

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2015

CORAM:

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

Cr1.O.P.No.32873 of 2013

and

M.P.No.1 of 2013

1.R.Duraisamy  
2.M.Pavayiammal  
3.S.Vivek  
4.K.Krishnamoorthy  
5.K.Kumar

..Petitioners/Accused 6 to 10

Vs.

1.The State by the  
Inspector of Police,  
Anti Land Grabbing Wing,  
Udumalpet, Tiruppur District. ..Respondent/Complainant

2.S.Venkatesan ..Respondents/Respondent/  
Complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records of FIR No.2330 of 2011 dated 27.07.2011 on the file of the Inspector of Police, Anti Land Grabbing Wing, Tiruppur District and quash the same with respect to the petitioners herein.

For Petitioners : Mr.M.Sanjaiyan

For Respondents : Mr.C.Emalias, APP (R1)  
Mr.P.Jagadeeswaran (R2)

O R D E R

This Criminal Original Petition is filed by A6 to A10 to quash the FIR in Cr.No.2330 of 2011 on the file of Anti Land Grabbing Wing, Udumalpet, Tiruppur District, registered for the offences under sections 120b, 420, 467, 468, 471, 294b and 307 IPC, on the basis of the complaint given by the second respondent herein.

2.The allegations raised in the complaint are regarding the transfer of a portion of the property belonging to Udumalpettai Nadar Uravin Muraiyar Sangam measuring 5 acres in favour of the accused A6 to A10 by A1 to A3 by names Vivekanandan, Nataraj and Muthuvel along

with other accused, in their capacity as President, Secretary and Treasurer of the Sangam, without duly elected so and without actually passing any resolution either for compromising the matter or for approving the terms of the compromise and by creating forged resolution with forged signature of dead persons for extension of their tenure etc., and regarding the attempt of assault of the member, who questioned A1 President about the same on 08.01.2010.

3. Few facts, which are relevant for consideration herein are as follows:

Udumalpettai Nadar Uravin Muraiyar Sangam hereafter referred to as sangam was founded during 1930 and was registered under Tamil Nadu Societies Registration Act and its Administrative Board consists of 15 members including President, Secretary, Treasurer, Vice President and Assistant Secretary and Sangam owns huge properties and as per the compromise decree dated 4.1.1963 made in batch of appeals by this Court, no one was permitted to create encumbrance or alienation of the properties belonging to Sangam. A1 to A3 were elected as President, Secretary and Treasurer in the General body meeting held on 22/9/2002 for three years. During their tenure, the Board of Directors did not submit their annual report for the year 2004 onwards and as per the resolution dated 11.9.2005, their period was extended beyond 11.9.2005. While so, one of the properties belonging to Sangam measuring 33.68 acre was leased out to A11 S.N.Ramasamy Gounder and Sangam through A1, A4 and A5 entered into a compromise on 12.11.2006 with A11 S.N.Ramasamy Gounder for giving up his lease hold right in respect of 27.82 acres and to retain 5.10 acres without any consideration and thereafter 5.10 acres was sold to A6 to A10 by the Society through A1, A4 & A5 along with A11 by 5 separate sale deeds on 21.5.2009, which gave rise to civil suits in O.S.Nos.57/2009 and 71/2009 on the file of Sub Court, Udumalpet for declaring the compromise agreement dated 12.11.2006, sale agreement dated 12.11.2006 and sale deeds dated 21.5.2009 as invalid and for consequential reliefs and also for permanent injunction and the same was also followed by criminal complaint registered as FIR in Cr.No.2330/2011 alleging act of forgery, cheating, criminal breach of trust and misappropriation.

4. In the mean while, new office bearers of the sangam are also elected. While the civil suits are filed by the independent members for themselves and also on behalf of all members of Sangam against the Sangam rep. by its secretary and other individuals and official defendants. The second respondent/defacto complainant claiming himself as one of the members of the Sangam, filed an application IA.No.303 of 2012 in O.S.No.71 of 2009 for impleading him as party to the proceedings. Pending civil suits, the present complaint came to be filed by defacto complainant who is one of the members, raising the allegations as stated above.

5.While according to the defacto complainant, the sale of the property to the petitioners by A1, A4 and A5 with A11 is for under valuation without any right to do so and the resolutions for extending their tenure and for approving the compromise were created through criminal conspiracy to illegally acquire the property belonging to Sangam, thereby cheating the Sangam and depriving their valuable properties, according to the petitioners/A6 to A10, they are the bonafide purchasers of the property for valuable consideration without being party to the alleged acts of conspiracy and forgery if any. It is the specific case of the petitioners that the compromise was duly entered into between the office bearers of Sangam and the lessee and the terms of compromise was duly approved in the General body meeting and the sale deeds are executed by the Board of Directors in pursuance of such compromise entered into between the parties. It is also their case that even otherwise the validity and genuineness of the resolutions and the documents in question having been raised as one of the issues in the civil suits, the same are the matters for consideration before the civil forum on appreciation of evidence adduced after full fledged trial and pending civil suits, no criminal complaint can be entertained on the same issue. According to the petitioners, as the complaint is by third party and not by Sangam, it is hit by delay and laches.

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

7.As stated above, FIR is registered for the offences under section 120-B for act of criminal conspiracy, under section 420 for act of cheating and dishonestly inducing delivery of property, under section 467 for act of forgery under section 468 for act of forgery for purpose of cheating, under section 471 for the act of using forged document as genuine, under section 294(b) for act of causing annoyance by uttering any obscene song, ballad or words in or near any public place and under section 307 IPC for act of attempt to murder. The reading of the FIR would reveal that the main allegations raised in the complaint against A1 to A5 are for getting their tenure extended and for compromising the matter with A11 lessee thereby the lessee relinquished his lease hold right in respect of the property belonging to sangam to an extent of 27.82 acres and to retain 5.10 acre without consideration. Whereas, the allegations made in the complaint would not attribute any specific overt act against the petitioners herein/A6 to A10, who are the purchasers of the property, for the alleged acts of office bearers in getting their tenure extended and entering into compromise with the lessee. According to the allegations raised in the complaint, they purchased the property which is valuing few lakhs, by creating forged sale deeds with full knowledge about the forged nature of the resolution and by conspiring together with A1 Vivekanandan. The allegations raised in the complaint to that effect are very vague and bald and appear to be an after thought for the purpose of implicating the purchasers in the criminal complaint. Further, the complaint does not mention the period during which, A1 to A5 and A11 on one hand and A6

to A10 conspired together to commit the act of forgery to grab the property belonging to Sangam. Though detailed counter was filed regarding the manner of investigation, the same does not reveal any materials collected in the course of investigation prima facie disclosing any case against the petitioners herein.

8.As far as the forged nature of alleged resolutions dated 11.06.2005, 10.07.2005, 16.10.2005 and 12.10.2008 are concerned, the resolutions dated 11.06.2005 and 10.07.2005 are for permission to the President and the Secretary to compromise the matter with the lessee. By the resolution dated 12.10.2008, the settlement effected between the office bearers and lessee was approved and the President, Secretary and Treasurer were given authority to implement the same. That being so, the allegations regarding the involvement of the petitioners, who purchased the property on 21.5.2009 by way of 5 sale deeds in the act of forgery through their knowledge about the same, appear to be vague, baseless and unfounded.

9.As far as the plea regarding under valuation of the property is concerned, the mere fact that they were served with notice for paying deficit stamp fee by itself will not fasten any criminal liability on the petitioners for purchasing the property for lesser value and the same is also bereft of particulars and material evidence herein, as such, the allegations raised against the petitioners do not make out any case against them for the offences under sections 120-B and 420 IPC.

10.As far as the offences under sections 294b and 307 IPC are concerned, the same are raised only against A1 Vivekanandan and not against the petitioners/A6 to A10.

11.The remaining offences registered against the petitioners are under sections 467, 468 and 471 IPC for fabricating forged documents by using the same as genuine one for the purpose of cheating. The act of cheating under section 415 IPC is defined as that, whoever by deceiving any person, fraudulently and dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, the Explanation clause says, the dishonest concealment of facts is a deception within the meaning of this section. Section 420 IPC is attracted for an act of cheating and dishonestly inducing delivery of property. In the present case, no act of cheating as defined under the IPC is involved in the transaction effected between A1 to A5 and A11 on one hand and A6 to A10 on other hand. The 5 sale deeds were executed by A1 to A5 and A11 claiming themselves to be the current President, Secretary, Treasurer and lessee. As far as the sale deeds are concerned, the same cannot be treated as forged documents pending determination of the forged nature of the resolutions before the civil court and in view of the sale deeds executed by the office bearers and lessee in favour of the

petitioners herein by referring to the ownership of Sangam and by referring to the lease in favour of the daughters of All Ramasamy and the terms of the settlement dated 12.11.2006 and the removal of the lessees in TR.No.14/2007 by the Court of Cultivating Tenancy Records and by referring to the terms of the settlement, etc. Pending the same, the question of treating the sale deeds as forged one does not arise herein. It is one thing to say that the documents are fabricated by impersonation or by forging the signature of some one and it is different thing that the documents are executed without any right to do so. As rightly argued by the learned counsel for the petitioners, the sale deeds do fall under the second category. If that is so, the dispute between the parties is more of civil in nature and no criminal colour can be attached, so as to sustain any criminal proceedings in respect of the same.

12.As a matter of fact, some of the members have already instituted civil suit, thereby questioning the validity of the sale deeds by raising similar dispute. It is pertinent to mention at this juncture that the plaintiffs in both the suits have not raised any allegation much less serious allegation against the purchasers in the plaint. The petitioners/A6 to A10 who are the purchasers of the property, are impleaded therein only for questioning the validity of the sale deeds. The defacto complainant has also taken steps to implead himself in the civil suit to support the plaintiff's case therein. As such, this court is of considered view that the remedy available to the defacto complainant is before the appropriate civil forum. It is also to be noted herein that though A1 to A5 are alleged to have committed the acts by extending their tenure as office bearers of the sangam and though new office bearers already assumed office, neither the civil suit nor the complaint was filed by the newly elected office bearers. On the other hand, the civil suit was filed by the individuals, claiming themselves to be independent members in the representative capacity of the Sangam and others.

13.Next material aspect to be considered herein is the unexplained delay on the part of the defacto complainant in lodging the complaint. It is specifically averred in the complaint that the defacto complainant came to know about the alteration made in the resolution as early as in 2008. The alleged act of using obscene words and the alleged act of attempt to murder is on 08.01.2010, whereas the complaint is filed after inordinate delay only on 27.07.2011. There is absolutely no reason adduced for the delay in lodging the complaint. The defacto complainant has also failed to complain of the same before the Registrar of Societies for taking appropriate action and to approach the civil and criminal forum for appropriate remedy, within reasonable time though the alleged forged resolutions are of the years 2005, 2006 and 2008 and the sale deeds of the year 2009.

14.Thus, considering the nature of the documents and nature of the acts alleged and nature of the allegations raised herein, which do not prima facie make out the alleged offences and civil nature of

the dispute involved herein and the pendency of the civil suit and the delay on the part of the defacto complainant to come forward with the complaint, this Court is of the view that in the event of the criminal proceedings being allowed to go on against the petitioners/purchasers, the same amounts to abuse of process of law and causes serious prejudice to the petitioners, as such, it is a fit case, wherein, the criminal complaint is, to secure the ends of justice, liable to be quashed.

15.In the result, the criminal original petition is allowed and the criminal proceedings in FIR No.2330 of 2011 registered on 27.07.2011 pending on the file of the Inspector of Police, Anti Land Grabbing Wing, Tiruppur District stands quashed, insofar as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police, Anti Land Grabbing Wing,  
Udumalpet, Tiruppur District.

2.The Public Prosecutor, High Court, Madras-104.

+1cc to Mr.M. Sanjaiyan, Advocate, S.R.No.20341

VGI (CO)  
EU(24/06/2015)

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