

IN THE COURT OF HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 21..08..2017
Order Pronounced on : 07..09..2017

CORAM

THE HON'BLE MR.JUSTICE **K.KALYANASUNDARAM**

Crl.O.P. No.793 of 2014
and
MP No.1 of 2014

N.Venkatasamy : Petitioner/Accused

-vs-

1.State of Tamil Nadu
rep. by Inspector of Police,
Kavindapadi Police Station,
Gobichettipalayam,
Erode.

2.A.P.Palanisamy : Respondent

Prayer: Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.32 of 2012 on the file of the Judicial Magistrate No.II, Gobichettipalayam in pursuance of Crime No.12 of 2012 on the file of the Inspector of Police, Kavindapadi Police Station, Gobichettipalayam Taluk, Erode and quash the same.

For Petitioner : Mr.S.R.Balasubramanian

For 1st Respondent : Mr.S.Sekar
Government Advocate (Crl. Side)

For 2nd Respondent : Mr.N.Manokaran

ORDER

This petition is filed to quash the proceedings in C.C.No.32 of 2012 pending on the file of the Judicial Magistrate No.II, Gobichettipalayam.

2.The 2nd respondent has filed a private complaint alleging that the petitioner, by a registered sale deed, dated 25.05.2007 sold the properties comprised in Survey No.181/7 to an extent of 2.93 Acres and in Survey No.181/6 to an extent of 0.01 cents, for a sale consideration of Rs.5,35,000/-. When he was enjoying the property, one Saradha Devi, W/o.A.M.Eswaramurthi filed a suit in O.S.No.330 of 2010 before the District Munsif, Bhavani, claiming right over the property.

3. It is further alleged that when it was informed to the petitioner herein, he did not take proper action and by a compromise, the 2nd respondent paid Rs.1,00,000/- to the plaintiff for purchasing the property to an extent of 0.35-1/2 cents.

4. The sum and substance of the allegation is that the petitioner executed a sale deed to an extent of 2.93 Acres in Survey No.181/7, but the actual extent is 2.65 Acres, thereby the accused have committed the offences.

5. The petitioner would state that in the tender-cum-auction conducted by TIIC Limited, the petitioner purchased the land on 08.08.2005 and the property in the sale deed was mentioned based on the partition deed under document No.936/1990, dated 05.10.1990. The petitioner sold the property to the 2nd respondent, on 23.05.2007. In the sale deed also, the schedule was incorporated as per the partition deed, dated 05.10.1990 and the sale deed, dated 08.08.2005.

6. The learned counsel for the petitioner would submit that one A.M.Eswaramurthy along with his family members availed loan from TIIC Limited by deposit of their registered partition deed, dated 05.10.1990. The petitioner was the successful bidder in the auction conducted by the TIIC Limited and the sale deed was executed in favour of the petitioner, on 08.08.2005. The entire mortgaged property was sold in favour of the petitioner and possession was also

handed over as per the boundaries mentioned in the document.

7. The learned counsel for the petitioner would further submit that when the petitioner sold the property to the 2nd respondent on 23.05.2007, the same extent was mentioned in the sale deed and if there is any lesser extent, the 2nd respondent should have measured the property with the help of the surveyor and for mentioning larger extent based on the earlier document, a criminal case cannot be initiated against the petitioner. It is further submitted that continuation of proceedings in a criminal case is an abuse of process of law.

8. The learned counsel for the 2nd respondent would submit that the complaint was preferred in the year 2011 and the trial had already commenced and as per the decision of the Supreme court in the judgment reported in **1973(4) SCC 10**, at this juncture the complaint cannot be quashed.

9. Heard Mr.S.R.Balasubramanian, learned counsel for the petitioner and Mr.R.Sekar, learned Government Advocate (Criminal side) for the first respondent and Mr.N.Manokaran, learned counsel for the 2nd respondent.

10. A perusal of the partition deed, dated 05.10.1990, the sale deeds, dated 08.08.2005 and 23.05.2007 would reveal that the sale deeds have been prepared based on the partition deed, dated 05.10.1990. It is not the case of the 2nd respondent that the petitioner had purchased small extent in the public auction and sold larger extent to him.

11. Further, merely because the wife of the mortgagor filed a suit against the 2nd respondent and the matter was settled on payment of some amount to the plaintiff, would not give any cause of action for filing a complaint against the petitioner. A perusal of the complaint would show that ingredients for the offences alleged against the petitioner is totally absent.

12. It is settled law that a criminal case can be quashed if the Court finds the continuation of the Proceedings is total waste of precious time of the Court and it has been initiated with an oblique motive. Hence, the decision relied on by the learned counsel for the respondent would not have bearing on the facts of this case. Therefore, I am of the considered view that the complaint filed against the petitioner is an abuse of process of law and it is liable to

be quashed.

13. In that view, the Criminal Original Petition is **allowed** and the complaint in C.C.No.32 of 2012 on the file of the Judicial Magistrate No.2, Gobichettipalayam, is hereby quashed. Consequently connected Miscellaneous Petition is closed.

07.09.2017

Speaking Order / Non-Speaking Order

Index :Yes/No

Internet:Yes/No

er/ r n s



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K.KALYANASUNDARAM, J

er/ r n s

To

1. The Judicial Magistrate No.II,
Gobichettipalayam.
2. The Inspector of Police,
Kavindapadi Police Station,
Gobichettipalayam Taluk,
Erode.



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