

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2017

CORAM

The Hon'ble Mr.JUSTICE C.T.Selvam

Crl.O.P.Nos.4825 of 2012 & M.P.No.1 of 2012
&
Crl.O.P.No.23067 of 2014
& M.P.Nos.1 and 2 of 2014

1.S.Martin ... Petitioner in Crl.O.P.No.4825 of 2012

2.Martin Charles ... Petitioner in Crl.O.P.No.23067 of 2014

Vs

1. STATE: represented by
The Inspector of Police,
Central Crime Branch,
Coimbatore City,
Crime No.108 of 2011.

R-1 in both Crl.O.Ps.

2. P.Manickavasakkam

R-2 in both Crl.O.Ps.

PRAYER in Crl.O.P.No.4825 of 2012 :-

Criminal Original Petition filed under section 482 of Criminal Procedure Code praying to quash the complaint/FIR registered in Cr.No.108 of 2011 on the file of the Central Crime Branch, Coimbatore.

PRAYER in Crl.O.P.No.23067 of 2014 :-

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in Crime No.108 of 2011, on the file of the first respondent/Central Crime Branch, Coimbatore, and to quash the same as against the petitioner.

For Petitioner in : Mr.N.R.Elango for
in Crl.O.P.No.4825/2012 Mr.A.Ravichandran

For Petitioner in : Mr.N.R.Elango for
in Crl.O.P.No.23067/2014 Mr.K.Vivekananthan

For Respondent-1 : Mr.R.Rajarathinam
Public Prosecutor

For Respondent-2
in Crl.O.P.No.4825/2012 : Mr.J.Srinivasan

For Respondent-2
in Crl.O.P.No.23067/2014 : Mr.R.Shanmugam

COMMON O R D E R

Crl.O.P.No.4825 of 2012 and Crl.O.P.No.23067 of 2014 preferred by accused Nos.2 and 3 respectively, seek to quash case in Crime No.108 of 2011, on the file of first respondent. They are taken up together and disposed of by this common order.

2. Case in Crime No.108 of 2011, on the file of first respondent has been registered for offence under Section 420 read with 506 (ii) IPC on complaint of second respondent. In brief, complaint of the second respondent is that, he had been forced into selling property belonging to him to first accused/Company, wherein, accused Nos.2 and 3, petitioners herein, are Directors. Though the actual sale consideration was Rs.1,00,00,000/- (Rupees One Crore) the sale deed reflected the consideration as only Rs.24,40,000/-. Having promised the payment of Rs.75,60,000/- immediately after registration, and, on the representation that the same was kept in a Car, belonging to the accused, such payment was not made to him, and he was threatened against making demands therefor.

3. Heard the learned Senior Counsel for petitioners and learned Public Prosecutor.

4. Learned Senior Counsel submitted that, defacto complainant/second respondent had preferred an earlier complaint regards the same transaction. Such complaint too had been preferred before the first respondent and therein there was no allegation against petitioner in Crl.O.P.No.4825 of 2012. Seeking a direction for registration of a case on such earlier complaint, second respondent has moved Crl.O.P.No.18573 of 2011 but in doing so, no mention has been made about the involvement of petitioner who had resigned from the Directorship of first accused/Company as early as on 31.03.2008. Learned Senior Counsel submitted that the complaint of second respondent on same allegations ought not to have been entertained by first respondent inasmuch as the same is opposed to law, particularly Sections 91 and 92 of the Indian Evidence Act. Decision in

M.Venugopal Pillai and others) reported in (2000) 7 S.C.C. 104 was relied on:-

" 92. Exclusion of evidence of oral agreement - When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms;

Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents. "

A perusal of the aforesaid provision shows that what section 92 provides is that, when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced in the form of a document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting from the said written document. However this provision is subject to proviso 1 to 6 but we are not concerned with other provisos except proviso 4, which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition. Proviso (4) to Section 92 contemplates three situations, whereby:

(i) the existence of any distinct subsequent oral agreement as to rescind or modify any earlier contract, grant or

disposition of the property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents.

6. In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral in such situations it is always open to the parties to the contract to modify its terms and even substitute a new by oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by new oral agreement. Where under law a contract or disposition are required to be in writing and the same has been reduced in writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted. There is another reason why the defendant/appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the

settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent oral agreement modifying or rescinding the registered instrument. The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded by the appellant is allowed to be substantiated by parol evidence it would mean re-writing of Ex.A/1 and, therefore, no parol evidence is permissible.

7. In view of the aforesaid legal position on interpretation of proviso (4) to Section 92 we have to examine as to whether settlement deed Ex.A/1 was required to be in writing under the law or not. It is not disputed that by settlement deed Ex.A/1 which is a disposition Muthuswamy Pillai passed on right to property to all his sons who acquired right in the property. Where there is such conferment of title to the property, law requires it be in writing for its efficacy and effectiveness. A document becomes effective by reason of the fact that it is in writing. Once under law a document is required to be in writing parties to such a document cannot be permitted to let in parol evidence to substantiate any subsequent arrangement which has effect of modifying earlier written document. If such parol evidence is permitted it would divest the rights of other parties to the written document. We are, therefore, of the view that the subsequent oral arrangement set up by the defendant-appellant cannot be proved by the parol evidence. Such a evidence is not admissible in evidence. "

5. Learned Public Prosecutor placed reliance on the counter affidavit filed by first respondent to inform that allegations of complainant are matters to be investigated. It is seen that allegations of withholding part of sale consideration on promise of payment after registration of the sale deed are reiterated in the counter affidavit. The delay in preference of complaint is sought to be explained by informing that complainant feared for his life.

6. The complaint leading to registration of case in Crime

No.108 of 2011 on the file of 1st respondent is found to be malafide in that in earlier complaint regards the same transaction no allegation has been made against petitioner in Crl.O.P.No.4825 of 2012. Even in seeking registration of case on such earlier complaint dated 07.07.2011 through Crl.O.P.No.18573 of 2011 nothing was stated against petitioner.

For the aforesaid reason, both the Criminal Original Petitions are allowed and the complaint registered against the petitioners in Crime No.108 of 2011 on the file of first respondent stands quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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TO

1. The Inspector of Police,
Central Crime Branch,
Coimbatore City,
Crime No.108 of 2011.

2. The Public Prosecutor,
High Court, Chennai.

+2cc to Mr.R.Vivekananthan, Advocate SR.No.24976

सत्यमेव जयते

Crl.O.P.Nos.4825 of 2012

&
Crl.O.P.No.23067 of 2014

GN(01/11/2017)

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