

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.R.C.No.965 of 2010

1. A. Ramasamy, M/A. 57 years
S/o. Arumugam
Assistant, Sub-Registrar's Office
Mettur Dam, Salem District
Residing at
No.166, Thalavaipatti Steel plant Road
Salem -32
 2. V. Sivaperuman, M/A.58 years
S/o.Vaiyapuri
Sub-Registrar
Formerly at Mettur Dam, Salem District
Residing at
No.5, Gani Rawther Street
Paramathy Velur Taluk
Namakkal District
- .. Petitioners/Petitioenrs 1&2/
Accused 3&4

Vs.

State represented by
Inspector of Police
Vigilance and Anti Corruption
Salem

.. Respondent/Respondent/
Complainant

Criminal Revision Petition under Section 397 r/w Section 401, Cr.P.C., against the order of dismissal of the petition for discharge of the accused passed by the Special Judge cum Chief Judicial Magistrate, Salem made in Crl.M.P.No.173 of 2008 in Special C.C.No.114 of 2007 by its order dated 14-07-2009.

For petitioners :: Mr. M. Rajkumar for
M/s.T. Vijayaraghavan,B.K. Appukutti

For respondent :: Mr. P. Govindarajan, Addl.PP

ORDER

This criminal revision case has been directed against the order dated 14-07-2009 passed in Crl.M.P.No.173 of 2008 by the

Special Judge cum Chief Judicial Magistrate, Salem.

2. The revision petitioners, as petitioners have filed CrI.M.P.No.173 of 2008 under Section 239, Cr.P.C., praying to discharge them from the proceedings of Special Calendar Case No.114 of 2007, wherein the present respondent has been shown as sole respondent.

3. It is averred in the petition that the respondent has conducted an investigation on the basis of alleged complaint and subsequently filed a final report and the same has been taken on file in Spl.C.C.No.114 of 2007, wherein the present petitioners have been arrayed as accused Nos.3 and 4. Further, it is averred in the petition that during the relevant period, the third accused has acted as an Assistant in Sub-Registrar Office, Mettur whereas the fourth accused has served as Sub-Registrar. The fourth accused has registered the documents, in question as per Government Orders and he has not flouted any existing law. Under the said circumstances, this petition has been filed for getting the relief sought therein.

4. The Court-below after considering the divergent contentions raised on either side has dismissed the petition. Against the dismissal order, the present criminal revision case has been filed at the instance of the petitioners as criminal revision petitioners.

5. The learned counsel appearing for the revision petitioners has contended that as per G.O.Ms.No.2179 (Co-operation) dated 29-06-1966, the fourth accused is entitled to give exemption in cases of registration of sale deeds in favour of members of Society and by way of following the said G.O., he registered the sale deeds, in question and he has no connection whatsoever with the other accused. Since the fourth accused is a Sub-Registrar and third accused is an Assistant, they have been falsely implicated in Spl.C.C.No.114 of 2007. Under the said circumstances, the present petition has been filed for getting the relief sought therein. But the Court-below without considering the nature of role played by the accused Nos.3 and 4 has erroneously dismissed the petition and therefore, the dismissal order passed by the Court-below is liable to be set aside.

6. The learned Additional Public Prosecutor has also equally contended that as per by-law of the concerned Society, a sale deed should be registered in favour of a person, who is a member of particular Society for five years and in the instant case, the purchasers of properties of the Society are not having five years' period as Members and the fourth

accused by way of flouting existing Rules and also by way of violating the G.O., has registered the sale deeds, in question and the Court-below after considering the nature of role alleged to have been played by the petitioners has rightly dismissed the petition and therefore, the dismissal order passed by the Court-below does not require any interference.

7. For considering the rival submissions made on either side, the Court has to look into G.O.Ms.No.2179 (Co-operation) dated 29-06-1966 and the same reads as follows:

"ISSUED IN THE GOVERNMENT - AGRICULTURE DEPARTMENT

(G.O.Ms.No.2179, Agriculture (Co-operation), 29th June, 1966)

(Published at page 1215, Fort St.George Gazette,
Part II - Section 1, dt.10th August 1966)

II-1 No.3082 of 1966 -In exercise of the powers conferred by sub-section (1) of section 43 of the Madras Co-operative Societies Act, 1961 (Madras Act 53 of 1961) and in supersession of the Notification II-1 No.4819 of 1963, dated the 12th September 1963, published at page 2185 of Part II-Section 1 of the Fort St. George Gazette, dated the 18th September 1963, the Governor of Madras hereby remits in the case of all registered societies the stamp duty (not being the stamp duty referred to in clause 9 a) of sub-section (2) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), chargeable under the said Indian Stamp Act, in respect of -

(1) instruments executed by or on behalf of any such society, or by an officer or member thereof and relating to the business of such society:

Provided further that in the case of a sale-deed executed in respect of a house, constructed by the Co-operative House Construction Societies, the remission shall not operate unless such deed is in favour of a member to whom the property conveyed was allotted and a period of not less than has elapsed since the date of such allotment.

Provided further that in the case of a sale deed in favour of any such society, the remission shall not operate unless, the vendor, has been a member of such society continuously for a period of not less than two years immediately before the date of the execution of the sale deed;

(2) decisions, awards or orders of the Registrar or the arbitrators under the Madras Co-operative Societies Act (Madras Act 53 of 1961)."

8. From a close reading of the said G.O., the Court can easily come to a conclusion that two proviso clauses are available in the said G.O. The first proviso clause is related to house constructed by Co-operative Society. The second proviso clause is related to sale deed executed in favour of Society.

9. In the instant case, it is an admitted fact that in all the sale deeds, vacant house plots of the concerned Society have been sold and registered by the fourth accused. Therefore, the proviso clauses available in G.O.Ms.No.2179 (Co-operation) dated 29-06-1966 are not applicable to the facts and circumstances of the present case.

10. In the initial portion of the said G.O., it has been clearly mentioned that certain exemption can be given in paying stamp duty and by way of invoking the same, the fourth accused has registered the sale deeds, in question. Considering the fact that the proviso clauses available under the said G.O., are not applicable to the facts and circumstances of the present case, and also considering the said G.O., exemption can be given with regard to stamp duty, this Court is of the considered view that the fourth accused has acted well within his limit and he has not flouted any existing Rules nor any G.O. The Court-below without considering the nature of role alleged to have been played by the petitioners has erroneously dismissed the petition.

11. In view of the discussion made earlier, this Court has found acceptable force in the contention put forth on the side of the present petitioners and altogether, the present criminal revision case is liable to be allowed.

In fine, criminal revision case is allowed. The order passed in CrI.M.P.No.173/2008 in Special C.C.No.114 of 2007 dated 14-07-2009 by the Special Judge cum Chief Judicial Magistrate, Salem is set aside and the petition filed in CrI.M.P.No.173 of 2008 is allowed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

glp

To

1. The Special Judge-Cum-Chief Judicial Magistrate, Salem.
2. The Inspector of Police, Vigilance and Anti corruption, Salem.
3. The Public prosecutor, High Court, Madras.
4. The Section Officer, Crl.Section, High Court, Madras.

+1 cc to Mr.T.Vijayaraghavan, Advocate, sr.58977

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gr co
kra 23.11.2015



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