IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.10825 of 2010

1.S.P.Velayutham

2.V.Amar ... Petitioners/1 & 2 Accused

vs.

1.Inspector of Police,
Central Crime Branch,
Chennai Sub Urban Police,
St. Thomas Mount,
Chennai - 600 016.
(Ref. Cr.No.41 of 2009 dated 18.04.2009)

2.Arun Builders Pvt. Ltd.,

3.Fashion Builders Pvt. Ltd.,

4.Income Builders Pvt. Ltd.,

5.Good Neighbours Pvt. Ltd.,

6.Infovision Pvt. Ltd.,
(rep. by their Authorised Signatory
Mr.D.Gobichandran)

(Respondents 2 to 6 impleaded as per the
order of this Court dated 22.09.2010 in MP.No.2 of 2010)

7.Asset Reconstruction Company India Ltd.,
Rep. by its Chief Manager Legal
Mr.S.Sarvanan
... Respondents

(7th Respondent impleaded as per the
order of this Court dated 05.06.2017 in
Crl.M.P.No.6906 of 2017 in Crl.O.P.No.10825 of 2010)

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the

First Information Report in Crime No.41 of 2009, registered by the respondent police for alleged offences under Sections 120-B, 465, 466, 467, 468 read with 420, 109, 471 IPC.

For Petitioners: Mr.R.Krishnamurthy, Senior counsel
Mr.V.Raghavachari
for M/s.M.Jeeva

For Respondents: Mr.P.Rajarathinam (for R1)
Public Prosecutor
Assisted by Mr.P.Govindarajan,
Additional Public Prosecutor

Mr.N.Ramakrishnan (for R2 to R6)
for M/s.Waron and Sai Ram

Mr.P.H.Aravind Pandian, Senior counsel
for M/s.Akhil R.Bhansali (for R7)
(proposed respondent)

JUDGMENT

The above Criminal Original Petition has been preferred under Section 482 of Cr.P.C. seeking to quash the F.I.R. in Crime No.41 of 2009, on the file of the 1st respondent police, wherein the petitioners have been arrayed as 1st and 2nd accused for alleged commission of offences under Sections 120-B, 465, 466, 467, 468 read with 420, 109, 471, IPC, based on the complaint preferred by one, D.Gopichandran, on behalf of five different companies viz., the respondents 2 to 6.

2.The criminal law has been set in motion by the said D.Gopichandran, as a power of attorney agent of the respondents 2 to 6, who are in turn the power agents of various individuals claiming to be the owners of a vast extent of land at Alandur Village, Kancheepuram District. The present complaint has been preferred as against the petitioners herein (1st and 2nd accused) and four others, alleging that a sale deed, a settlement deed and agreements were executed by them with respect to the above said land, without having any right or title over the said land. It appears that the respondents 2 to 6 have mortgaged the said land to Indian Bank, who had later assigned the mortgage in favour of Asset Reconstruction Company (India) Ltd. (ARCIL), which has been impleaded in this original petition as the 7th respondent.

3.I heard the learned senior counsel, Mr.R.Krishnamurthy and Mr.V.Raghavachari, appearing on behalf of the petitioners, Mr.P.Rajarathinam, learned Public Prosecutor, appearing for the 1st respondent, Assisted by Mr.P.Govindarajan, learned Additional Public prosecutor, Mr.N.Ramakrishnan, learned counsel appearing for the respondents 2 to 6 and the learned senior counsel Mr.Aravind Pandian, appearing for the 7th respondent. Perused the voluminous documents produced on behalf each parties, including the case dairy submitted by the 1st respondent police.

4.The only issue that has to be decided in the above original petitions is whether the case of the prosecution, if assumed to be true in its entirety, would render the petitioners criminally liable. The brief set of facts, as reflected in the impugned FIR that are essential to determine the above issue can be summarized as follows:

(i) A vast extent of land at Alandur Village, Kancheepuram District was owned by one, Sriramulu Reddiar, disposed off various portions of the said land and retained an extent of about 1.87 Acres only. Pertaining to the said extent of 1.87 Acres, a Partition Deed was executed between the said Sriramulu Reddiar and his five sons on 19.09.1977, which was registered as Document No. 2124 of 1980, on the file of the Sub Registrar, Alandur. By virtue of the said partition, one of the sons of the said Sriramulu Reddiar namely, Deenadayalu Reddiar (3rd accused) had derived an extent of 31 cents of land.

(ii) During 1985 to 1986, the said Sriramulu Reddiar and his sons, including the said Deenadayalu Reddiar had sold the said extent of about 1.87 Acres also in favour of various persons. Subsequently, an extent of about 150 grounds comprised in Survey No.16, 17, 18, 19 and 21 of Alandur Village, which was originally owned by Sriramulu Reddiar was purchased by one, M.Subramanian and others through various Sale deeds. After the purchase of the lands, the said M.Subramanian and others have been in joint possession and enjoyment of the properties and the revenue records were transferred into their respective names.

(iii) Subsequently, the said M.Subramanian and others, through their Power of Attorney Agents namely the 2nd to 6th respondents herein had mortgaged approximately 120 grounds of the said land at Alandur Village to Indian Bank by depositing the original title deeds.

(iv) From the year 1997, Indian Bank had been issuing repeated advertisements in news papers, publicizing the fact of mortgage of 120 grounds of land. In the year 2002, Indian Bank posted its security personnel in the mortgaged property. During January, 2005, Indian Bank initiated proceedings under the SARFAESI Act and subsequently during March, 2005, took possession of the said 120 grounds.

(v) On 23.08.2006, the said Deenadayalu Reddiar and his son, K.Venkatakrishnan (4th accused), executed a Power of Attorney Deed in favour of the first petitioner herein, which was registered as Doc.No2115/2006 on the file of the Sub Registrar, Velacherry, with respect to an extent of 9.92 Acres of land, which included the above said 150 grounds of land.

(vi) On 05.07.2007, the said Deenadayalu Reddiar and K.Venkatakrishnan, through their Power of Attorney Agent, the first petitioner herein, had executed a sale deed, registered as Document No. 2179 of 2007, on the file of the Sub Registrar, Alandur, thereby transferring the entire extent of 9.92 Acres of land in favour of the second petitioner herein, who is the son of the first petitioner.

(vii) Further, the petitioners had executed two agreements dated 24.05. 2007 and 29.08.2008, to support their claim over the said land and also had the revenue records mutated in the name of the 2nd petitioner. Subsequently, on 19.10. 2008, the second petitioner had executed a settlement deed in favour his father, the first petitioner, which was registered as Document No.2881 of 2008, on the file of the Sub Registrar, Alandur.

(viii) It is the further case of the prosecution that Indian Bank had assigned their mortgage rights in favour of the 7th respondent herein by way of an Assignment Agreement dated 07.12.2007, registered as Document No. 3788 of 2007, on the file of the Sub Registrar, Alandur, whereby the 7th respondent has stepped into the shoes of Indian Bank.

5.On the other hand, the learned senior counsel appearing on behalf of the petitioners had substantiated the title of the first petitioner over the land in question in the following manner:

(i) The land comprised in Town Survey Nos. 16, 17, 18, 19 and 21 of Alandur Village, admeasuring about 9.92 Acres originally belonged to one, Lokanatha Reddiar. The said Lokanatha Reddiar mortagaged the said land in favour of Sriramulu

Reddiar, by way of a mortgage deed dated 28.09.1929, registered as Document No. 1631 of 1929, on the file of the Sub Registrar, Saidapet.

(ii) Subsequently, the said Lokanatha Reddiar sold the land in favour of Sriramulu Reddiar, by way of a Sale deed dated 22.12.1937, registered as Document No. 2061 of 1937, on the file of the Sub Registrar, Saidapet.

(iii) Thereafter, Sriramulu Reddiar executed a Settlement Deed dated 16th September, 1942, in favour of his only son, Deenadayalu Reddiar and daughter-in-law, Lalitha Kumari, with respect to the said land, which was registered as Document No. 170 of 1943, on the file of the Sub Registrar, Saidapet. Though the document was titled as 'Settlement Deed', it was in fact only a Will and the terms provided for transfer of interest only after the death of Sriramulu Reddiar.

(iv) Sriramulu Reddiar had cancelled the said Will (Settlement Deed), by executing a Revocation and Cancellation Deed dated 02.03.1949, registered as Document No. 383 of 1949, on the file of the Sub Registrar, Saidapet. Thus, ever since 1937, Mr. Sriramulu Reddiar was in possession and enjoyment of the land as absolute owner till his demise on 23.04.1979.

(v) However, the said Lalitha Kumari settled the land in favour of one, Kuppusamy Reddy and P.Rajadurai, by way of a Settlement Deed dated 17th June, 1949, registered as Document No. 1798 of 1947, on the file of the Sub Registrar, Saidapet. The said Settlement Deed is null and void and it was never acted upon.

(vi) After the death of Sriramulu Reddiar, the land was inherited by his only son, Deenadayalu Reddiar. The said Deenadayalu Reddiar, along with his son, Mr. Venkatakrishnan had appointed the first petitioner herein as their Power of Attorney Agent to deal with the said land, by way of a Power Deed dated 23.08.2006, registered as Document No. 2115 of 2006, on the file of the Sub Registrar, Velacherry. Subsequently, the said Deenadayalu Reddiar and Venkatakrishnan had executed another General Power of Attorney Deed dated 07.06.2007 in favour of the 1st petitioner herein, thereby authorizing him to deal with the above said land in all manner, including sale.

(vii) The first petitioner herein, in his capacity as the Power Agent of Deenadayalu Reddiar and Venkatakrishnan, sold the land in favour of the second petitioner herein, by way of a Sale Deed dated 05.07.2007, registered as Document No. 2179 of 2007, on the file of the Sub Registrar, Alandur.

(viii) Subsequently, the second petitioner herein settled the land in favour of the first petitioner herein, by way of a Settlement Deed dated 13.10.2008, registered as Document No. 2881 of 2008, on the file of the Sub Registrar, Alandur. The revenue records, electricity service connection, etc., stand in the name of the first petitioner and he is in absolute possession and enjoyment of the property till date as its sole and exclusive owner.

6.The learned senior counsel appearing on behalf of the petitioners had further submitted that proceedings under Section 145, Cr.P.C. was initiated with respect to the above land, by the Sub-Divisional Magistrate/ Revenue Divisional Officer, Tambaram, vide M.C.No.Na.Ka.4761/2009C, by summoning all the claimants of the property, including the first petitioner and the defacto complainant, Mr. D.Gopichandran. Following a detailed enquiry, the Sub-Divisional Magistrate had by way of an order dated 01.04.2010 found that the said property is in the possession of the first petitioner and the other claimants were directed to approach the appropriate civil forum to establish their rights over the said property. The said order passed by the RDO, Tambaram was challenged by the defacto complainant before this Court in Crl.R.C.No.760 of 2010 and the same was dismissed by way of an order dated 04.07.2012 and the order passed by the Sub-Divisional Magistrate was upheld. The order in Crl.R.C.No.760 of 2010 in para 27 and 28 as follows:

“27.On verifying the facts and circumstances of the case and arguments advanced by the learned senior counsel, Mr.B.Kumar, for the revision petitioner and arguments advanced by the learned senior counsels, Mr.R.Krishnamoorthy and Mr.A.Ramesh for M/s.Vedavalli Kumar and Mr.S.Vasudevan, learned counsels for the fourth respondent and arguments advanced by Mr.Muthappan, learned counsel for the fifth respondent and on scrutinizing the impugned order passed by the second respondent herein, viz., Sub Divisional Magistrate and the Revenue Divisional Officer, Tambaram, in his proceedings in M.C.No.Na.Ka.4761 of 2009, dated 01.04.2010, and this Court's findings listed as (i) to (xi), this Court dismisses the revision along with impleading petition and confirms the impugned order passed by the second respondent herein. Thirumaniselvam was shown as the 'A' party in the R.D.O. Proceedings. He has not filed any revision before this Court. However, one Mr.Ravikumar claiming through Thirumaniselvam filed Crl.R.C.No.613 of 2010 before this Court. He withdraw the revision as not pressed, which was also ordered accordingly.

28.Resultantly, the above revision is dismissed. Consequently, the impugned order passed in M.C.Na.Ka.4761 of 2009, on the file of the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram, dated 01.04.2010 is confirmed and the impleading petition in M.P.No.1 of 2012 is dismissed. Accordingly ordered."

7.Challenging the said order dated 04.07.2012 passed by this Court, the defacto complainant had approached the Hon'ble Supreme Court vide S.L.P.(Crl.)Nos.7548 and 7549 of 2012 and the same were dismissed as withdrawn on 15.10.2012. The Hon'ble Supreme Court has passed the order as follows:

"The special leave petitions are dismissed as withdrawn."

8.Thereafter, the 7th respondent, had proceeded to challenge the order dated 01.04.2010, passed by the Sub Divisional Magistrate, Tambaram before this Court in Crl.O.P.No.27317 of 2010, which was also dismissed by way of an order dated 06.11.2014, holding that the remedy for the 7th respondent shall lie before the Civil Court. This Court on 06.11.2014 in Crl.O.P.No.27317 of 2010 has passed the order in paras-6, 7 and 8 as follows:

"6.In my considered opinion, the petition deserves only to be dismissed, in view of the order passed by this Court in Crl.R.C.No.760 of 2010. The learned counsel appearing for the petitioner would submit that because of the order passed by the Revenue Divisional Officer, the petitioner is not in a position to make any developmental activities in the property. In this regard, I may refer to paragraph No.26(ix) of the order of this Court in the Crl.R.C.No.760 of 2010, which reads as follows:

"26(ix). The impleading petitioner viz., Asset Reconstruction Company (India) Ltd., had financed the Indian Bank, Chennai, who is the mortgagee of the property, to an extent of 120 grounds including the disputed property. The impleading petitioner's civil rights and physical possession of the property can be established only before a civil Court. This impugned order has been made only to maintain law and order and had been passed according to criminal procedure code. As such the rights of the impleading petitioner will not be in any away affected by the impugned order."

7.This Court has already clarified that the order of the Revenue Divisional Officer is not final and the petitioner has to workout his remedies before the Civil Court. Therefore, it is not proper for the petitioner to approach this Court seeking to quash the very same order. The remedy for the petitioner as has been clarified by this Court in the criminal revision petition is before the Civil Court.

8.In such view of the matter, this petition is not maintainable and the same is accordingly dismissed. Consequently, the connected miscellaneous petitions are closed."

9.The said order passed by this Court was challenged by the 7th respondent before the Hon'ble Supreme Court in S.L.P.(Crl.) No.838 of 2015 and the same was also dismissed on 27.02.2015, by confirming the view of this Court that the appropriate course of action would be to approach the Civil Court. The Hon'ble Supreme Court has passed the order as follows:

"We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the petitioner. We have also heard the learned counsel for respondent no.3, who has entered appearance on caveat.

According to the learned counsel for the petitioner, findings on title and possession have been recorded in the order passed by the Magistrate on 1.4.2010, and they would prejudice the petitioner in all judicial proceedings. Having given our thoughtful consideration, and keeping in mind the mandate contained in Section 145(4) of the Cr.P.C., it is apparent, that the determination of the Magistrate is without reference to merits of the claims of any of the parties. Even, learned counsel representing the caveator states, that he has no objection if an order is passed to the effect, that the order passed by the

Magistrate on 1.4.2010 would not be treated to be an order on merits either on the question of possession or on the question of title. We affirm the aforesaid legal position by clarifying, that the observations recorded by the Magistrate in the order dated 1.4.2010, will not be treated as a binding determination on the issues pertaining to possession and title.

In view of the above, we are satisfied that the interests of the petitioner were fully protected by the High Court, by relegating the petitioner to seek the redressal of its grievance, before a competent civil Court.

Disposed of in the above terms."

10.The learned senior counsel appearing on behalf of the petitioners had further submitted that the present complaint is an abuse of process of law and the police machinery is being misused for settling private scores. While the prosecution has admitted that the entire extent of land originally belonged to Sriramulu Reddiar, they have not produced any document to show that he had transferred the property in favour of the principals of the defacto complainant or their purported predecessors in title. It was further submitted on behalf of the petitioners that civil suits have been filed by the respondents 2 to 6 in O.S. Nos.33, 35 and 45 of 2009, before the learned District Munsif, Alandur, challenging the title deeds of the petitioners herein and that the said suits are still pending.

11.It was also brought to the notice of this Court that a prosecution has been initiated by the Central Bureau of Investigation as against few officials of Indian Bank and other individuals belonging to the respondents 2 to 6 for defrauding Indian Bank by raising loan on the aforesaid land without verifying its title and flouting the banking norms and the same is pending in C.C. No. 36 of 1998, on the file of the learned XIth Additional Fast Track Court, Chennai. It was contended on behalf of the petitioners that the present complaint has been preferred by suppressing the above prosecution with an ulterior motive.

12.It was further contended on behalf of the petitioners that while a partition deed is claimed to have been executed by Sriramulu Reddiar and his sons on 19.09.1977, the same has been registered only in the year 1980, whereas Sriramulu Reddiar died on 23.04.1979 itself. Further, the recitals of the said

Partition Deed state as if the land was an ancestral property of Sriramulu, while in fact he had purchased the same by way of a sale deed in the year 1937. It was submitted that the above factors create a suspicion on the genuineness of the said partition deed and the same cannot be a basis for holding that the title of the 1st petitioner is defective.

13.On the other hand, the learned Public Prosecutor as well as the learned counsel appearing on behalf of the other respondents have put forth their contentions based on the allegations contained in the FIR. It was pointed out that the sale deed dated 05.07.2007 was executed by the 1st petitioner in favour of the 2nd petitioner for a meagre sale consideration of Rs.5 Crores, while the market value of the property was more than Rs.150 Crores and that the fact of undervaluation of the property would show that the transaction was not bonafide. The learned counsel for the petitioners had responded to the same stating that though the value of the property was higher, there were several encroachers in the land, who had to be evicted by making huge payments and that the said expenses had to be deducted from the sale consideration, whereby the net consideration was arrived at Rs.5 Crores. It was further submitted that the said sale deed was registered by paying a stamp duty of about Rs.15 Crores and that there was no intention on the part of the petitioners to undervalue the property.

14.Be that as it may, the quantum of sale consideration can never determine the validity of any sale transaction if other legal requirements are complied with. There is no allegation that the petitioners have caused any loss to the State Exchequer by undervaluing the property nor the vendors in the sale deed have disputed the quantum of sale consideration. On the other hand, the private respondents, who dispute the title of the 1st petitioner, seek to dump the said sale as a sham transaction on the ground of adequacy of sale consideration, which is neither permissible nor sustainable.

15.The only grievance of the respondents 2 to 6/ defacto complainant as well as the 7th respondent is that the petitioners have executed few documents pertaining to a property without having any title over the same. There is not even an iota of allegation to the effect that the petitioners or the other accused had committed forgery by creating any false document as defined under the Indian Penal Code or committed an offence of cheating by making any deceitful representation/ inducement. In such circumstances, I do not have any hesitation to hold that the impugned FIR is an abuse of process, which has to be quashed in exercise of the inherent jurisdiction of this Court.

16.The Hon'ble Supreme Court had in the case of Md. Ibrahim & Others versus State of Bihar & Another, reported in 2009 (8) SCC 751, held as follows:

> "12… When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.
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> …
>
> 14. … It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. … As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code."

17.In yet another case, the Hon'ble Supreme Court in the case of Ramesh Dutt & others versus State of Punjab & others, reported in JT2009(12)SC532, held as follows:

> "17. … In the facts and circumstances of this case, in our opinion, only because appellants are said to have transferred a portion of the property without having complete ownership over them by itself do not satisfy the ingredients of Sections 467, 468 and 469."

18.It is made clear from the above judgments of the Hon'ble Supreme Court that a person cannot be rendered criminally liable only because he has executed a document pertaining to a property without having right to do so. In the absence of any allegation reflecting the ingredients of any offence, the continuance of the criminal proceeding cannot be justified. Criminal proceedings cannot be used as a medium for finding solutions for title disputes over properties and the same cannot be entertained. As the allegations do not make out any offence of forgery or cheating, the charges under Sections 465, 466, 467, 468 read with 420, 109, 471, IPC has to be quashed.

19.As far as the charge of conspiracy under Section 120-B, IPC is concerned, the facts do not disclose any agreement to commit an illegal act or any act by illegal means, as stipulated under Section 120-A, IPC. It is further clear from the proviso clause to Section 120-A, IPC that criminal conspiracy come into play when commission of any other offence is involved. While the facts do not constitute commission of any offence, the theory of conspiracy does not have place to stand and as such the charge under Section 120-B is also unsustainable.

20.The learned senior counsel appearing for the 7th respondent would submit that a separate complaint on the same issue has been preferred before the CBI by the 7th respondent and an application in Crl.O.P.No.11060 of 2015 has been preferred before this Court seeking to register the said complaint, which is still pending. However, no material has been placed before me to even suggest commission of any offence by the petitioners in order to justify continuance of criminal investigation as against them and continuation of the impugned criminal proceedings cannot be justified solely on the ground that a fresh complaint has also been preferred.

21.While conceding to the fact that the investigation has not revealed any material to criminally implicate the petitioners, the Learned Public Prosecutor had sought time to further investigate into the complaint, on the ground that a new investigating officer has taken charge pursuant to the order dated 01.11.2016 passed by this Court in Crl.O.P.No.22473 of 2016. The order dated 01.11.2016 passed by this Court does not deal with the merits or demerits of the impugned FIR and the said order primarily pertains to another FIR relating to the same land, wherein the 1st petitioner is the informant.

22.It is to be noted that the impugned FIR has been registered on 18.04.2009 and more than eight years have passed since then. There was no bar to proceed with the investigation, except for a period of about 1½ years, when there was an order of interim stay of investigation by this Court in the present quash petition. While the investigation that has continued for years together has not revealed any incriminating material as against the petitioners, the request for further time without any basis or prima facie case cannot be accepted. The criminal proceedings cannot be allowed to continue on mere surmises, especially when the uncontroverted allegations put forth on behalf of the prosecution do not reflect commission of any offence.

23.In view of the above findings, this Criminal Original Petition is allowed, it is clear that the impugned F.I.R. is an off shoot of the title dispute between the parties and no criminality can be seen to justify continuation of criminal investigation based on the impugned F.I.R. Hence, the F.I.R. in Crime No. 41 of 2009, on the file of the 1st respondent police, is hereby quashed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Inspector of Police,
Central Crime Branch,
Chennai Sub Urban Police,
St. Thomas Mount,
Chennai - 600 016.
(Ref. Cr.No.41 of 2009 dated 18.04.2009)

2.The public Prosecutor,
High court,Madras.

+1cc to Mr.Akhil R.Bhansali, Advocate SR.No.46759
+1cc to Mr.Waroon & Sairams, Advocate SR.No.46739
+5cc to Mr.M.Jeeva, Advocate SR.No.46625

Crl.O.P No.10825 of 2010

KJI(CO)
GN(05/07/2017)