature of the dispute, if any, between the parties is more of civil in nature and the same can be resolved through appropriate civil forum and for such dispute, no criminal liability can be fastened against the petitioners herein.

20. Thus the combined appreciation of the factors referred to and discussed above would compel this court to hold that no ingredients for any offence are attracted against the petitioners herein and the manner of taking cognizance of the Judicial Magistrate concerned vitiates the entire proceedings and in the event of the proceedings being allowed to go on, it would amount to abuse of process of law and is hence liable to be quashed.

21. In the result, the criminal original petition is allowed and

the proceedings in PR.No.10 of 2011 on the file of the Judicial Magistrate No.I, Salem is quashed. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.I, Salem.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Central Crime Branch, Salem.

+ 1 cc to M/s.R.Vivekananthan, Advocate SR 23885

+ 1 cc to the Public Prosecutor, High Court, madras SR 23290

br(co)
prk10/7

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