

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.20231 of 2011
and
M.P.No.1 of 2011

Ponsingh

... Petitioner

vs.

1.The State rep. by
The Inspector of Plice,
Korattur Police Station,
Korattur, Chennai - 80.

2.The Tahsildar,
Ambattur Taluk,
Ambattur,
Chennai-53.

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.296 of 2009, on the file of the learned Judicial Magistrate, Ambattur, Chennai and quash the same.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

This Criminal Original Petition has been filed in C.C.No.296 of 2009, on the file of the learned Judicial Magistrate, Ambattur, by the petitioner/accused No.2 for quashing the C.C.No.296 of 2009.

2.It is the case of the petitioner is that the 1st respondent Inspector of Police has registered a case on the basis of the complaint given by the 2nd respondent Tahsildar as against the petitioner and one another accused for having committed alleged offences punishable under Sections 465, 468, 471, 420 and 109 of IPC in Cr.No.667 of 2004, on the file of the Inspector of Police, Korattur Police Station, Chennai-80.

3. In the complaint, it was alleged that the property bearing Survey No.320/2B and 320/2C situated at Padi Village, Ambattur Taluk, Thiruvallur District is the Government Poramboke land and knowing fully well that the Government Poramboke land as per the G.O.Ms.No.841, dated 11.05.1998, the 2nd respondent Tahsildar has leased out the property to the 1st accused. Thereafter, the 1st accused has failed to consideration of the said lease amount to the Government. Thereafter, suppressing the said lease given by the 2nd respondent Tahsildar, Ambattur, the 1st accused has sold out the property to the 2nd accused, who is the petitioner herein by a registered sale deed dated 02.01.1998 in Doc.No.12/1998.

4. On knowing about the said illegal sale by the 1st accused in favour of the 2nd accused, who is in favour of the 2nd respondent Tahsildar has given a complaint to the 1st respondent Inspector of Police, the case has been registered against the A1 in Cr.No.667 of 2004 for the offences under Sections 465, 468, 471, 420 and 109 IPC. At the time of giving F.I.R., this petitioner has not included in the accused, but later on at the time of filing a final report in C.C.No.296 of 2009 filed before the learned Judicial Magistrate, Ambattur, this petitioner's name has been included as a 2nd accused. Therefore, challenging the said charge sheet in C.C.No.296 of 2009, this petitioner, who is the 2nd accused has filed this Criminal Original Petition saying that the said charge sheet is illegal and irregularity and also there is no prima facie case made out by the 1st respondent Inspector of Police.

5. Apart from this, the petitioner also challenged the charge sheet, that the 1st accused in this case ***Mr.V.M.Chacko, S/o.Mathew** has sold out only the lease right to this petitioner as per the sale deed dated 12.01.1998, since the 1st accused have a valuable lease hold right over the property. The petitioner, who is A2 is the bonafide purchaser, he could not alleged that the Government poramboke land was sold to this petitioner/***A2**. The petitioner also states that the accused ***Mr.V.M.Chacko, S/o.Mathew** who has having title and right over the property bearing Survey No.1177/1A and the patta was also issued in the name of ***Mr.V.M.Chacko, S/o.Mathew**. Therefore, he prayed this Court for quashing the charge sheet filed against this petitioner in C.C.No.296 of 2009.

6. I heard Mr.C.Prabakaran, learned counsel appearing for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the respondents and perused the entire records.

7.It is admitted fact that the 1st accused in this case ***Mr.V.M.Chacko, S/o.Mathew** has sold the property in Survey No.1177/1A. Originally the sale deed did not sold the title of the property on 02.01.1998 in favour of the petitioner/A2, but only the lease hold right was given and not sold the entire title of the property. Thereafter, on 13.06.2013 a rectification deed was executed by the son of the Mathew one Mr.V.M.Chacko on ***13.06.2013**, which was registered in Doc.1876/2014 in favour of the petitioner. In the rectification deed, it is mentioned that in the schedule of property instead of Free Hold Right, it has been mentioned as lease hold property, Survey No.320/2C was wrongly typed instead of Survey No.1177/1A (Part) and the same was also rectified through the said deed of rectification. Therefore, when the lease hold right of the 1st accused and later on it was modified as free hold right was sold by the 1st accused in favour of the petitioner/2nd accused, there is no irregularity in the said sale.

8.When the 2nd respondent by his order in G.O.No.841 dated 11.05.1998 leased out the property in question to the 1st accused and later on the 1st accused has sold out the lease hold right which was later on as per rectification deed rectified into free hold right to the petitioner, who is the 2nd accused in this case. There is no illegal sale in this case, since A1 ***Mr.V.M.Chacko, S/o.Mathew** has not sold out the title of the property in favour of the A2, but the lease hold right alone (free hold right alone) was sold out. Therefore, it is not a case under the collusion of criminal offences and the 2nd respondent Tahsildar has having every right to cancel the lease hold issued in favour of the 1st accused ***Mr.V.M.Chacko, S/o.Mathew**, there is no violation had been done by the 1st accused as per the leased agreement issued in G.O.Ms.No.841 dated 11.05.1998 which required for implication of the petitioner as an Accused No.2, who is bonafide purchaser.

9.Apart from this, though the lease hold right was given by the 1st accused in favour of the 2nd accused, the petitioner herein on 02.01.1998 and 12.01.1998 whereas, the complaint has been given only in the year 2004. Therefore, there is a delay in alleged F.I.R. has been registered and the charge sheet also filed only after 5 years i.e. in the year 2009. Therefore, this petitioner/A2 prima facie case was made and hence, the alleged charges filed in C.C.No.296 of 2009, is liable to be quashed.

10.In the result, this Criminal Original Petition is allowed and the Charge Sheet in C.C.No.296 of 2009, on the file of the Judicial Magistrate, Ambattur, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assitant Registrar (CS II)

Dated : 27.07.2017

***Amended as per Order of the
Court dated 01.08.2017 made
in CrI.OP.20231 of 2011
Sd/- Assistant Registrar(CO)
Dated : 08.08.2017**

/true copy/

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate, To be Substituted to the Order
Ambattur.

Already despatched on 27.07.2017

2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.54723

CrI.O.P No.20231 of 2011
and
M.P.No.1 of 2011

NR 27/07/2017

CA(08.08.2017)

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