

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No. 5245 of 2015

1. C.Viswanathan
 2. Asali Ammal
- ...Petitioners/Accused 1 and 2.

vs.

1. The State, rep. by
Inspector of Police,
CCB, EDT-II, Team -III,
Vepery, Chennai - 600 007.
 2. C.Ramalingam.
- ...Respondents/Complainants &
Defacto Complainant.

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in Cr.No.431 of 2011, on the file of the respondent/Police, CCB, EDT-II, Team -III, Vepery, Chennai, dated 22.09.2011, and to quash the same as against the petitioners.

For Petitioners : Mr. D.Stephen

For Respondent-1 : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

The petitioners herein, who have been arrayed as accused No.1 and 2 in the First Information Report registered in Crime Number 431 of 2011, on the file of first respondent/Police have filed this Criminal Original Petition, to quash the said F.I.R. in respect of them.

2. It is submitted by the learned counsel appearing for petitioners that, on the complaint given by one Ramalingam/second respondent, case has been registered against the petitioners and seven others in the aforesaid Crime Number for offence under Sections 406, 420, 465, 467, 471 read with 34 IPC. The learned counsel submitted that, according to the de facto complainant/second respondent, one Geetha, who claimed to be the Power Agent of the

second petitioner, sold plot No.12 at Venkateswara Nagar to one Shanmugam, by a sale deed, dated 12.01.2001, and the sale was in respect of the property comprised in S.No.407/3B in Perungulathur, bearing Old S.No.134, having an extent of 2460, out of total extent 1.42 cents, situate in the layout by name Venkateswara Nagar. The purchaser/Shanmugam died and the property devolved upon his legal heirs i) Raja, ii) Alamelu and iii) Rajalakshmi.

3. It is further submitted by the learned counsel appearing for petitioners that one Ashok Kumar, Senthil and Karthick informed the de facto complainant about the availability of property bearing plot No.12 at Venkateswara Nagar, comprised in S.No.407/3B for sale. On the basis of the representation made by aforesaid persons, viz., Ashok Kumar, Senthil and Karthick, the de facto complainant approached the legal heirs of Shanmugam, and entered into an agreement of sale with them and also paid the sale consideration. However, the de facto complainant was not having means to pay the stamp duty and registration charges, and therefore, he obtained General Power of Attorney, executed by owners in favour of his wife and that was registered as Document No.1207 of 2008. Thereafter, the said plot No.12 in Venkateswara Nagar was sold to the de facto complainant, by his wife on 19.02.2010, registered as Document No.725 of 2010. When the de facto complainant approached the Village Administrative Officer, Perungulathur, for getting patta, he came to know that the property in S.No.407/3B was a Poramboke land under the control of the Government, and there was no lay out in the name Venkateswara Nagar, in respect of that property. The learned counsel further submitted that though the extent was designed by the first petitioner/Viswanathan, who is the Document Writer and his wife/second petitioner, in connivance with Geetha, who is working in the office of the first petitioner, the de facto complainant complained that all the persons, viz., the petitioners herein and seven others conspired and cheated the de facto complainant and sold the property, which belonged to the Government and on the basis of the complaint given by the de facto complainant, complaint was registered against the petitioners and others in Cr.No.431 of 2011 for the aforesaid offences.

4. The learned counsel for petitioners submitted that the first respondent/Police, without properly appreciating the contents of FIR, and without conducting enquiry, and without verifying whether the property in S.No.407/3B, is Government poramboke land or patta land, they, in collusion with the de facto complainant, registered the case against the petitioners. The learned counsel further submitted that the son of the petitioners applied for adangal extract from Tahsildar Office, and as per the adangal extract, given by the Tahsildar, the property in S.No.407/3B has been assigned in the name of the second petitioner, and has been classified as Nanjai Tharisu and patta also stands in the name of the second petitioner, which was divulged from the revenue records. The learned counsel, therefore,

submitted that as per the revenue records, the property, which was sold to the de facto complainant, was not the Government poramboke and was a patta land, belonging to second petitioner, and she, through her Power Agent/Geetha, sold the property to Shanmugam, and the de facto complainant purchased the property from the legal heirs of said Shanmugam, and therefore, there is no question of playing fraud by petitioners. Therefore, the FIR registered against the petitioners is liable to be quashed.

5. Heard the learned Additional Public Prosecutor for the first respondent and his submission is that, originally, anticipatory bail was granted to the petitioners by the Sessions Court, which was subsequently cancelled by this Court, by order, dated 28.02.2014, in CrI.O.P.Nos.11466 and 11467 of 2013, and while cancelling the anticipatory bail, this Court observed as follows:-

" From the above facts and circumstances, it is crystal clear that there is a fraud played in the matter. The documents, which have been produced before this Court themselves, were also forged, for which, there are prima facie materials. From the facts, it is prima facie seen that by forging the chitta and adangal extracts and other revenue records, accused No.1 to 3 have claimed title falsely, grabbed the property and sold away the same to too many purchasers. Many of them, may be innocent purchasers. The de facto complainant's wife is one of the victims of such fraud. But, before the court below by producing the very same forged documents, the accused 1 and 2 and also a3 have obtained anticipatory bail. Fraud played upon the court cannot be viewed lightly. Therefore, in my considered opinion, the anticipatory bail granted by the court below to accused 1 and 2 and third accused, because of the fraud played upon the court by the accused by producing the fake documents, cannot be allowed to sustain. Therefore, I am inclined to cancel the anticipatory bail granted to the accused 1 and 2 and also to the third accused by the learned Principal Sessions Judge, Chengalpattu."

6. Thereafter, in CrI.O.P.No.12034 of 2014, filed by the de facto complainant, viz., the second respondent herein, based on the cancellation of anticipatory bail to the petitioners, this Court directed arrest of the petitioner and the petitioners were arrested. Now, it is contended by the learned counsel for petitioners that the Police, in collusion with the de facto complainant, cancelled the anticipatory bail granted in favour of the petitiones, by falsely representing before this Court that the property is the Government

land, and the adangal extract and the patta issued by the revenue authorities would prove that the property is assigned in the name of the second petitioner, and considering these aspects, the FIR is liable to be quashed.

7. I am unable to accept the contentions of the learned counsel for the petitioner. Whether the adangal extract and the patta produced by the petitioners in the typed set of papers, alleged to have been issued by the Tahsildar Office/Revenue Officials are genuine or not, have to be considered only by the Investigating Officer during investigation. It is also open to the petitioners to produce those documents before the Investigating Officer and request them to verify into the veracity of those documents to find out whether the property in S.No.407/3B is the Government poramboke land or patta land. Considering the fact that the said property is claimed to be a Government poramboke, it is for the respondent/Police to find out from the revenue records and also with regard to the documents produced by the petitioners whether the property is Government poramboke or not and that exercise can be done only during investigation of the case, and till exercise is done, and final report is filed, it cannot be stated that the petitioners have been falsely implicated in this case. Hence, at this stage, FIR cannot be quashed.

8. In the result, the Criminal Original Petition is dismissed.

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-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
CCB, EDT-II, Team -III,
Vepery, Chennai - 600 007.
2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.Stephen and Stephen Associates, Advocate SR 12747

vsn(co)
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