

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.8947 of 2016

and

Crl.M.P. Nos.4661 and 4662 of 2016

1.Usha @ Usharani

2.P.K.Devadass Petitioners

Vs.

Auroville Foundation

rep.by its Land Board Member and Resident,

Lt. Col. SandeepDabral,

S.M. (Retd.),

S/O.Late S.M.Dabral,

Auroville Bhawan,

Auroville - 605 101.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in STC No.30 of 2016 on the file of the learned Judicial Magistrate, Vanur and quash the same.

For petitioners : Mr.N.R.Elango,
Senior Counsel for
M/s.R.Vivekananthan

ORDER

This petition has been filed to quash the proceedings in STC No.30 of 2016 on the file of the learned Judicial Magistrate, Vanur.

2. The short facts of this case are as follows:

2.1. Auroville Foundation and Usha @ Usha Rani (A1) entered into a Deed of Exchange dated 16.06.1995, under which two properties were exchanged between them, by virtue of which, Auroville Foundation became the absolute owner of "X" property and Usha (A1) became the owner of "Y" property. For the reasons best known to them, they did not exchange the original title deeds which remained in the custody of the respective parties. While so, Usha (A1) executed a Gift Deed

dated 16.05.2012 in respect of "X" property belonging to Auroville Foundation in favour of her husband Devadass (A2), taking undue advantage of the fact that the original documents of "X" property were in her possession. Thereafter, Devadass (A2) filed a civil suit in O.S.No.27 of 2015 before the District Munsif Court, Vanur, for declaration that the Deed of Exchange dated 16.06.1995 itself is null and void, on several grounds, particularly that Auroville Foundation does not have a valid title over "X" property. In the suit in O.S.No.27 of 2015, the District Munsif Court, Vanur, appears to have granted interim injunction in favour of Devadass (A2).

2.2.Under such circumstances, Auroville Foundation filed a private complaint before the Judicial Magistrate, Vanur, for offences under Section 406 and 420 IPC alleging that Usha (A1) had committed criminal acts of breach of trust and cheating by transferring "X" property, which belongs to Auroville Foundation, in favour of her husband Devadass (A2) on 16.05.2012 and thereby, encumbering the property.

2.3.The Judicial Magistrate Court, Vanur, took the complaint on file and by a detailed order, has held that an offence under Sections 406 and 420 IPC is not made out and only an offence under Section 465 and 120-B IPC has been made out. Challenging the cognizance order, Usha (A1) and P.K. Devadass (A2) are before this Court.

3. Mr. N.R. Elango, learned Senior Counsel appearing for the petitioners/accused submitted that the dispute with regard to the title of "X" property is pending in O.S. No.27 of 2015 before the District Munsif Court, Vanur and therefore, criminal prosecution against the petitioners is an abuse of process of law. He also submitted that the Judicial Magistrate, Vanur, ought not to have taken cognizance for an offence under Section 465 IPC, inasmuch as Usha (A1) has not created a false document as defined under Section 464 IPC.

4. This Court gave its anxious consideration to the submissions made by the learned Senior Counsel appearing for the petitioners.

5. The allegation of Auroville Foundation is that "X" property belongs to them by virtue of the exchange deed dated 16.06.1995, but, the title deeds of "X" property were with Usha (A1) in trust. By taking advantage of the fact that the title deeds were with her, the execution of gift deed in favour of her husband Devadass (A2), as if "X" property belongs to her, would prima facie attract Section 406 IPC.

6. In the backdrop of the said allegations, the contention of the learned Senior Counsel appearing for the petitioners/accused that the pendency of O.S. No.27 of 2015

would be an impediment for the present criminal prosecution, cannot be countenanced. It is not a thumb rule that a civil case and a criminal case cannot co-exist and the judgments of the Supreme Court quashing criminal prosecutions, where, it is found that a criminal colour has been given to a civil dispute, are a legion. The Supreme Court, in M.Krishnan vs. Vijay Singh and another, [(2002) MLJ (Crl.) 134], has struck a note of caution as follows:

"3.The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in restoring to the criminal proceedings.

4. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal Court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a Civil Court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks."

7. That apart, in cheating and fraud cases, there is bound to be some element of civil nature and unscrupulous criminals may even file a civil suit to protract criminal prosecution and hence, criminal proceedings should not be quashed on the ground that the subject matter is pending before the Civil Court.

8. In this case, Devadass (A2) has filed a suit against Auroville Foundation after having obtained a gift deed from his wife Usha (A1) in respect of "X" property, which prima facie appears to belong to Auroville Foundation.

9. As regards the contention of the learned Senior Counsel appearing for the petitioners/accused that the Judicial Magistrate, Vanur, ought not to have taken cognizance for the offence under Section 465 IPC, this Court is of the considered view that this contention of the learned Senior Counsel may require expatiation and that can be done only after evidence under Section 244, Cr.P.C. is adduced. In the considered opinion of this Court, prima facie, an offence under Section 406 and 420 appears to have been committed by the petitioners/accused.

10. Hence, the order of cognizance dated 17.03.2016, passed by the Judicial Magistrate, Vanur, is set aside and the matter is remitted back to the Judicial Magistrate, Vanur, for fresh cognizance in accordance with law.

This Criminal Original Petition stands allowed in the above terms. Connected CrI.O.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps/cad

To

The Judicial Magistrate
Vanur.

+1cc to Mr.R.Vivekananthan, Advocate, S.R.No.29093

CrI. O.P.No.8947 of 2016

PA(CO)
CA(04/07/2016)