

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.22031 of 2015
and

Crl.M.P.No.2926 of 2016 and M.P.No.1 of 2015

Elaiyappan

... Petitioner

Vs.

1.The Inspector of Police
District Crime Branch (ALGSC)
Villupuram and District.

2.The Inspector of Police
Keezhkuppam police station
Villupuram District.

3.Muthusamy Gounder

... Respondents

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for entire records in connection with F.I.R.No.31 of 2015, on the file of the first respondent police and quash the same.

For Petitioner : Mr.S.Sathia Chandran

For R1 and R2 : Mr.C.Emalias
Additional Public Prosecutor

For R3 : Mr.S.Baskaran

ORDER

This petition is filed for quashing the proceedings in connection with F.I.R.No.31 of 2015 on the file of the first respondent police.

2.The petitioner has been arrayed as accused in Crime No.31 of 2015, dated 07.08.2015 on the file of the first respondent for the offences punishable under Sections 417, 420 and 506(ii) IPC stating that the petitioner/accused and the third respondent/defacto complainant are close relatives. The

disputed property is an adjacent property of the petitioner, which is measuring 4 acre 34 cents in S.No.275/1A and it belongs to one Kalliammal and others. In order to expand his cultivation, the petitioner intended to purchase the said property. However, he was short of funds and therefore, he approached the defacto complainant/third respondent, who agreed to provide funds. Accordingly, the third respondent came forward to lend him Rs.4,00,000/- on condition that the said property would be registered in his name initially and on repayment of the entire amount with interest, the third respondent would re-convey the same to the petitioner. After execution of the sale deed, dated 29.05.2002, the petitioner has been in possession of the said property and continued cultivation. After he repaid the entire amount with interest, he demanded the defacto complainant to re-convey the said lands in his name, but he refused to do so. Suddenly, the defacto complainant has given a complaint and on that basis, a case has been registered against the petitioner on 07.08.2015 for the offences punishable under Sections 417, 420 and 506 (ii) IPC.

3.Learned counsel for the petitioner further submitted that the petitioner has not fabricated any documents and hence, ingredients of Sections 417 and 420 IPC are not made out. Admittedly, the dispute is civil in nature and the defacto complainant with a view to grab the property, has given the complaint. It is further submitted that as per the dictum laid down in Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC)], the defacto complainant ought to give the complaint immediately, but he has given the complaint belatedly. So the police ought to conduct preliminary enquiry before registering the case. But the police without conducting enquiry, registered the case. Similarly, the defacto complainant has preferred another complaint against the petitioner. It is also submitted that in the complaint lodged by the defacto complainant dated 14.02.2015, it was specifically stated that he has leased out the disputed property to the petitioner and the petitioner has been cultivated the same. Therefore, by applying the dictum laid down in 1992 SCC (Cr1) 426 (State of Haryana and others v. Bhajan Lal and others), he prays for quashing the proceedings. Further, he has relied upon the following decision to substantiate his arguments:

- (i) CDJ 2010 MHC 6381 (Rekha and another v. Abdul Wahaf and another);
- (ii) CDJ 2010 MHC 5472 (M.Chandramohan and others v. Chandrasekar);

4.Resisting the same, learned counsel for the third respondent/defacto complainant submits that the defacto complainant has purchased the disputed property vide registered sale deed in the year 2002. But the petitioner with

a view to grab the property attempted to interfere with the defacto complainant's peaceful possession of the said property. He further submits that the petitioner has never been in possession of the property. If really there was an agreement between both the parties for re-conveyance of the sale deed, after repayment of entire sale proceeds with the interest, the petitioner ought to move before the Civil forum and not before this Court. Hence, the defacto complainant has given the complaint and based upon the same, the case has been registered against the petitioner and investigation is going on. So the petitioner is not in possession of the property and the third respondent alone is in possession and therefore, he prays for dismissal.

5.Learned Additional Public Prosecutor submits that the case has been registered only on 07.08.2015 and since the investigation is at an early stage, whether the ingredients of Sections 417, 420 and 506(ii) IPC are made out have to be decided only during the investigation. Hence, he prays for dismissal.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.Admittedly, the property has been purchased in the name of the third respondent/defacto complainant on 29.05.2002. It is also an admitted fact that the property originally belonged to one Kalliammal and others. The case of the petitioner is that since he is in possession of the property adjacent to the disputed property comprised in S.No275/1A with an extent of 4.34 acres, he intended to purchase the property. Since he was short of funds, he borrowed a sum of Rs.4,00,000/- from the third respondent on condition that the said property would be registered in his name initially and on repayment of the entire amount with interest, the defacto complainant would re-convey the same to the petitioner. According to the petitioner, he has paid entire amount with interest. But the defacto complainant instead of re-convey the property, has preferred the complaint against the petitioner. On that basis, a case has been registered against the petitioner on 07.08.2015 for the offences punishable under Sections 417, 420 and 506(ii) IPC.

8.The point to be decided is that whether the ingredients of Sections 417, 420 and 506(ii) IPC are made out against the petitioner? Learned counsel for the petitioner has drawn attention of this Court through document No.2, a partition deed dated 26.08.2011, which is a family partition executed among the family members of the third respondent. In the said partition deed, the property mentioned in the sale deed dated 29.05.2002 has not been stated. It clearly shows that since there was an arrangement between the third respondent and the

petitioner, the disputed property has not been included in the partition deed. So, the argument advanced by the learned counsel for the petitioner that there was an arrangement between the third respondent and the petitioner in respect of the disputed property and so, the third respondent has not treated the property as family property and included the same in the family partition deed is acceptable.

9. It is pertinent to note that the petitioner has given a complaint on 14.02.2015, in which, it was stated that the disputed property has been leased out to the petitioner and that he has cultivated the lands as lessee. But at the time of argument, the learned counsel for the third respondent submits that the third respondent alone is in possession of the property. Further, the instant case is not registered for offence under Section 447 I.P.C., which deals with punishment for trespass and it has been registered only for the offences under Sections 417, 420 and 506(ii) IPC. In such circumstances, the argument advanced by the learned counsel for the third respondent that the third respondent alone is in possession of the disputed property does not merit acceptance.

10. Furthermore, in the F.I.R., it was stated that on 20.04.2015, when the defacto complainant was in his land, the petitioner came there and threatened him that he would alone cultivate the land and made criminal intimidation. According to the petitioner, he has been in possession of the disputed property and cultivating the lands.

11. At this juncture, it is appropriate to consider the decision reported in 1992 SCC (Cri) 426 (State of Haryana and others v. Bhajan Lal and others), wherein the Honourable Apex Court has issued guidelines for quashing F.I.R. In para-102, it is held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The above decision has given guidelines under what circumstance, the F.I.R. has to be quashed and only in the rarest of rare cases, F.I.R. is quashed by stating that it is purely civil in nature.

12.As per the complaint lodged by the third respondent, the petitioner is a lessee under him and the lease amount was fixed as Rs.60,000/- per annum. On 12.02.2015, since the defacto complainant wants to cultivate his lands on his own, he requested the petitioner to hand over the property. Thereafter, the problem arose between them.

13.Under such circumstances, this Court has to decide that who is in possession of the property, whether entire sale proceeds has been paid by the petitioner and whether the third respondent has given reason for not executing the sale deed in favour of the petitioner? According to the petitioner, on repayment, when he requested the defacto complainant to re-convey the said lands, the defacto complainant stated that since his second son was in Abroad, on his return, he would re-convey the lands to the petitioner. Thereafter, the defacto complainant stated that there was a misunderstanding between him and his elder son and hence, he orally refused to re-convey the lands to the petitioner.

14.Considering the aforestated facts and circumstances of the case, I am of the considered opinion, the defacto complainant instead of go before the Civil forum, has preferred the complaint before the police. Admittedly, the dispute is purely civil in nature. Under the said circumstances, whether the petitioner is a lessee under the defacto complainant, whether he is in possession, whether any agreement between them on the date of purchase of the property on 29.05.2002, whether the defacto complainant has given Rs.4,00,000/- to the petitioner and whether the petitioner has repaid the entire amount with interest, have to be decided only before the Civil Court and not by this Court. Further, during investigation, no document is received from the petitioner. Merely because the petitioner demanded re-conveyance of land to him, it will not amount to offence for cheating. Therefore, I am of the view, it is a fit case for quashing the proceedings in Crime No.31 of 2015, which has been registered against the petitioner. Accordingly, the Criminal Original Petition stands allowed and the proceedings in Crime No.31 of 2015 is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
District Crime Branch (ALGSC)
Villupuram and District.

2.The Inspector of Police
Keezhkuppam police station
Villupuram District.

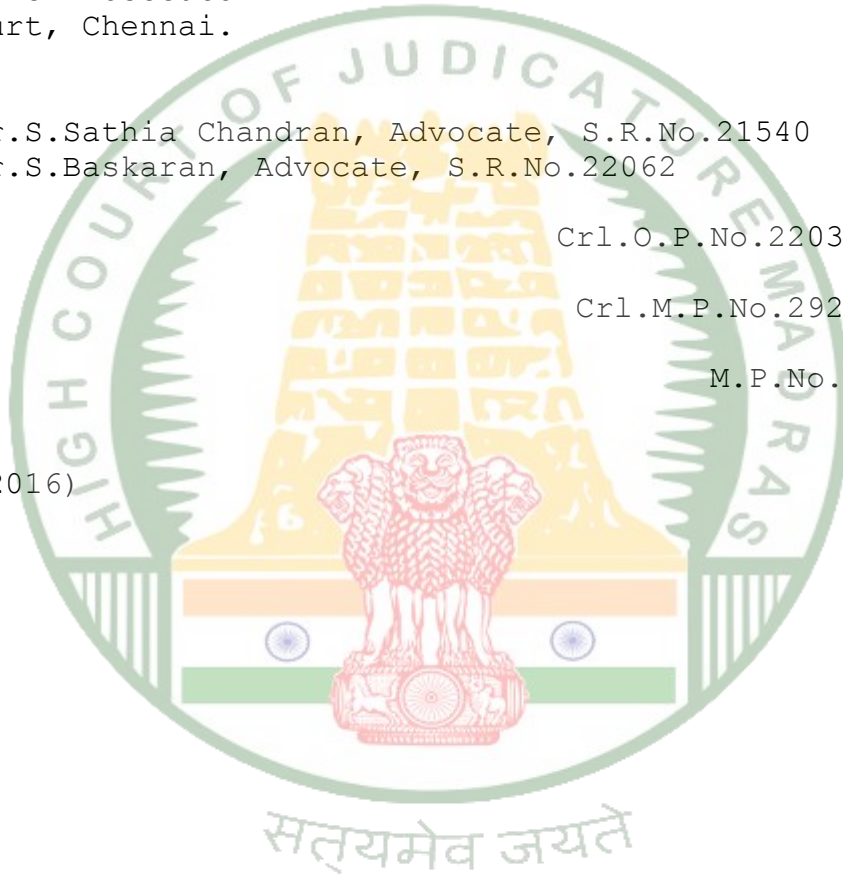
3.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.21540

+1cc to Mr.S.Baskaran, Advocate, S.R.No.22062

CrI.O.P.No.22031 of 2015
and
CrI.M.P.No.2926 of 2016
and
M.P.No.1 of 2015

KSJ(CO)
CA(26/04/2016)



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