

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MALA

Crl.OP.Nos.14071 & 14072/2016

B.Raguraman .. Petitioner / Defacto
Complainant in both
cases

Versus

1.The Inspector of Police
EDF-1, O/o.The Commissioner
of Police, Vepery, Chennai. .. 1st Respondent /
Complainant in
both petitions

2.Dr.R.Sivasamy Velumani
3.Mrs.Anandhi Prabha ..2nd & 3rd Respondents in
Crl.OP.14071/2016

4.Yasodha
5.Balu Reddy
6.M.Suresh Babu
7.M.Babu ...Respondents 2 to 5 in
Crl.OP.14072/16

Petitions filed under section 439[2] Cr.P.C., set aside the order by cancelling the anticipatory bail granted by the learned Principal Sessions Judge, in Crl.MP.Nos.7783 & 7784/20126 dated 17.06.2016.

For Petitioner in
both the petitions : Mr.Ar.L.Sundaresan,
Senior Counsel for
Mr.S.Pugaleanthi

For R1 in both
the petitions : Mr.M.Mohamed Riyaz
Govt. Advocate [Crl.Side]

For RR 2 & 3 : Dr.A.Thiyagarajan,
in Crl.OP.14071/16 Senior Counsel for
Mr.S.Jagannathan

For RR 2 to 5 in : Mr.G.Santhosh Kumar
Crl.O.P.No.14072/16

COMMON ORDER

The above Criminal Original Petitions are filed by the defacto complainant challenging the order passed by the learned Sessions Judge, in granting anticipatory bail to the accused persons, viz., respondents 2 to 7 herein, vide order dated 17.06.2016 made in Crl.MP.Nos.7783 & 7784/2016.

2 Mr.Ar.L.Sundaresan, learned Senior Counsel appearing for the defacto complainant / petitioner in both the petitions would submit that the property in dispute is owned by A1 [Yasodha] and A2 [Balu Reddy] is her husband. A3 [Anandhi Prabha] is the tenant/subsequent purchaser of the property and A4 [Sivasamy Velumani] is the husband of A3. A5 and A6 are the attestors to the documents. He would submit that the complainant had entered into a Sale Agreement with A1 and the sale proceeds has been initially fixed at Rs.36 lakhs, pursuant to which, there was an oral agreement and the complainant paid a sum of Rs.6 lakhs on 14.03.2008 and the balance payments were made at various intervals through cash and by cheques for which, the complainant was issued with receipts. It is the submission of the learned Senior Counsel that a General Power of Attorney has been executed and without the knowledge of the petitioner / defacto complainant, on 23.05.2011, A1 had cancelled the said Power of Attorney vide Doc.No.7328/2015 and executed a Sale Deed in favour of A3 and A4 on 22.01.2016, who very well know about the existence of the Power of Attorney between A1 and A2 and the complainant. Hence, the complainant lodged a complaint on 16.02.2016, on the basis of which, a case has been registered in FIR No.151/2016 dated 09.06.2016. Apprehending arrest at the hands of the respondent police, the accused persons approached the Court below seeking for anticipatory bail and they were accordingly, granted anticipatory bail by the learned Principal Sessions Judge, Chennai, in Crl.MP.Nos.7783 & 7784/2016 dated 17.06.2016 on the ground that the dispute between the parties is purely of civil in nature. Challenging the same, the petitioner is before this Court.

3 The learned Senior Counsel would submit that the learned Judge, while granting anticipatory bail to the accused, has not considered the ingredients of sections 420 IPC and held that the complaint is of civil in nature. It is further submitted that it is a clear case of cheating, forgery, breach of trust, criminal intimidation and fabrication of documents. The learned Senior Counsel would submit that the original title

deeds are still with the defacto complainant ; but the accused had given a publication that the original title deeds has been lost and executed a Sale Deed in favour of A3 / wife of A4 and this shows the dishonest intention of the accused and hence, prays for cancellation of the anticipatory bail granted to the accused and for allowing of the above petitions.

4 Dr.A.Thiyagarajan, learned Senior Counsel appearing for the respondents 2 and 3 in CrI.OP.No.14071/2016 [A4 and A3] would submit that A4 and A3 are tenants under A1 and that they are the subsequent bona fide purchasers of the property in dispute. It is the submission of the learned Senior Counsel that since A3 and A4 are tenants under A1, they purchased the property without the original title deeds and the learned Judge, in paragraph 5 of the order, has dealt with the matter in detail and has granted anticipatory bail imposing certain conditions and that the said conditions have already been complied with by the accused persons. It is the further submission of the learned Senior Counsel that there is no averment or reason made out in the affidavit, seeking for cancellation of the anticipatory bail to the accused and hence, prays for dismissal of the above petitions.

5 The learned counsel appearing for the respondents 4 to 7 / A1, A2, A5 and A6, while sailing with the arguments advanced by the learned Senior counsel appearing for the respondents 2 and 3 / A4 and A3 would submit that A1 is the owner of the property and he entered into a sale agreement with the defacto complainant and one Mr.Nageswara Rao. Since the property in dispute was encroached by some third parties, the complainant came to him for evicting the encroachers, A1 had executed a Power of Attorney and got sale deed within three years from the date of Power of Attorney and since the complainant has not parted full payment of sale consideration, A1 cancelled the Power of Attorney and entered into a Sale Agreement with A3 and A4, to which document, A5 and A6 stood as attestors. It is his further submission that the order of the learned Judge, in granting anticipatory bail to the accused persons is right in law and warrants no interference of this Court and prays for dismissal of the above petitions.

6 This Court considered the rival submissions and also perused the records carefully including the order granting anticipatory bail to the accused [A1 to A6] by the learned Sessions Judge, Chennai, made in CrI.MP.Nos.7783 and 7784/2016 dated 17.06.2016.

7 It is seen that a case has been registered based on the complaint of the defacto complainant on 16.02.2016 for the alleged commission of the offences u/s.406, 420 and 120[B] IPC. The admitted facts are A1 [Yasodha] is the owner of the

property in dispute ; A2 [Balu Reddy] is her husband ; A3 [Anandhi Prabha] is the tenant under A1/subsequent purchaser of the property ; A4 [Sivasamy Velumani] is the husband of A3 ; and A5 and A6 are the attestors to the documents. It is also an admitted fact that A1 has executed a Power of Attorney in favour of the defacto complainant and also received the sale consideration to some extent. According to the petitioner / complainant, even though there is an oral sale agreement, on the basis of the same, the Power of Attorney was executed and that the same was cancelled on 23.11.2015, as the defacto complainant has not completed the transaction by paying the full sale consideration within the time. Even though in page No.56 of the typed set of papers, it has been specifically mentioned that the transaction is valid only for one month, A1 has received some amount and had acknowledged that same. But, after 23.11.2015, since the defacto complainant has not performed his part of the contract, A1 herein had cancelled the Power of Attorney executed in favour of the complainant and executed a Sale Deed in favour of A3, her tenant and the said factor has been considered by the Court below in paragraph 5 of its order. The learned Senior Counsel appearing for the petitioner would submit that on the date of inception of the Power of Attorney, A1 had the dishonest intention to cheat the complainant and received the amount from him and till 23.11.2015, the said Power of Attorney was in existence. It is appropriate to incorporate Section 415 IPC, which reads thus:-

"415:Cheating:-

Whoever, by deceiving any person, fraudulently or 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, is said to 'cheat'."

But, in the case on hand, prima facie the ingredients of section 415 IPC has not been made out on the date of execution of the Power of Attorney in favour of the defacto complainant. But, a perusal of the Power of Attorney it is seen that it is not a special Power of Attorney as defined under section 202 of the Indian Contract Act, and it is not coupled with any interest. But the document reveals that some payment has been made. It is also seen that A1 waited till 23.11.2015 for the defacto complainant to complete the contract. But, since the defacto complainant has not performed his part of contract, A1 cancelled the same and executed a sale deed in favour of A2. Civil Suits are pending on both sides. The learned Judge has considered all

these aspects in his order and came to the correct conclusion. I do not find any irregularity or illegality in the order passed by the learned Judge in granting anticipatory bail to the accused persons. Further more, the accused are complying with the conditions imposed by the Court below.

8 Accordingly, the criminal original petitions are dismissed and the order passed by the learned Principal Sessions Judge, Chennai, in CrI.MP.Nos.7783 and 7784/2016 dated 17.06.2016 is hereby confirmed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

AP

To

1.The Inspector of Police
EDF-1, O/o.The Commissioner
of Police, Vepery, Chennai.

2.The Principal Sessions Judge
Chennai.

3.The Public Prosecutor
High Court, Madras.

2 ccs to Mr.S. Pugalenthir, Advocate, Sr. 19495

1 cc to Mr.S. Jaganathan, Advocate, Sr. 69310 (25/11/2016)

CrI.OP.Nos.14071 & 14072/2016

KSJ (CO)
kk 24/11

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