

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.944 of 2010
and
M.P.No.1 of 2010

1.Jayabalan
2.Elango
3.Damodaran
4.Padmaraj
5.Kumaresan
6.Hari

...Petitioner

Vs

The State rep. by
The Inspector of Police,
D.C.B. St.Thomas Mount
Chennai-600 016.

... Respondent

Prayer:- This Criminal revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order dated 28.04.2010 passed in C.M.P.No.85 of 2008 in C.C.No.334 of 2001 on the file of the learned Judicial Magistrate Court No.1, Poonamallee and allow the Revision Petition and discharge the petitioners from C.C.No.334 of 2001.

For petitioner : Mr.K.A.Ramachandran

For Respondent : Ms.M.F.Shabana
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision is filed against the order passed by the learned Judicial Magistrate No.1, Poonamallee passed in CMP.No.85 of 2008 in C.C.No.334 of 2001 dated 28.04.2010 filed by the petitioner under Section 239 of Cr.P.C. for discharging the petitioners from the criminal case.

2.An extent of nine cents of land in S.No.72/1 at Valasaravakkam Village, is classified as Grama Natham in the revenue records. According to the defacto complainant, he is in possession and enjoyment of the above said property, and it has

been leased out to one Mr.E.Krishnan, who was arrayed as A1, in this case who subsequently died. Since A1 refused to vacate the premises, the complainant filed a suit in O.S.No.1237 of 1980 on the file of the District Munsif, Poonamallee, that suit was decreed against A1. Against the judgment and decree, A1 filed an appeal in A.S.No.17 of 1994 on the file of the Sub-Court, Poonamallee, which was also dismissed by the Appellate Court and again a Second Appeal was filed in S.A.No.932 of 2005 before this Hon'ble Court and the same was admitted and an Interim Stay was also granted. Subsequent to that, A1 approached the Government for assignment to the extent of six cents of land in his favor and the land has also been assigned by the Special Tahsildar, Saidapet Taluk in his favour on payment of Rs.63,650/-. Subsequently, another suit was filed by the defacto complainant in O.S.No.2310 of 1991 against the order, granting Patta and for cancellation of patta in favour of Krishnan-A1 and that suit was also dismissed. Thereafter, another suit was filed by the defacto complainant in O.S.No.611 of 2000 on the file of the District Munsif Court, Poonamallee, for a mandatory injunction against all the accused, which was also dismissed for default on 08.02.2009.

3.According to the learned counsel for the petitioners, the suit so far not restored, and in the above circumstances, the present complaint has been filed by the defacto complainant on the ground that pending the suit, A1 sold three cents of land using a forged document in favour of A5 and A1 to A4, encroached the remaining three cents and A1-A4 sold the property to an extent of 1500 Square feet in favour of 5th respondent and the remaining area was occupied by some political party. Now, the main grievance of the defacto complainant is that, when the suits are pending, A1, sold the property in favour of A2 to A5 and A6 fraudulently for which he has no right. After investigation, a final report was filed against the petitioner. In the above circumstances, the petitioner filed a petition to discharge and two civil suits are pending and the claim of the defacto complainant, who has no right over the property has been rejected and A1 had already granted an assignment order in his favour on payment of entire cost of land. Hence, there is no question of denial or forgery.

4.The Trial Court dismissed the application stating that the genuineness and the correctness of the complaint can be decided only in the trial and as such, the petition for discharge cannot be entertained at this stage since a prima facie case has been made out against the petitioner. Aggrieved over the same, the present Criminal Revision has been filed.

5.Heard Mr.K.A.Ramachandran, learned counsel appearing on behalf of the petitioner and Ms.M.F.Shabana,learned Government

Advocate (Criminal Side), appearing on behalf of the respondents.

6.From the perusal of the records, it is seen that several civil suits are pending between the parties. Earlier suits filed by the defacto complainant against A1 is now pending for disposal before this Court and an order of Stay has also been granted. Subsequently, Government has also assigned six cents of land in favour of A1 on payment of entire cost of land, thereafter, A1 sold the property in favor of the accused. In the above circumstances, it is only a civil dispute, as between the parties and the property also assigned in favor of A1, on payment of cost. There is no prima facie material to indicate commission of an offence under Section 482 IPC. In the above circumstances, the order passed by the Trial Court is set aside. The Criminal Revision is allowed and all the accused are discharged. Consequently, connected Miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS-VII)
True Copy
Sub-Assistant Registrar

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To

- 1.The Judicial Magistrate Court No.1,
Poonamallee.
- 2.The Inspector of Police,
DCB, St.Thomas Mount Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.K.A.Ramachandran, Advocate SR.No.73838

Cr1.R.C.No.944 of 2010
and
M.P.No.1 of 2010

SSI (CO)
GN(04/04/2017)