

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.19420 of 2015 &

M.P.Nos.1 and 3 of 2015

1. A.Abbas
2. A.Shams Nisha Banu
3. A.Mohammed Ali ... Petitioners

versus

1. State through
The Sub Inspector of Police (Crime),
N-3, Muthialpet Police Station,
Chennai-600 001.

2. M.S.Yahoobdheen ... Respondents

Prayer: This petition is filed under Section 482 Cr.P.C.,
praying to call for the records in C.C.No.512 of 2015 pending on
the file of the learned XVI Metropolitan Magistrate, George
Town, Chennai-600 001 and quash the same.

For Petitioner : Mr.A.D.Jagadish Chandra
For R1 : Mr.C.Emalias,
Addl.Public Prosecutor
For R2 : Mr.M.Devaraj

ORDER

This petition is filed, praying to call for the records in
C.C.No.512 of 2015 pending on the file of the learned XVI
Metropolitan Magistrate, George Town, Chennai-600 001 and quash
the same.

2. On the complaint lodged by one M.S.Yahoobdheen, 2nd
respondent herein, the respondent police registered a case in
Crime No.1787 of 2012 and after completing the investigation, a
final report was filed, which was taken on file vide C.C.No.512
of 2015 by the learned XVI Metropolitan Magistrate, George Town,
for the offences under Sections 406 and 420 IPC against one

Abbas (A1), Shams Nisha Banu (A2) and Mohammed Ali (A3), the petitioners herein. Challenging the same, Abbas and Shams Nisha Banu have come forward with the present petition.

3. The case of the prosecution is that the petitioners herein sold a property to Yahoobdheen, de facto complainant by way of two documents dated 19.12.2009 and 22.01.2010 and received a sum of Rs.9 lakhs and thereafter, it came to the knowledge of the de facto complainant that the property originally belonged to the government.

4. At the first blush, this Court was of the view that this is not a fit case in which, there should be interference by this Court under Section 482 Cr.P.C. However, the learned counsel for the petitioners placed before this Court the facts admitted by the prosecution to demonstrate that the petitioners had not cheated the de facto complainant in any manner. The learned counsel took this Court through the documents dated 19.12.2009 and 22.01.2010 in which, the accused have very clearly stated that the property is covered by 'B' Memo and that they will have no objection if Yahoobdheen could obtain 'B' memo from the revenue authorities. The said two documents are not registered documents, because the property itself is a government poramboke and therefore, the Registrar will not register any sale deed in respect of said property. The documents dated 19.10.2009 and 22.01.2010 have been prepared on non-judicial stamp papers with denomination of Rs.20/- and Rs.100/- respectively. 'B' Memo levy is normally levied by the Revenue Authorities on an encroacher who occupies government lands. Such 'B' memo does not confer any title on the encroacher. Knowing full well that the property was covered by 'B' memo, the defacto complainant has agreed to the terms and paid Rs.9 lakhs to the accused under the two deeds referred to above.

5. Mr.M.Devaraj, learned counsel appearing for the defacto complainant, while reiterating the averments made in the counter, would submit that the petitioners, in one breath, are saying that they have obtained possession of the property by virtue of the document dated 22.12.2006 from one Dr.Nirmala Issac and in another breath, they are saying that under the same document, they purchased the property from said Nirmala by document dated 10.10.2008 and therefore, this shows the fraudulent intention of the accused. He also contended that the petitioners have filed a suit in O.S.No.214 of 2012 averring that they had purchased the land in question through unregistered sale deed in the year 2008, but they denied the execution of the unregistered sale deed in favour of the defacto complainant and that the sale deeds are forged and fabricated by the defacto complainant. Therefore, the learned counsel would

submit that all these factors would show the fraudulent intention of the petitioners.

6. Learned Addl.Public Prosecutor appearing for the State, while referring to the averments made in the counter filed by the first respondent, would submit that with an intention to cheat the defacto complainant, the petitioners colluded with each other and gave false promise to him and sold the property, which, was originally not belonging to 2nd petitioner and that she was not in possession of the property since the said property belongs to Government and the defacto complainant came to know only on 26.04.2013 by invoking Right to Information Act. He would further submit that after investigation, the first respondent filed the final report, which was taken on file vide C.C.No.512 of 2015 by the learned XVI Metropolitan Magistrate and unless the petitioners are subjected to trial, it cannot be concluded that the petitioners have not committed any offence. Therefore, the learned Addl.Public Prosecutor sought for dismissal of the petition.

7. Heard the learned counsel for the petitioners and the learned counsel for the second respondent and the learned Addl.Public Prosecutor for the State.

8. At the outset, it is immaterial as to when and from whom, the petitioners purchased the property in question. The fact remains that the property in question has been covered by 'B' memo. It is not the defacto complainant's case that the petitioners had sold the property in the year 2008 and again resold the same property to him in the year 2009 for valuable consideration. Therefore the fact remains that in 2009, Yahoobdheen has paid Rs.9 lakhs to the petitioners for taking possession of the property which is belonging to the government, covered under 'B' Memo and it is too late in the day for the defacto complainant to allege that he has been cheated by the accused. There was no misrepresentation by the petitioners that they are the owners of the property in question. Even a perusal of the unregistered deeds relied upon by the defacto complainant show that the petitioners were only having possessory right which they got from one Dr.Nirmala Issac, who was in possession of the property by virtue 'B' memo. Therefore, there was no inducement or misrepresentation.

In the result, this petition is allowed and the proceedings in C.C.No.512 of 2015 on the file of the XVI Metropolitan Magistrate, George Town, Chennai is hereby quashed. However, this shall not in any way prejudice the rights of Yahoobdheen, the second respondent to proceed against the petitioners/accused in the manner known to law. Any observation made herein shall

not in any manner affect or prejudice the rights of both the parties. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

suk/gms

To

1.XVI Metropolitan Magistrate,
George Town, Chennai-600 001.

2.Tkhe Sub Inspector of Police (Crime),
N-3, Muthialpet Police Station,
Chennai-600 001.

3.The Public Prosecutor
Madras High Court,
Chennai 600 104.

+1cc to Mr.A.D. Jagadeish Chandira, Advocate, S.R.No.57708
+1cc to Mr.M. Devaraj, Advocate, S.R.No.58004

kgk (CO)
md(03/11/2016)

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