

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

CrI.O.P.No.30976 of 2013

and

M.P.No.1 of 2013

K.Anitha

... Petitioner/Accused

Vs.

1. The Sub Inspector of Police,
E8 Kelambakkam Police Station,
Kancheepuram District.

2. Harish Vasanji

... Respondents/Defacto
Complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records of FIR No.483 of 2013 dated 23.11.2013 on the file of the first respondent and quash the same.

For Petitioner : Mr.N.Senthilkumar

For Respondents : Mr.C.Emalias, APP (R1)
Mr.N.R.Elango, SC for
Mr.N.S.Nandakumar (R2)

O R D E R

The named accused in E8 Kelambakkam Police Station, Kancheepuram District FIR in Cr.No.483 of 2013 dated 23.11.2013 is the petitioner herein. The petitioner has come forward with this criminal original petition to quash the FIR registered for the offences under sections 468, 471 and 420 IPC against her and other unnamed accused on the basis of the complaint given by the second respondent herein.

2.The complaint proceeds as if the property measuring 4.60 acres in No.43 Padur Revenue Village, Thiruporur Taluk originally belongs to one Zahrunissa and Gulam Razul and after their

death, their legal heirs succeeded to the same and the second respondent and his family members purchased the same during 1994-95 and have become the owners and have been in possession and enjoyment of the same since the date of purchase. It is the further case of the second respondent/defacto complainant in the complaint that they applied patta for the property in question during 2011, at that time, it came to their knowledge that patta was already transferred in the joint names of the petitioner/accused and one C.A.Kabir since deceased and the petitioner also created mortgage over major portion of the property for Rs.1 lakh. On coming to know about the same, they preferred a complaint and the complaint was transferred to the Deputy Superintendent of Police, Mahabalipuram, but no action was taken, even after obtaining direction from the High Court. It is further stated therein that no civil court proceedings is pending against the property in question. On receipt of the complaint, the FIR was registered for the offences as referred to above against the petitioner and others.

3.The petitioner would in this Criminal Original Petition, after having traced her title through judgment and decree dated 11.11.1989 made in O.S.No.8667/1985 on the file of the City Civil Court, Chennai and after having referred to various proceedings pending in respect of same property on civil side and invoking writ jurisdiction and before the Revenue authorities and after having referred to various transactions effected between the second respondent and his family members much before the complaint and the earlier proceedings before the Revenue authorities for transfer of patta and after having referred to the knowledge of the second respondent about the entire dispute relating to the property as early as in 2009 by way of CRP.No.1596 of 2009, number of FIRs filed by the second respondent and his family members and his business associates K.C.P.Shivaraman and others and the nature of enquiries conducted in the earlier FIRs, seek to quash the proceedings mainly on the ground that the dispute between the parties is more of civil in nature and the criminal complaint is only to circumvent the same and to seriously harass the petitioner herein. The petitioner has also by way of typed sets enclosed the copies of the proceedings referred to in this petition.

4.The relief sought for in this petition is seriously opposed by both the respondents 1 and 2. The first respondent has in his counter, referred to the manner of investigation held in the FIR and the pendency of the writ petitions filed by the defacto complainant and others and the petitioner herein and the nature of the relief sought for therein and the legal opinions obtained from the Additional Government Pleader-cum-Additional Public Prosecutor, Sub Court, Chengalpet as if the dispute is civil in nature and pendency

of the civil suit in O.S.64/2014 by the purchaser against the defacto complainant and the stage of the investigation. The second respondent has, in support of the averments raised in the complaint, filed more than one typed set containing number of documents in respect of various civil and criminal proceedings relating to the property in question.

5. Heard the rival submissions made on both sides and perused the materials placed before this court.

6. The material facts involved herein and the documents enclosed in the typed set of papers would disclose the following relevant facts for consideration by this court. The subject matter of the property in dispute is measuring an extent of 4.60 acres comprised in various survey numbers in Padur Revenue Village, Thiruporur Taluk previously Chengalpet Taluk. The subject matter of the land in dispute forms part of the subject matter of the suit in O.S.No.8667/1985 on the file of the City Civil Court, Chennai filed by one C.A.Khabeer since deceased and two others against 9 individuals and two officials and the 9 individuals are one Mohammed Sadiq, S/o.Hayath Basha and other legal heirs of Hayath Basha and the officials arrayed as defendants 10 and 11 were the Sub Registrar, Thiruporur and the Tahsildar, Chengalpet Taluk. The suit is filed for declaring the right, title and interest of the plaintiffs and for permanent injunction restraining the defendants from in any way dealing with the property and for restraining them from registering sale deeds and other documents except the sale deed and documents executed by the second plaintiff by name C.A.Khabeer and restraining the officials not to effect any name transfer in Revenue Registry such as, patta, chitta, adangal etc. except on the application filed by the second plaintiff and the suit was after due contest decreed. In pursuance of the same, applications were filed by the second plaintiff and rival claimants before the Revenue authorities for issuance of patta.

7. As far as the petitioner is concerned, she obtained power of attorney for consideration from the second plaintiff by name C.A.Khabeer and she, on the strength of the same, applied for patta before the Revenue authorities. The Tahsildar, Chengalpet passed an order, granting patta in the joint names of the petitioner herein and C.A.Khabeer and the same was challenged before the District Revenue Officer, Kancheepuram, who confirmed the same. In pursuance of the same, patta was transferred in the joint names of the petitioner herein and C.A.Khabeer and the subject matter of the property measuring 4.60 acres in Padur Revenue Village and other properties got transferred in their names.

8. In the mean time, the family members of the second respondent/defacto complainant claimed to have purchased various properties including the subject matter of O.S.No.8667/1985 during 1994-95 sold a portion of the same through two sale deeds dated 3.10.2007 for valuable consideration in favour of K.C.P.Shivaraman and also effected gift deed in respect of certain extent of the properties to Padur Panchayat through K.C.P.Shivaraman. Both the sale deeds and gift deed are effected without obtaining any patta. Thereafter, Padur Panchayat on the strength of gift deed, filed an application for issuance of patta, which was summarily rejected for technical defects in the document by the Tahsildar, Chengalpet vide order dated 9.3.2012. The order rejecting the application for grant of patta was challenged by way of appeal before the Revenue Divisional Officer, Chengalpet who after holding a detailed enquiry, dismissed the appeal vide order dated 22.5.2012. The order of the Revenue Divisional Officer was again challenged by Padur Panchayat before the District Revenue Officer, Kancheepuram and the same is yet to reach finality.

9. While so, one of the plaintiffs in OS.8667/1985 C.A.Khabeer filed an Execution Petition EP.71/1995 against the Revenue authorities for executing the decree dated 11.11.1989 made in O.S.8667/1985 and the Execution Petition was dismissed on 19.11.2007. Aggrieved against the same, C.A.Khabeer filed two Civil Revision Petitions CRPs.1596 and 1597 of 2009 before High court, Madras and the defacto complainant and his family members filed MP.1/2012 for impleading them in the CRPs. Pending Civil Revision Petitions, patta was issued in the name of C.A.Khabeer and in view of the same, C.A.Khabeer withdrew two Civil Revision Petitions on 16.7.2012, which compelled the 2nd respondent/defacto complainant also to withdraw his impleading application filed in CRPs and the Civil Revision Petitions along with impleading application were accordingly dismissed as withdrawn by order dated 16.7.2012.

10. In pursuance of the same, the second respondent and his family members made another application to the Tasildar, Thiruporur for name transfer of patta in the name of the second respondent and his family members. Pending the same, four writ petitions WP.22256 and 22351 to 22353 of 2012 are filed, seeking cancellation of patta issued in the joint names of C.A.Khabeer and the petitioner herein, without impleading C.A.Khabeer and the petitioner herein in the writ petitions and without disclosing the disposal of CRPs. Again C.A.Khabeer and the petitioner herein, having come to know about the same, got them impleaded in the writ petitions. The second respondent/defacto complainant and his family members also filed one

more writ petition WP.26250/2012 to set aside the proceedings of the Revenue Divisional Officer, Chengalpet dated 22.5.2012, thereby confirming the order of the Tahsildar, Chengalpet and rejecting the appeal filed by Padur Panchayat for transfer of patta in their name and the consequential notice issued by the District Revenue Officer, Chengalpet dated 22.6.2012. Pending writ petitions, the Tahsildar, Thiruporur disposed of the application filed by the second respondent/defacto complainant for transfer of patta by directing them to file an appeal before the Revenue Divisional Officer Chengalpet against the transfer of patta in the names of C.A.Kabir and the petitioner herein. While the earlier four writ petitions are pending, WP.26250/2012 filed to quash the proceedings of the Tahsildar, Chengalpet as confirmed by Revenue Divisional Officer, Chengalpet, rejecting the patta transfer in the name of Padur Panchayat, was disposed of by order of this Court dated 4.4.2013, thereby directing the second respondent/defacto complainant to approach the District Revenue Officer, Kancheepuram and also directing the District Revenue Officer to conduct an enquiry and dispose of the same within 3 months. Thus, the facts above stated would reveal that C.A.Khabeer on one hand and the second respondent defacto complainant and his family members on the other hand and Padur Panchayat have independently initiated proceedings claiming ownership and for issuance of patta in their respective names, in respect of the same property which is the subject matter of O.S.8667/1985.

11.As far as the second respondent/defacto complainant is concerned, the dispute relating to the property is known to him during 2009 and the same compelled him to file an impleading application in CRP Nos.1596 and 1597 of 2009 which were filed by deceased C.A.Khabeer against the dismissal of the Execution Petition for enforcement of the decree made in O.S.8667/1985. The second respondent also initiated patta proceedings before the Revenue authorities and filed batch of writ petitions before this court to cancel the patta issued in the names of C.A.Khabeer and the petitioner herein, besides, filing separate writ petition for getting the patta transferred in the name of Padur Panchayat and approaching the Revenue authorities for cancelling the patta issued in the names of C.A.Khabeer and the petitioner herein. In pursuance of the order made in WP.26250/2012, the second respondent was also summoned for enquiry in the office of the District Revenue Officer, Kancheepuram.

12.When that being so, the second respondent/defacto complainant has come forward with the present complaint as if they applied for patta in 2011 in respect of the property in question and only at that time, they came to know about the transfer of patta in the names of

C.A.Khabeer and the petitioner herein and the creation of mortgage by the petitioner for Rs.1,00,000/- and the same compelled him to approach the police officials with necessary complaint and no civil court proceedings are pending against the property in question. As rightly pointed out by the learned counsel for the petitioner, the second respondent defacto complainant has come forward with the present complaint during the pendency of different proceedings before different authorities by and against different claimants, which are all well within his knowledge and the second respondent for the reasons best known to him, has not made any whisper in the present complaint about the other proceedings which are either disposed of or pending on the date of the present complaint.

13.The second respondent defacto complainant also approached this court by way of Crl.OP.No.28714/2013 seeking direction to register a case alleging that no action was taken in the earlier complaint dated 07.05.2013 lodged by him before the Superintendent of Police, Kancheepuram for land grabbing and the same was disposed of by this court by order dated 14.11.2013, thereby directing the Deputy Superintendent of Police, Mahabalipuram to enquire into the complaints and to proceed in accordance with law. Thereafter, the second respondent defacto complainant lodged another complaint dated 21.11.2013 before the Superintendent of Police, Kancheepuram. The identical allegations made in all the complaints are that the defacto complainant and his family members, having purchased property from the previous owners, are the present owners of the property measuring an extent of 4.60 acres and the same property was dealt with by deceased C.A.Khabeer and the petitioner herein by mortgaging it and by obtaining patta and the same constitute an act of land grabbing and is warranting serious and immediate action. The last complaint dated 21.11.2013 received on 23.11.2013 came to be registered as FIR in Cr.No.483 of 2013 against the petitioner and others for the offences under sections 468, 471 and 420 IPC and the same is sought to be quashed in this Crl.OP.

14.It is averred in this Criminal Original Petition by the petitioner that the first respondent has in his counter explained in detail about various proceedings pending and disposed of by the Revenue and Police officials and also various writ proceedings pending and the nature of the orders passed therein. The first respondent official has also referred to the pendency of OS.64/2014 before the Principal District Judge, Chengalpet filed by K.C.P.Shivaraman who is the purchaser of the portion of the property from the defacto complainant, arraying the second respondent defacto complainant and his family members as parties to the same.

15.The averments raised herein and the documents produced on both sides would now disclose that both the petitioner through C.A.Khabeer since deceased and the second respondent/defacto complainant and his family members through their vendor i.e. legal heirs of one Zahrunissa and Gulam Rasool have been making rival claims in respect of the same property in question. While the petitioner is tracing out her title under deceased C.A.Khabeer, who was the decree holder in OS.8667/1985, the second respondent/defacto complainant and his family members are tracing out their title through multiple sale deeds executed in the year 1994-95 in their favour from several persons, one among whom is one Meharunissa, who was one of the defeated defendant in O.S.No.8667 of 1985. It is pertinent to mention at this juncture that the decree dated 11.11.1989 made in O.S.No.8667/1985 was also registered as document no.2/1989 on the file of the SRO, Thiruporur and was duly reflected in the Encumbrance Certificate and the second respondent defacto complainant and his family members ought to have been aware of the same through EC before their purchase during 1994-95. The second respondent and his family members also in 2007 and 2009 effected sale transactions and executed gift deed in respect of the same property and the encumbrance referring to the civil court decree, could not have escaped their attention at every stage. They did not even mention the sale transaction effected in favour of K.C.P.Shivaraman and gift deed in favour of Padur Panchayat through K.C.P.Shivaraman and came forward with the present complaint as if they continue to be the owners of the entire extent of the property in question. Thus, the sequence of the events narrated herein would clearly demonstrate that the averments raised in the complaint, by suppressing the material facts as discussed above and prior knowledge of the defacto complainant about the same, appears to be lacking in bonafide.

16.On facts, the nature of the proceedings initiated before different authorities by different individuals in respect of same property would only go to show that there is serious civil dispute in respect of ownership of property between two sets of claimants. Before deciding the claim of the parties, it is but necessary to determine the validity of the decree made in O.S.8667/1985 and its binding nature either on the petitioner herein or on the second respondent and his family members. The deceased C.A.Khabeer on one hand and the vendor of the second respondent and his family members on the other hand, claimed right over the property in question and the nature of right acquired by the petitioner and the 2nd respondent and his family members under their respective predecessor-in-title and their right to get transfer of patta etc. can be effectively adjudicated only on appreciation of evidence, after full fledged trial, in a comprehensive civil suit by appropriate civil forum and

the dispute is hence more of civil in nature and not triable under criminal jurisdiction.

17. Even otherwise, none of the ingredients of sections 468, 471 and 420 IPC have been made out, on the allegations raised in the FIR registered on the basis of the complaint given by the defacto complainant. When the provisions of Indian Penal Code i.e., Section 468 deals with the act of forgery for the purpose of cheating; Section 471 deals with using the forged document or electronic record as genuine and Section 420 deals with cheating and dishonestly inducing delivery of property, the allegations raised in the FIR do not reflect any dishonest intention on the part of the petitioner herein to cheat the second respondent defacto complainant and no act of forgery of document or using the forged document as genuine is also involved in the present case. The second respondent defacto complainant, except using the expression 'bogus documents' and 'land grabbing' in the complaint, has not raised necessary allegations constituting any offence against the accused.

18. It is well settled law that mere incorporating certain words per se, will not give rise to criminal prosecution. As rightly argued by the learned counsel for the petitioner, the allegations raised in the complaint, if viewed in the light of backdrop of the events as mentioned above, they do not show or reflect any of the standard ingredients, constituting the offences as stated above to enable this court to take cognizance of the same against the accused.

19. This court also finds considerable bonafide in the contention raised on the side of the petitioner that the execution of bogus document came to the knowledge of the second respondent, when he applied for patta, is only to suit the allegations raised in the complaint, as such, knowledge is attributed to the second respondent on the date of filing his impleading application i.e., on 13.3.2012. In that event, the complaint lodged during November 2013, that too, after the application filed by him for patta was rejected by the Revenue authorities without even putting forth any explanation for the delay would vitiate the proceedings and cannot be slightly brushed aside. This Court also finds that there is no error on the part of the petitioner in finding fault with the second respondent for lodging the complaint with factually incorrect statement that they are the owners of 4.60 acres of land, without disclosing the sale transactions and gift deed in respect of major portion of the same.

20. Be that as it may, the dispute between the parties being civil in nature, the second respondent defacto complainant for getting

redressal of grievance or for establishing his right over the suit property, ought to have resorted to civil remedy and his attempt to give criminal colour to the civil dispute would only tantamount to abuse of process of law. In this connection, this court is inclined to usefully extract the observation of the Hon'ble Supreme Court in paras 17 and 18 of the decision reported in (2011) 7 SCC 59 (Joseph Selvaraja v. State of Gujarat and others) cited on the side of the petitioner:

"17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v. State of U.P., relevant part thereof is reproduced hereinbelow: (SCC p. 505, para 27)

"27. ... A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

18. In fact, all these questions have been elaborately discussed by this Court in the most oftquoted judgment in State of Haryana v. Bhajan Lal where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused, is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the court, at least after having gone through the FIR, which discloses only a civil dispute".

21. Thus, on the facts and circumstances narrated above and the conduct of the parties involved in this case, if appreciated in the light of the principles laid down by the Hon'ble Supreme Court in the decision cited supra, this Court is of the considered view that in the event of the criminal proceedings being allowed to go on, it is nothing but an abuse of process of law, as such, in order to meet the ends of justice and to avoid serious prejudice to the petitioner, this Court deems it fit to invoke the inherent jurisdiction under

Section 482 Cr.P.C. and the criminal proceedings lodged against the petitioner is hence liable to be quashed and stands quashed.

22.In the result, this criminal original petition is allowed and the proceedings arising out of FIR No.483 of 2013 on the file of E8 Kelambakkam Police Station, Kancheepuram District stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rk

To

1.The Sub Inspector of Police,
E8 Kelambakkam Police Station,
Kancheepuram.

2.The Public Prosecutor,
High court, Madras.

+1cc to Mr.N.S.Nanda Kumar, Advocate, S.R.No.13337

+1cc to M/s.N.Senthil Kumar, Advocate, S.R.No.13500

Cr1.O.P.No.30976 of 2013

RJ(CO)
CA(03/09/2015)

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