

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.24229 of 2016

and

Cr1.M.P.Nos.11547 & 11548 of 2016

D.Kuber

.. Petitioner

Vs.

1.State by Inspector of Police,
Central Crime Branch,
Tiruppur.
Crime No.29 of 2009

2.Moorthy

.. Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.753 of 2013 on the file of the learned Judicial Magistrate No.I, Tiruppur and quash the same.

For Petitioner :: Mr.V.V.Sairam

For Respondents :: Mr.C.Emalias [for A1]
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.753 of 2013 on the file of the Judicial Magistrate No.I, Tiruppur

2. On the complaint lodged by Moorthy, the respondent police registered a case in Crime No.29 of 2009 and after completing the investigation have filed a final report in C.C.No.753 of 2013 before the Judicial Magistrate No.I, Tiruppur, for the offences under Sections 468, 471 and 420 r/w 120(B) IPC against this accused, challenging which, Kuber is before this Court.

3. Heard Mr.V.V.Sairam, the learned counsel appearing for the petitioner and Mr.C.Emalias, the learned counsel appearing for the respondent police.

4. The learned Additional Public Prosecutor submitted that the co-accused in this case have filed an application under Section 239 Cr.P.C. before the trial Court for discharge and on dismissal of the application, they filed CrI.RC.No.191 of 2016, before this Court, which was dismissed by this Court on 26.9.2016, holding that there are prima facie materials for the trial Court to proceed against the accused.

5. Per contra, Mr.V.V.Sairam, the learned counsel for the petitioner submitted that this petitioner was not a party in CrI.RC.No.191 of 2016.

6. This Court gave its anxious consideration to the rival submissions. The allegations in the charge sheet is that Kuber (A6) and the de facto complainant were partners in "K.G.N.M Stones" along with one Suseela and that they have purchased 2.10 acres of land. On account of dispute between the partners, the firm could not be continued. The specific allegation against the petitioner is that though he was entitled to only 70 cents of land, on the dissolution of the partnership, he had sold additional 20 cents of land belonging to the de facto complainant illegally to the accused A1 to A4.

7. Mr.V.V.Sairam, the learned counsel submitted that even in the suit in O.S.No.469 of 2005 that was filed by the de facto complainant, he has not made any such allegations and therefore, the present prosecution is an abuse of process of law.

8. This Court is unable to countenance this submission because the plaint can utmost considered as a previous statement with which the de facto complainant can be confronted, whilst he is in the witness box. When there are prima facie material for the trial to proceed inasmuch as 20 cents of land not belonging to A6/petitioner has been sold to the other accused, this Court cannot quash the prosecution in the light of the law laid down by the Hon'ble Supreme Court in Bajanlal Vs. State of Haryana [AIR 1992 SC 604]. Whatever is stated above is only for deciding the present issue and shall not prejudice the case of either parties before the trial Court.

9. In the result, this petition is dismissed with liberty to the petitioner to raise all the before trial Court. Consequently, connected miscellaneous petitions are closed.

10. At this juncture, the learned counsel for the petitioner seeks permission for dispensing with the personal appearance of the petitioner in the trial Court. Recording his submission, this Court directs the petitioner to appear before the trial

Court, for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. The petitioner shall file an affidavit of undertaking before the trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witness on the day, they are examined in-chief and that he will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioner. If the petitioner adopts any dilatory tactics, the trial Court can insist on his presence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Judicial magistrate I
Tiruppur

2 do thro Chief Judicial Magistrate, Tiruppur

3 The Inspector of Police
Central Crime Branch
Tiruppur

4 The Public Prosecutor
High Court, Madras

rsy(CO)
md(01/12/2016)

सत्यमेव जयते

CrI. O.P. No.24229 of 2016

WEB COPY