

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

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

Crl.O.P. No.23515 of 2016 & Crl.M.P. No.11032 of 2016

1 Kalpana
2 Tr.Kuppusamy

Petitioners/ Accused

vs.

1 State represented by
the Inspector of Police
Central Crime Branch - EDF-III
Team - XX
Vepery
Chennai

2 S. Elango

Respondents/ Complainant

(R2 suo motu impleaded as per order dated 24.10.2016
passed in this Crl.O.P. and Crl.M.P. No. 11032 of 2016)

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the records in Cr.No.85 of 2014 dated
05.05.2014 on the file of the Inspector of Police, CCB, EDF-III,
Team - XX, Vepery, Chennai and quash the proceedings therein.

For petitioners Mr. A. Saravanan

For R1 Mr. C. Emalias
Addl. Public Prosecutor

For R2 Mr. Addesh Anto

ORDER

This Criminal Original Petition has been filed seeking to
call for the records in Cr.No.85 of 2014 dated 05.05.2014 on the
file of the Inspector of Police, CCB, EDF-III, Team - XX,
Vepery, Chennai and quash the proceedings therein.

2 On the complaint lodged by one Elango, the second
respondent herein, the first respondent police registered a case
in Crime No.85 of 2014 on 05.05.2014 under Sections 406 and 420
read with Section 120-B IPC against (1) Krishnan, (2) Kalpana,
(3) Kuppusamy, (4) Thangagopalan, (5) Senthil, (6) Rajendran and

certain others, challenging which, Kalpana and Kuppusamy are before this Court.

3 It is the case of Elango (de facto complainant) that the property in question, viz., Plot No.4, measuring 3,356 sq. ft. originally belonged to one Krishnan and that he and his daughter Kalpana, had sold the property to one Chandrasekaran in 2004, suppressing which, they sold the same property to him on 27.12.2012. Hence, the FIR.

4 Mr. Saravanan, learned counsel for the petitioners/accused submitted that Kalpana sold the property to one Mahendran on 27.12.2012 by Document No.10313/2012 and thereafter, the said Mahendran had given a power of attorney in favour of Elango, which has been registered vide Document No.2088 of 2013 on 27.02.2013 for dealing with the property.

5 It is the specific case of Kalpana and her father Kuppusamy that they had not sold the said property to Chandrasekaran as alleged by Elango, the power agent of Mahendran.

6 It is represented by the learned Additional Public Prosecutor that the police arrested Krishnan (A1) and during the course of investigation, it came to light that Krishnan (A1) who was the original owner of the property, had sold the same to one Sunandha Sinha vide Document No.5792 of 1992 as early as 09.11.1992. Thereafter, he had altered the area of the property and sold the same through his power agent Raju to Kalpana on 12.07.1995 vide Document No.2268 of 1995.

7 Therefore, Mr. Sivanandaraj, learned counsel for the second respondent/de facto complainant contended that Kalpana knew that Krishnan had already sold the property to Sunandha Sinha as early as 09.11.1992, suppressing which, she had sold the property to Mahendran on 27.12.2012.

8 This contention that is being taken now by Mr. Sivanandaraj is not the allegation in the FIR. The specific allegation in the FIR is that Kalpana and Krishnan had colluded to sell the property to Chandrasekaran.

9 As stated above, the investigation by the police reveals that Krishnan had already sold the property to Sunandha Sinha on 19.11.1992 and suppressing the said sale, he has sold the same property by altering the area to Kalpana on 12.07.1995. Thus, there is sufficient force in the submission of Mr. Saravanan, learned counsel for the petitioners/accused that the petitioners/accused had not sold the property to Chandrasekaran at an earlier point of time, as alleged by Elango in the FIR.

10 The learned Additional Public Prosecutor submitted that if Kalpana and her father Kuppusamy appear for enquiry, it will be easier for the police to proceed further in the investigation.

11 Mr. Saravanan, learned counsel for the petitioners/accused submitted that Kuppusamy is an octogenarian living at Perungudi and Kalpana who is a single mother, is working in Pune and that is the reason they are not able to appear before police for interrogation.

12 This Court cannot step into the shoes of the Inspector of Police at this juncture and take a call based on the evidence collected by the police till now. It is for the Investigating Officer to conduct an enquiry thoroughly.

13 The learned Additional Public Prosecutor, on instructions, submitted that Kuppusamy appeared before the police for interrogation, but, since he had come alone without Kalpana, the police had asked him to bring his daughter Kalpana for enquiry.

14 From the above, it is apparent that Kuppusamy cannot be classified as an absconding accused.

15 Mr. Saravanan, learned counsel for the petitioners/accused submitted that both Kuppusamy and Kalpana have nothing to hide and they are prepared to appear before the police for enquiry at any time.

16 Recording the aforesaid submission of Mr. Saravanan, learned counsel for the petitioners/accused, Kalpana and Kuppusamy are directed to appear before the respondent police from 26.11.2016 onwards and cooperate in the enquiry. The first respondent police shall conduct a thorough enquiry uninfluenced by any of the observations made in this order, which are made only for the limited purpose of deciding this quash application and if it is found that Kalpana and Kuppusamy are themselves innocent purchasers, it is needless to state that the prosecution against them should be closed.

With the above directions, this Criminal Original Petition is closed. Connected Crl.M.P. is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

cad

To

1 The Inspector of Police
Central Crime Branch - EDF-III
Team - XX
Vepery
Chennai

2 The Public Prosecutor
Madras High Court
Chennai - 600 104

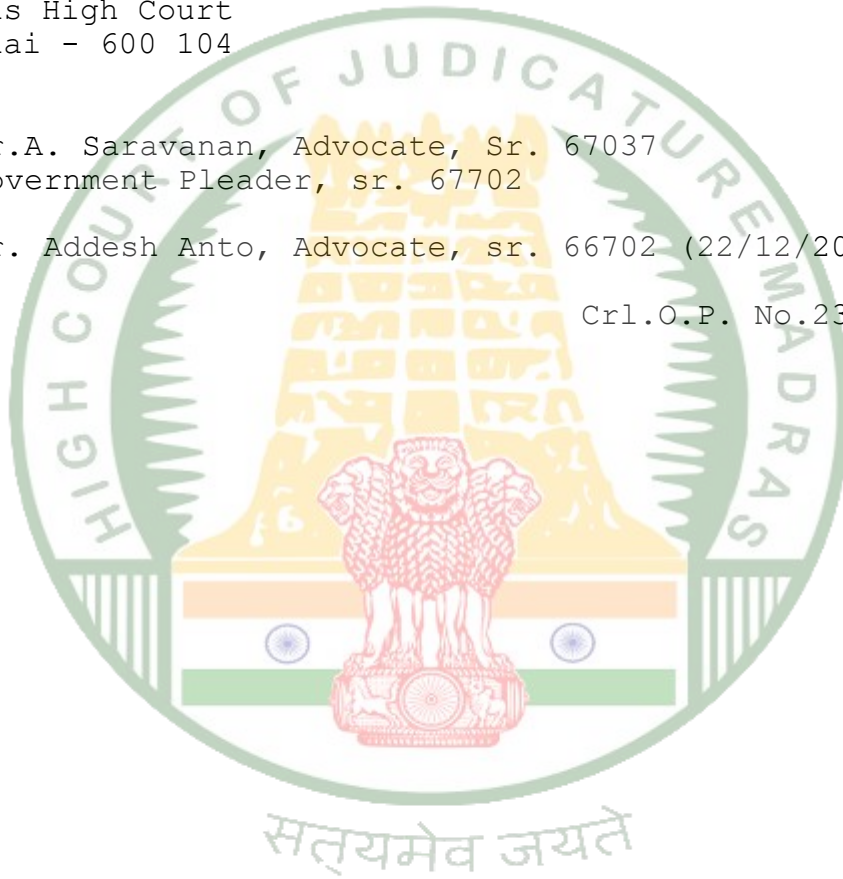
1 cc to Mr.A. Saravanan, Advocate, Sr. 67037

1 cc to Government Pleader, sr. 67702

1 cc to Mr. Addesh Anto, Advocate, sr. 66702 (22/12/2016)

Cr1.O.P. No.23515 of 2016

PVS (CO)
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