IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2017

DELIVERED ON : 15.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.637 of 2015
and
Crl.M.P.Nos.1 & 2 of 2015

Habib Abdul Latif ... Petitioner

vs

1. The State
   Rep by its Inspector of Police,
   T1 Ambattur Police Station,
   Ambattur, Chennai.

2. C.Selvaraj
   S/o.Chellaiah
   (R2 impleaded as per
   the order of this Court dated 27.07.2015
   made in M.P.No.3 of 2015) ... Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the order of learned Judicial Magistrate, Ambattur passed in Crl.M.P.5170/2015 in C.C.No.234 of 2010 on 05.05.2015 and to discharge the petitioner of the charges levied, against him in the interest of justice.

For Petitioner : Mr.Javed Razack
for Mr.R.Gopinath

For Respondents: Mr.M.Mohammed Riyaz
(Crl.Side) [R1]
Mr.John Britto[R2]

O R D E R

This petition seeks to set aside the order of learned Judicial Magistrate, Ambattur, passed in Crl.M.P.5170/2015 in C.C.No.234 of 2010 on 05.05.2015.

2. By the order under challenge, Court below has dismissed a petition seeking discharge u/s. 239 Cr.P.C. Petitioner is the 4th accused in C.C.No.234 of 2010 on the file of learned Judicial Magistrate, Ambattur. The prosecution case is that the second accused as an employee of Brittania Industries, was a member of the Brittania Employees Union Society and was allotted Plot No.433 of layout promoted by such Society under the name 'Royal City'. The second accused T.P.Sivasankaran being unable to effect payment therefor, approached the de-facto complainant/second respondent to purchase the plot and nominated him as purchaser. Accordingly, the plot was registered in the name of de-facto complainant/second respondent in the year 1992 under document No.102/1992. Under the pretext of need to effect mutation of revenue records and in Society records, the second accused withheld delivery of the original sale deed to the de-facto complainant/second respondent. In the year 2004, A1, acting in conspiracy with A2 and his wife/A3 and also this petitioner/A4, caused impersonation the de-facto complainant and registration of power of attorney in respect of the property in favour of petitioner/A4. Such Power of Attorney was registered as document No.3865/04 on 16.11.2004. The 2nd accused had impersonated the de-facto complainant as the Principal/owner of the property and also signed the Power of Attorney as a witness. Petitioner/A4 has come used such Power of Attorney for sale of the plot to A5. In doing so, petitioner had informed that the property lies in Royal City layout, although the same formed part of the Britannia Nagar layout. Petitioner and others are accused of offences u/s.406, 420, 465, 468 and 471 IPC.

3. Heard Mr.Jaked Razack, learned counsel for petitioner and Mr.M.Mohammed Riyaz, learned Government Advocate [Crl.side] for first respondent and Mr.John Britto, learned counsel for de-facto complainant/ second respondent.

4. The contention of the petitioner is as follows:-

Petitioner is the Managing Director of “Latif Estate”. The complaint has been preferred in the year 2007 and registered in Crime No.967/2007. Petitioner was approached by A1 who had informed that the property in respect of which offences allegedly were committed belonged to the 2nd accused and the same was available for sale. Intending to purchase the same for his friend who was abroad and being led by A1 to believe that T.P.Sivasankaran[A2] was the de-facto complainant, finding A2 in possession of the original sale deed registered in favour of the de-facto complainant under document No.102/1992 and also being satisfied with the identity of A2 and A3, as established to the satisfaction of the Sub-Registrar, he innocently obtained a Power of Attorney in his favour. Petitioner was a law abiding person, holding a good reputation and status in society and had absolutely no bad antecedents.

5. The prosecution contention is that the petitioner as the promoter of the immediately adjacent layout had an eye on the property of the de-facto complainant and was in cahoots with the other accused.

6. Learned counsel for petitioner submitted that the offences alleged do not stand attracted and there is no material on record to substantiate the wrong doing alleged against petitioner. Learned counsel also contended that petitioner was an innocent victim of the wrong doing of accused 1 to 3.

7. Learned counsel for de-facto complainant/second respondent contended that petitioner was the prime mover of the offending of transactions and that petitioner while seeking Anticipatory Bail which was ordered by this Court in Crl.O.P. No.16143 of 2008 had contended that both he and A1 were victims, but now contends that he was a victim of wrong doing of A1 to A3. Learned counsel for further contented that petitioner earlier had filed Crl.O.P.No.15260 of 2011 seeking quash of proceedings against him and obtained interim stay. However, when the matter was listed for final hearing, petitioner did not instruct his counsel and his counsel sought permission of this Court to withdraw the petition with liberty to move later. In such circumstances, petitioner's challenge to dismissal of discharge petition is not to be entertained.

8. Learned Government Advocate [Crl.side] submits that the order under challenge does not call for interference. Learned Government Advocate [Crl.side], however, on instructions, submits that the petitioner is not involved in any other case.

9. This Court has considered the rival submissions. The attendant facts are as follows:

(i) The property in Plot No.433 was purchased in the name of the de-facto complainant under document No.102/1992 on 13.12.1991 and registered in the year 1992.

(ii) The power of attorney in favour of petitioner/A4 was executed on 16.11.2004 and registered as document No.3865 / 04, i.e., in the year 2004.

(iii) A2 has executed the power of attorney impersonating the de-facto complainant. A2 has also signed as a witness. While, it is the prosecution case that the petitioner was the prime mover of wrong doing, it is the case of petitioner that he was misled into believing A2 to be the de-facto complainant. Since the original document of title of defacto complainant/2nd respondent was produced by him and documents to support the identity of A2 as the de-facto complainant also were produced.

10. After discussing the rival contentions, the Court below, in dismissing the petition seeking discharge has merely observed as follows:

"Upon hearing both side submissions and on perusal of materials place before this Court and on consideration of the complainant and the statements recorded by the Investigation Officer and the expert opinion regarding the thump impression in the General Power of Attorney and other relevant materials relied by the prosecution, this Court is of the considered view that the prosecution has sufficient material evidence to make out the prima facie case for the alleged offences u/s. 406,420,465,468 and 471 IPC and the evidenciary value, and veracity of witness regarding oral evidence and with respect documentary evidence through its executance evidence and the experts opinion can be tested only during the trial. Therefore having this Court considered that sufficient materials is available against the petitioner herein for the alleged offences u/s. 406,420,465,468 and 471 IPC this petition deserves a dismissal order".

11. In Union Of India vs Prafulla Kumar Samal [1979 AIR 366], the Supreme Court has held thus:

'Thus, on a consideration of the authorities mentioned above, the following principles emerge:
(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out: (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while (1) A.I.R. 1967 S.C. 740.

(2) [1969] 2 S.C.R. 520.

giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

12. Therefore, the prime consideration that arises for consideration on a petition seeking discharge is whether the material available gives rise to mere suspicion or to such grave suspicion as befits putting a person to trial. In the instant case, the only indication of wrong doing on the part of petitioner is that he failed to see that the initial of the person representing himself to be the de-facto complainant in the documents of identity produced by such person was different from that of the de-facto complainant in the sale deed of the year 1992. In the view of this Court, the same can only be termed as a negligent mistake. That such mistake stands committed also by the registering authority is to be kept in mind. The availability of the original document of title standing in the name of the de-facto complainant, easily could be put down as the cause thereof. In circumstances, where there is no dispute that the petitioner was the promoter of the immediately adjacent layout, no umbrage can be taken against the petitioner informing in the sale deed executed in favour of A5 that the plot fell in the layout developed by him. It is also brought to notice, that the petitioner is not involved, in any other offence.

The Criminal Revision Case shall stand allowed. The order of learned Judicial Magistrate, Ambattur, passed in Crl.M.P.5170 of 2015 in C.C.No.234 of 2010 on 05.05.2015 is set aside. Petitioner shall stand discharged in the case. However, in the event of any material which would probablise the conviction of petitioner surfacing during trial, it would be open to the Court below to proceed u/s.319 Cr.P.C. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bri/sts

To

1. The Judicial Magistrate,
   Ambattur.

2. The Inspector of Police,
   T1 Ambattur Police Station,
   Ambattur, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.R.Gopinath, Advocate Sr. 42338

+1cc to Mr.A.John Britto, Advocate Sr. 42565 (07.08.2017)

Pre-delivery order
in
Criminal Revision Petition No.637 of 2015

AD(CO)
VR(28/06/2017)