

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.21489 of 2017

V.J.Palani

..Petitioner/Accused No.2

Vs

1.The State of Tamil Nadu,
Represented by its Inspector of Police,
DCB, Thiruvannamalai Police Station,
Anti Land Grabbing Special Cell,
Thiruvannamalai District. .. R1/Complainant

2.Indira Kumar ..Respondent 2/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records and quash the F.I.R. in D.C.B.
Crime No.5 of 2017 pending on the file of the Inspector of
Police, DCB, Anti Land Grabbing Cell, Thiruvannamalai Police
Station, Thiruvannamalai District pending the above Crl.O.P.

For Petitioner : Mr.R. Premkumar
for M/s.King & Partridge

For Respondent-1 : Mr.P.Govindarajan,
Additional Public Prosecutor

For Respondent-2 :Mr. B.Jawahar

O R D E R

The Criminal Original Petition has been filed seeking to
call for the records and to quash the Crime No.5 of 2017,
insofar as the petitioner is concerned.

2. The second respondent/defacto complainant had given a
complaint before the first respondent against one
Balamurugan/first accused as well as the petitioner herein
stating that their property was illegally sold through forgery.

3. It is stated that the first accused/Balamurugan

facilitated the sale in favour of the second accused, who is the petitioner herein. Subsequent to the registration of the complaint in Crime No.5 of 2017, the petitioner/second accused had offered to purchase the property from the complainant and thereby amicably resolved the dispute between them.

4.The second respondent /defacto complainant had also accepted the offer given by the second accused/petitioner and agreed to quash the proceedings, insofar as the second accused/petitioner is concerned. It is also pertinent to note that the defacto complainant as well as the petitioner/second accused are personally present before this Court and also have been identified. The defacto complainant also filed an affidavit dated 10.10.2017 to the effect that she has no objection to quash the FIR pertaining to DCB Crime No.5 of 2017, pending on the file of the respondent police.

5.The learned counsel for the petitioner submitted that though he has condoned the acts committed by the second accused/petitioner, on the ground that he is an innocent purchaser, he has expressed his intention to proceed with the complaint, insofar as the first accused/Balamurugan alone is concerned.

6.The learned Additional Public Prosecutor opposed the proposition and submitted that the partial quashing of the FIR, with regard to one accused alone is not permissible in law. He also submitted that the offence made out in the complaint are non-compoundable and a heinous offences and therefore, objected to having the FIR quashed, insofar as the petitioner alone is concerned.

7.At this juncture, it would be appropriate to refer to the Judgement of the Hon'ble Supreme Court in the case of Lovely Salhotra and another Vs. State NCT of Delhi and another (Criminal Appeal No.670 of 2017), wherein, it has held that a FIR can be quashed in part, on the basis of the facts of each case and when one of the accused has offered to settle the issue amicably with the complainant, he should not be allowed to suffer by refusing to have the investigation quashed as against him.

8.The same proposition has been reiterated in a decision of the Punjab and Haryana High Court, in the case of Balvinder Kumar @ Eidhu Vs. State of Punjab and another reported in CRM-M-16847-2014 by relying on three other Judgements of the same Court wherein it was held that partial quashing of the FIR is permissible. Likewise, the other Judgement of Punjab and Haryana High Court in Crl.Misc.No.M-23739 of 2010 wherein it has been held as follows.

"Broad guidelines have been laid down by the Full Bench of this Court in the case of Kulwinder Singh and Ors. Vs. State of Punjab and another 2007(3) RCR (Cr1.) 1052 for quashing the prosecution when parties entered into compromise. The Full Bench has observed that this power of quashing is not confined to matrimonial disputes alone. The relevant portion of the Judgement reads as under:-

26. In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Shawney and others, (1980)1 SCC 63, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:-

"The finest hour of justice arrived propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social emity and reduces friction, then it truly is finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation."

9. In view of the aforesaid precedents, in order to meet the ends of justice, it would be appropriate that the petitioner's prayer to have the proceedings quashed can be entertained, since the petitioner herein is only an innocent purchaser as admitted by the defacto complainant and the overt-acts in the complaint for the criminal offences implicates the other accused only.

10. At this juncture, the learned counsel for the petitioner submitted that they are willing to co-operate with the investigation, as a witness.

11. Recording the submissions made by the learned counsel for the petitioner, the proceedings in DCB Crime No.5 of 2017, on the file of the respondent police is partially quashed, insofar as the petitioner/second accused alone is concerned. The Criminal Original Petition is partially allowed. It is made clear that the first respondent police is at liberty to proceed with the investigation, insofar as the other accused are concerned. During the course of investigation, if the investigating officer is of the opinion that the petitioner/first accused is involved in any other offence, it is open to him to charge the petitioner for such an offence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
DCB, Thiruvannamalai Police Station,
Anti Land Grabbing Special Cell,
Thiruvannamalai District.

2.The Public Prosecutor,
High Court, Madras.

+2cc's to Mr.King & Partridge, Advocate, S.R.No.73117

Cr1.O.P.No.21489 of 2017

RV(CO)
GN(10/11/2017)