

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.191 of 2016

and Crl.MP.No.1248 and 1249 of 2016

1. P.Chinnasamy
2. Karunambal
3. Subramaniam
4. Saraswathi
5. Govindasamy

.. Petitioners

Vs.

State by Inspector of Police
Central Crime Branch,
Tirupur in Cr.No.29 of 2009.

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 31.12.2015 made in CMP.No.7547 of 2011 in CC.No.753 of 2013 passed by the learned Judicial Magistrate No.I, Tiruppur.

For Petitioners : Mr.C.R.Prasannan

For Respondent : Mr.Mohammed Riyaz, GA (Crl.side).

सत्यमेव जयते
ORDER

The Criminal revision is directed against the order passed by the learned Judicial Magistrate No.I, Tiruppur made in CMP.No.7547 of 2011 in CC.No.753 of 2013 dated 31.12.2015, dismissing discharge application filed by the revision petitioners.

2.The revision petitioners/A1 to A5 filed discharge application for the charges framed under Sections 468, 471, 420 r/w.120(B) of IPC, on the basis of the complaint given by the defacto complainant/R.Moorthy, it is not denied that the defacto complainant and A6 have jointly constituted partnership firm in

the name and style M/s.KGNM stones and purchased 2.11acres of land in SF.No.72/1 of Muthanampalayam Village. On 26.04.1991 and 02.09.1992 they have sold 0.70acres and 0.70acres to one Kandasamy and Subramaniam respectively. They retained the remaining 0.70acres of land with them. The aforesaid Kandasamy sold the property to Subramaniam. The Subramaniam along with A1, A2 and A4 jointly clubbed their land in favour of A5/Govindasamy and executed power of attorney in favour of him. A1 to A6 jointly parcelled the lands inclusive of the lands belong to defacto complainant and got approved from Muthanampalayam Panchayat. Therefore, the petitioners have been charged under Sections 468, 471, 420 and 120(B) IPC. The main allegations made in the complaint is that the petitioners have sold the property i.e, the lands belonging to the defacto complainant. The complaint was perused and direction was given by this Court to register the case and investigate the offence. In pursuant to the order of this Court made in Crl.OP.No.16105 of 2009 on 01.09.2009, FIR was registered and case was investigated and charge sheet was filed against the accused/petitioners herein.

3. The learned counsel for the petitioners would mainly contend that there are so many inconsistency and contradiction in the case of the prosecution and the learned counsel for the defacto complainant has not followed the direction made in the writ Court order passed in WP.No.23292 of 2008. Further, since there is Civil Suit pending between the parties and there is no offence made out against the present petitioners and also A5 is nothing to do with the alleged crime mentioned by the prosecution and there is no incriminating materials available against the petitioner, the order of the trial Court has to be set aside and the criminal revision case has to be allowed.

4.The learned Government Advocate (crl. side) mainly contended that there are so many incriminating materials available to presume charges against the accused. The trial Court after appreciating the entire facts and circumstances of the case, dismissed the application and there is no illegality or infirmity in the order of the trial Court and the learned Government Advocate (Crl.side) prays for dismissal of the revision petition.

5.Heard the rival submissions made on both sides and perused the records.

6.The learned counsel for the revision petitioners mainly put forth in his contention that there are so many contradiction in the case projected by the prosecution. In this case, even if there are inconsistency in the case of the prosecution, it will not be ground for discharging the petitioners at this stage. It can be considered only at the time of trial and after examination of both parties.

7.The learned counsel for the revision petitioners further contended that Civil Suit is pending between the parties at that point of time, and the same was dismissed for default on 08.02.2012 and direction was given by this Court in WP.No.23292 of 2008 on 24.09.2008, no case was made out against the revision petitioners.

8. On reading of the order passed by this Court in WP.No.23292 of 2008 on 24.09.2008, this Court dismissed the writ petition filed by the petitioner therein/defacto complainant, with the following direction:-

The District Collector has passed the impugned order, stating that the petitioner in his statement admitted that he is one of the partners of M/s.KGNM stones, which is not dissolved till date and hence, the petitioner is not at all entitled to claim any right in the land. In so far as the averment of the petitioner relating to No Objection Certificate granted by the 5th respondent and others is concerned, it is found that the development charges were collected, but lay out approval is not granted till date, however the Collector ordered enquiry, which is evident in the impugned order, and taking into consideration of the facts that the land in dispute is a patta land and the petitioner has also alleged that the other purchasers have encroached into the said lands, the collector rightly found that the petitioner has to seek his remedy before the competent civil court, where the suit is pending. The said reasons assigned by the District Collector in the impugned order are perfectly valid and no interference is warranted. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected MP is closed.

9.While dismissing the writ petition, this Court found that the petitioner has to seek his remedy before the competent civil court. In view of the above, there cannot be any bar to lodge FIR against the present revision petitioners by the defacto complainant. Whether the case is proved or not, whether the case has to be established beyond reasonable doubt has to be decided only at the time of trial, that too after examination of witnesses on the side of the prosecution. Hence, the arguments advanced by the learned counsel for the petitioners is liable to be rejected.

10.It is further contended on the side of the revision petitioners that the trial Court without considering the arguments of the learned counsel for the revision petitioner dismissed the petition stating that the defence raised by the petitioners can be decided only at the time of trial.

11.The learned counsel for the petitioners in support of his contention submitted the judgment of this Court reported in 2010 (1) MWN (Cr.) 375 - Dr.M.Kamatchi Sundaram V. State by the Inspector of Police, City Crime Branch, Coimbatore. The decision relied on the side of the petitioners is not applicable to the facts of the present case in hand.

12.This Court is of the considered view that there are so many incriminating materials are available to presume charges against the present accused. It is not proper on the part of the trial Court to decide the velocity or genuineness of the witnesses, whether the corroborative witnesses is available or not, the same has to be believed or not, cannot be decided at this stage. The contention put forth on the side of the petitioner has to be decided only at the time of trial. Further, the learned counsel for the revision petitioner mainly contended that the petitioners 1 to 4/accused 1 to 4, executed power of attorney in favour of A5. The petitioners 1 to 4 have no connection with the property except obtaining power of attorney and there is no role to play in the matter of sale of property in favour of third parties. Admittedly, A5 is the power of attorney holder, sold the property including the alleged property of defacto complainant. In view of the above, it cannot be decided at this stage that A5 has committed the offence or not, the same has to be decided only after completion of trial proceedings.

13.This Court perused the entire materials produced before this Court and satisfied with the materials and come to a conclusion that there are sufficient incriminating materials available to frame charges against the accused/revision petitioners. Hence, the arguments put forth on the side of the petitioners to discharge them from the charges is liable to be rejected and the same is hereby rejected. This Court finds there is no illegality or infirmity in the order passed by the learned Judicial Magistrate No.I, Tiruppur and the same does not warrant any interference by this Court.

14.In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petitions are closed.

sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

tsh

To

1 The Inspector of Police
Contral Crime Branch Tirupur.

2 The Judicial Magistrate No.I, Tiruppur.

3 The Public Prosecutor, High Court, Madras.

+ 1 cc to M/R.C.R.Prasannan, Advocate Sr.No.54969

SSI (CO)

RRI 22/10/2016

CrI.R.C.No.191 of 2016

WEB COPY