



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.03.2016

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

Crl.O.P.(MD) No.4552 of 2016

&

Crl.M.P.(MD) .No.2264 of 2016

S.M.Siddique @ Siddique Rowther
S/o.mohammad Abdulgani,
The Secretary,
Madurai Samaya Tharuva Paripalana Sangam
Parimala Sunnath Jamath,
No.21A, Goripalayam Pallivasal Street,
Madurai. ... Petitioner/Accused No.2

-vs-

1.State Represented by
The Inspector of Police,
District Crime Branch, Madurai. ...1st Respondent/Complainant
(Crime No.92 of 2013)

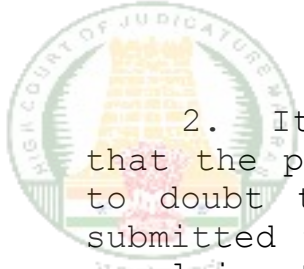
2.Lesly Hiruthayaraj ...2nd Respondent/Defacto
complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records pertaining to the FIR in Crime No.92 of 2013 on the file of the 1st respondent police and quash the same as against the petitioners alone.

For Petitioner : Mr.D.S.Haroon Rasheed
For R1 : Ms.S.Prabha
Government Advocate (Crl.Side)

O R D E R

It is the case of the defacto complainant that the property in question belongs to his father, J.A.Rathinam, and by a Will his father bequeathed the property to him. While so, one J.A.R.Rajan claiming himself to be one of the sons of J.A.Rathinam (defacto complainant's father), executed a power of attorney, stating that the property belongs to him, infavour of one Narasiman, who in turn sold the property to the petitioner Jamad, on 01.08.2000.



2. It is contended by the learned counsel for the petitioner that the petitioner is an innocent purchaser and he had no reason to doubt the bonafides of his seller. The learned counsel also submitted that a suit in O.S.No.171 2010 was filed by the defacto complainant before the District Munsif, Melur, for a declaration that the sale deed, dated 01.08.2000, is null and void and during the pendency of the suit, the present First Information Report, is abuse of process of law.

3. This Court gave its anxious time to the submissions of the learned counsel for the petitioner. It is seen that in paragraph 7 of the plaint in O.S.No.171 of 2010, the defacto complainant has stated as follows:-

"7. Similarly the 4th defendant had executed a false Sale Deed on 01.08.2000, in favour of the 5th defendant regarding the remaining portion of the suit property. The said Sale Deed was executed by the 4th defendant, as a Power Agent of the 3rd defendant, by falsely stating that the 3rd defendant is one of the sons of J.A.Rathinam. It is necessary to point out that the 3rd defendant is a total stranger to the family of J.A.Rathinam and as such, the entire sale transaction is fraudulently executed by false representation. It is submitted that both the above said sale transactions, dated 16.07.1987 and 01.08.2000 are null and void by committing fraud and as such these sale deeds need not be set aside separately."

4. In view of the above, the allegation of the defacto complainant is that one J.A.R.Rajan, claiming himself to be one of the sons of defacto complainant's father, has created document alienating the property of the defacto complainant, which has to be probed. It is needless to state that in the course of investigation, if it is found that the petitioner is an innocent purchaser having been cheated by those individuals, he cannot be added as one of the accused in the final report. Since there are prima facie materials for the police to proceed with the investigation, this is not a fit case to quash the first information report, in the light of the law laid down by the Hon'ble Supreme Court in State of Harayana v. Bhajan Lal and Ors. reported in AIR 1992 SC 604. In such circumstances, this criminal original petition is dismissed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/



1. The Inspector of Police,
District Crime Branch, Madurai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.D.S.Haroon Rasheed Advocate Sr.No.15184

GJM/NGM/SS/24.3.16-3p-4C

Cr1.O.P. (MD) No.4552 of 2016
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