

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-10-2015

CORAM:

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

Criminal Original Petition No.23085 of 2015
M.P.No.1 of 2015

Antony Gomes

... Petitioner

Vs.

1. State rep. by the Inspector of Police,
District Crime Branch,
Anti-Land Grabbing Special Cell,
Kancheepuram District.
(Crime No.14 of 2015)

2. N. Ramalingam

... Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in Crime No.14 of 2015 on the file of the first respondent and quash the same.

For Petitioner : Mr.N.R.Elango, Sr.Counsel
for Mr.R.Vivekanandan

For 1st Respondent : Mr.S.Shanmugavelayutham,
Public Prosecutor,
assisted by
Mr.C.Emalias,
Additional Public Prosecutor

For 2nd Respondent : Mr.I Subramanian,
Senior Counsel
for Mr.K.Ramasamy

Reserved on	Pronounced on
13-10-2015	28-10-2015

O R D E R

This is a text book case for the proposition that "if you cross swords with the Police, your life will become miserable."

2. For the sake of convenience, the parties will be referred to by their name.

3. The land in question measuring about 2 acres in S.No.58/11/A originally belonged to Gopal, Son of Arasan, who died on 1.3.1999, leaving behind one Radha and three others as his heirs. On 28.12.2005 Hallmark Infrastructure Pvt. Ltd. (hereinafter would be referred to as 'Hallmark'), a Realtor, entered into a sale agreement in respect of the said two acres of land with the heirs of the deceased Gopal viz., Radha and three others. Whiles, one Gopal, Son of Appu claimed himself as the original Gopal, Son of Arasan (who died on 1.3.1999) and gave a power of attorney to one Lalith Kumar Bhandari in respect of 1.48 acres of land in S.No.58/11/A/2A1A1. In the power of attorney, he has stated that the land belongs to one Chinnapaiyan and Chidambaram and that he is authorising the power agent viz., Lalith Kumar Bhandari to sign on behalf of the confirming party in the sale deed. From Lalith Kumar Bhandari, the land measuring 1.48 acres in S.No.58/11/A/2A1A1 came to the hands of the Wisdom Housing and Properties Pvt. Ltd. (hereinafter would be referred to as 'Wisdom Housing'), who is also a Realtor.

3. From Wisdom Housing, one Karthikeyan Manivasagan, a resident of California purchased 5500 sq.ft. of land on 20.6.2008 by Document No.5388/2008. On 11.12.2008 Hallmark obtained, by way of a registered sale deed, two acres of land in S.No.58/11/A/2A1 and sold the property on 30.4.2013 through their power agent Sudan in favour of Antony Gomes (A-3), who is the petitioner before this Court. Thus, Hallmark and Wisdom Housing appear to have purchased the same land through two different sources. Of course, it is the contention of the Wisdom Housing that they had purchased S.No.58/11/A2A1A1, whereas Hallmark had purchased S.No.58/11/A2A1. Thus, there is a small difference of additional 'A1' in the document of purchase by Wisdom Housing. This is where the subtle subterfuge lies, which will slowly reveal itself as the narration proceeds.

4. Sensing some fraud in the purchase of Wisdom Housing, Hallmark lodged a complaint before the respondent Police against

Wisdom Housing and a case in Cr.No.41 of 2013 was registered by the Police and investigation was taken up. Police arrested Gopal in Cr.No.41 of 2013 and he spilled the beans. He told the police that in order to usurp the land with the full knowledge of Lalith Kumar Bhandari and the owners of Wisdom Housing, the fake power of attorney was registered as if he was Gopal, Son of Arasan, who died on 1.3.1999. Investigation went on in full swing and several people were arrested by the Police in Cr.No.41 of 2013. Something happened somewhere that suddenly the Police made a 180 degree turn around, and filed a closure report in Cr.No.41 of 2013 on 17.1.2014, closing the case as mistake of fact. The Judicial Magistrate No.II, Chengalpet before whom the closure report was filed, accepted the closure report on 19.2.2014.

5. Hallmark approached this Court in CrI.R.C.No.860 of 2014 to set aside the order of the Judicial Magistrate No.II, Chengalpet accepting the closure report, and the same was allowed by this Court on 28.8.2014 with a direction to the Judicial Magistrate No.II, Chengalpet to take on file the protest petition and decide the same after hearing the defacto complainant and the police. On 27.10.2014 Ramalingam, the father in law of Karthikeyan Manivasagan lodged a complaint against Hallmark stating that they are dealing with the property in S.No.58/11/A/2A1A1, and that petition was under enquiry by the Police and no FIR was registered initially. Hallmark filed a protest application in the closure report against Cr.No.41 of 2013 before the Judicial Magistrate No.II, Chengalpet, which was dismissed on 29.12.2014 and the closure report by the Police was accepted.

6. Hallmark approached this Court again in Cr.R.C.No.56 of 2015 to set aside the order of the learned Judicial Magistrate No.II, Chengalpet dismissing their protest application on the ground that the investigation discloses commission of cognisable offence and the Police have also arrested the main accused Gopal, who had impersonated the deceased Gopal, etc. A learned single Judge of this Court went into the entire aspect and by a detailed order dated 29.6.2015 observed that the closure report filed by the Police is per se unsustainable in the teeth of the material implicating the accused involved in the case. Thus, CrI.R.C.No.56 of 2015 was allowed by this Court on 29.6.2015 and in the last paragraphs of this Court's order it is stated as follows:

"After pronouncing the order today, the learned Government Advocate (Criminal side) submitted that necessary direction may be issued to the Superintendent of Police, Kancheepuram District to appoint an Officer other than the Investigation Officer in this case, to deal with the matter.

2. In view of the said submission made, it is open to the Superintendent of Police, Kancheepuram District to appoint any Officer as he may thinks fit and necessary other than the Investigation Officer who has handled this case, to carry out fresh investigation in the matter. The officer, so appointed, shall see to it that the investigation in the matter is completed at the earliest point of time."

7. Aggrieved by the order in Crl.R.C.No.56 of 2015, Lalith Kumar Bhandari approached the Hon'ble Supreme Court in SLP (Crl) No.768 of 2015, which was dismissed on 18.9.2015 by observing as follows:

"We do not find any legal and valid ground for interference. The Special Leave Petitions are dismissed. Any further investigation would be carried out uninfluenced by the observations of the High Court."

8. The learned Public Prosecutor informed this Court that now the case in Cr.No.41 of 2013 is being investigated by one Mr.Subbiah, Inspector of Police, District Crime Branch, Anti-Land Grabbing Special Cell. After this Court allowed Crl.R.C.No.56 of 2015 and set aside the closure report filed by the Police in Cr.No.41 of 2013, the complaint given by Ramalingam on 27.10.2014 suddenly resurrected and FIR in Cr.No.14 of 2015 was registered on 24.7.2015 against Hallmark by the same Police, challenging which Antony Gomes (A-3) is before this Court.

9. Heard Mr.N.R.Elango, learned Senior Counsel appearing for Antony Gomes (A-3)/petitioner herein; Mr.S.Shanmugavelayutham, learned Public Prosecutor for the State; and Mr.I.Subramaniam, learned Senior Counsel appearing for the defacto complainant/second respondent herein.

10. Mr.I.Subramaniam, learned Senior Counsel contended that there is sufficient material in the complaint lodged by Ramalingam in Cr.No.14 of 2015 for the police to investigate against Hallmark and Antony Gomes [A-3].

11. The allegation in Cr.No.14 of 2015 is that Hallmark purchased two acres in S.No.58/11A/2A1 and sold the property to Antony Gomes (A-3) on 3.5.2013, in which sale deed it is stated as follows:

"All the piece and parcel of land comprised, S.No.58/11A/2a1 as per Patta No.41, S.No.58/11A/2A1A, subsequently renumbered as 58/11A/2A1A1 (as per proceedings TK8A/33/1400 dated 08.07.1991) measuring Acres 2 and 00 cents, situated at No.92, Eachankaranai Village, Chengalput Taluk, Kancheepuram District, and bounded ...
"

12. It is the contention of Mr.I.Subramaniam, learned Senior Counsel that an additional "A1" has been added in the sale deed and therefore there is an attempt to grab the property of the defacto complainant. It should be remembered that the very title to the said property of the defacto complainant is under cloud and under investigation in Cr.No.41 of 2013 on the complaint lodged by Hallmark, which the Police investigated with zeal initially and made a turn around subsequently by filing Closure report and which was set aside by this Court and confirmed by the Supreme Court. Mr.I.Subramaniam, showed a chart and contended that the land belonging to Wisdom Housing and the land belonging to Hallmark are in two different places and this FIR is in respect of a different survey number. This Court is unable to countenance this argument for the simple reason that if both the lands are located in different places as contended, then there is no question of the accused in Cr.No.14 of 2015 trying to usurp the land of defacto complainant. It is always open for the defacto complainant to file a suit to declare that the renumbered survey number shown in Antony Gomes's (A-3) sale deed is erroneous. Instead, the FIR has been registered against Hallmark in Cr.No.14 of 2015 on 24.7.2015 based on a complaint given by Ramalingam on 27.10.2014. In the considered opinion of this Court, the present defacto complainant Ramalingam is a stooge of Wisdom Housing and this FIR against Hallmark has been engineered in order to put brakes in the investigation of Cr.No.41 of 2013.

13. In the result, this Criminal Original Petition is allowed and the FIR in Cr.No.14 of 2015 is hereby quashed. If the investigation in Cr.No.41 of 2013 is continued by the same respondent Police, there may not be a free and fair investigation. Hence the case in Cr.No.41 of 2013 pending on the file of the first respondent Police is hereby transferred to the file of the Central Crime Branch, Chennai. The Inspector of Police, District Crime Branch, Anti-Land Grabbing Special Cell, Kancheepuram District is directed to hand over the case diary in Cr.No.41 of 2013 to the Deputy Commissioner of Police, Central Crime Branch, Chennai, who shall allot the case to a competent Inspector of Police to proceed further with the investigation. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vr

To

- 1.The Inspector of Police,
District Crime Branch,
Anti-Land Grabbing Special Cell,
Kancheepuram District.
- 2.The Deputy Commissioner of Police,
Central Crime Branch, Chennai
- 3.The Public Prosecutor,
High Court, Madras.

+2cc's to M/s.K.Ramasamy, Advocate, S.R.No.58550

CrI.O.P.No.23085 of 2015

RSK(CO)
CA(03/11/2015)

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