

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.15696 of 2010, M.P. No.1 of 2010
and M.P. No.1 of 2011

V. Sambasivam

Petitioner

Vs.

1 State represented by
the Inspector of Police
District Crime Branch
Coimbatore

2 Mangayarkarasi

Respondents

Criminal Original Petition filed under Section 482
of the Code of Criminal Procedure to call for the records
in Crime No.1 of 2010 on the file of the Inspector of
Police, District Crime Branch, Coimbatore and quash the
proceedings therein.

For petitioner Mr. S. Suresh

For R1 Mr. C. Emalias
Additional Public Prosecutor

For R2 Mr. S. Saravanan

ORDER

This Criminal Original Petition has been filed to
call for the records in Crime No.1 of 2010 on the file of
the Inspector of Police, District Crime Branch,
Coimbatore and quash the proceedings therein.

2 For the sake of convenience, the parties will
be referred to by their name.

3. The facts, in nutshell, are as under:

3.1 One Perumal, a relative of Sambasivam, was
doing finance business, in which, Sambasivam had invested
some money. When Perumal did not return the money,
Sambasivam lodged a complaint, based on which, a case in
Crime No.1272 of 1997 was registered against Perumal for
offences under the Tamil Nadu Protection of Interests of
Depositors (in financial establishments) Act, 1997 (for
brevity "the Act"). Perumal was arrested by the police

and later, he was prosecuted for the offences under the TNPID Act. His property, viz., land measuring 1,060 sq. ft. was attached under the TNPID Act.

3.2 Thereafter, Perumal and Sambasivam entered into a compromise, under which, Perumal agreed to transfer the land in favour of Sambasivam in lieu of the money that is due to Sambasivam. Pursuant to that, a memorandum of compromise was entered into between Sambasivam and Perumal and eventually, Perumal was acquitted by the Trial Court some time in the year 2001. Thereafter, Perumal transferred the said property to Sambasivam by a sale deed dated 23.09.2002 registered as document no.4755 of 2005 and put Sambasivam in possession of the property.

3.3 Thereafter, Perumal filed a suit in O.S. No.454 of 2005 against Sambasivam before the Fast Track Court-III, Coimbatore to declare the sale deed dated 23.09.2002 as void. The said suit was dismissed for default on 30.06.2005. On 24.04.2008, Perumal filed I.A. No.619 of 2008 to restore the suit, with a condone delay petition in I.A. No.618 of 2008 and both the Interlocutory Applications were dismissed for default.

3.4 Thus, believing that the litigation had come to an end, Sambasivam sold the property to Mangayarkarasi (the de facto complainant) by a sale deed dated 21.01.2009 registered as Document No.281 of 2009 and put her in possession of the property. On 09.10.2009, Mangayarkarasi received summons from the Fast Track Court-III, Coimbatore in O.S. No.454 of 2005 on a petition filed by Perumal once again to restore the suit. On 30.06.2009, the Condone Delay Petition was allowed and the suit was restored on file. Mangayarkarasi thought that Sambasivam had sold the property to her with encumbrance and therefore, she filed the present FIR, based on which, a case in Crime No.1 of 2010 was registered against Sambasivam, Perumal and his wife Geetha Kannan, for offences under Sections 120-B and 420, IPC, challenging which, Sambasivam is before this Court.

4 The learned counsel for Sambasivam submitted that Sambasivam had put Mangayarkarasi, the de facto complainant, in possession of the property and that Perumal, in order to wreak vengeance, filed a false suit in O.S. No.454 of 2005 to declare the sale as null and void, only in order to create unnecessary trouble to Sambasivam.

5 It is seen that, for the second time, the said suit was dismissed for default on 28.04.2010. In 2013, Perumal has filed another I.A. Nos.421 and 422 of 2013 seeking to condone the delay of 1,008 days and for restoration of the suit, respectively. Both the

Interlocutory Applications were dismissed for default on 03.01.2014. Again, in 2014, Perumal has filed another application in I.A. No.201 of 2014 to restore the suit, which was also dismissed for default on 24.08.2015.

6 From the above narration of facts, it is clear that Perumal is unnecessarily harassing Sambasivam and Mangayarkarasi, the de facto complainant, in order to disturb Mangayarkarasi's title

7 Sambasivam has filed an indemnity affidavit dated 28.09.2016, wherein, at paragraph no.4, he has stated as follows:

"4. However, considering the position of the second respondent, I give the following assurances on humanitarian grounds. I hereby agree and undertake to indemnify and safeguard the interest of the second respondent by making good her loss in the event of any proved defect in the title of the said property. I further indemnify that if any claim is put forth either by the second accused, Perumal in the capacity of my vendor or his legal heirs, representatives, successors or anybody, claiming any right, title, I would ensure that the second respondent does not suffer any monetary loss. I also undertake to reimburse all such cost and expenses of litigation incurred by the second respondent in the event of contest any litigation in view of purported defect in my title to the said property."

8 From the above, it is clear that Sambasivam is ready and willing to indemnify Mangayarkarasi and ensure that there is no threat to her title to the property.

9 In view of the above, this Court is of the view that it will be in the interest of justice, if the FIR as against Sambasivam alone is quashed.

Accordingly, this Criminal Original Petition is allowed. The police shall proceed with the investigation as against Perumal and his wife Geetha Kannan, as they are trying to unnecessarily disturb the title of Mangayarkarasi (the de facto complainant). Connected M.Ps. are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Inspector of Police
District Crime Branch
Coimbatore

2 The Public Prosecutor
Madras High Court
Chennai 600 104

1 cc to Mr.S. Suresh, Advocate, Sr. 55459

1 cc to M/s.S. Saravanan, Advocate, SR.55573

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MV (CO)
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