

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.06.2017

Pronounced on: 21.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.2984 of 2011
and
M.P.No.1 of 2011

P.D.Sivaji

.. Petitioner

Vs.

P.D.Balaji

.. Respondent

Petition filed under Section 482 Cr.P.C to call for the entire proceedings pending on the file of the learned XII Metropolitan Magistrate, Egmore, Chennai in C.C.No.4434 of 2010, against the petitioner and quash the same.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.S.Natana Rajan

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ORDER

This Criminal Original Petition has been filed by the petitioner to quash the private complaint filed against him by the respondent in C.C.No.4434 of 2010, before the learned XII Metropolitan Magistrate, Egmore, Chennai.

2.The respondent / complainant filed a private complaint under Sections 463 and 465 of IPC r/w Sections 200 and 357 of Cr.PC against the petitioner, which relates to the landed property situated in Old Door No.108, New Door No.165, Mount Road, Chennai-2. Originally the property was owned by one Smt.T.K.T.Nayagammal. She settled the property in favour of her two daughters, viz. Smt.Sivabhushanammal and Smt.M.Kokilambal. After the death of the said Nayagammal, the said Sivabhushanammal became the absolute owner of the undivided half share of the property. Sivabhushanammal passed away on 13.04.1994. Before her death, she executed a settlement deed on 19.11.1979 in favour of the complainant/respondent herein. After the death of the said Sivabhushanammal, the complainant was collecting the rent from the tenant and after meeting all the maintenance expenses, the complainant was sharing the mesne profits with the legal heirs of the late Smt.Kokilambal. Enraged by the same, the petitioner herein, who is the blood brother of the respondent herein, instigated P.S.Deivaprasad @ P.S.Veerabadran, the father of the petitioner and the respondent herein, to file a suit and a suit was filed in C.S.No.55 of 1996 before this Court for a declaration that the said P.S.Deivaprasad @ P.S.Veerabadran alone is entitled to the undivided half share of late Smt.Sivabhushanammal and that the

settlement deed dated 19.11.1979 executed by Smt.Sivabhushanammal is void in law and also for a permanent injunction restraining the complainant from collecting any rent from the property in question. The said suit was decreed as prayed for. As against the judgment passed in the civil suit, the complainant filed an appeal in O.S.A.No.36 of 2001 in which a compromise was effected whereunder the title of the complainant in respect of the undivided half share of the property derived by the complainant through the settlement deed executed by the late Sivabhushanammal was confirmed and a decree was also passed in the said O.S.A. accordingly to that effect on 01.02.2006. While this being the position, according to the complainant, on 21.04.2006, the petitioner herein executed a settlement deed in favour of his wife Smt.S.Kanyakumari, alleging that by virtue of the earlier judgment passed in C.S.No.55 of 1996, the undivided half share in the property devolved upon (1)P.S.Deivaprasad (2)D.Yasodha (3)P.D.Dilipkumar (4)P.D.Balaji (5)P.D.Sivaji (6)P.D.Rajendran (7)P.D.Raman and (8)T.Karpagavalli, as the legal heirs of the said Sivabhushanammal, knowing fully well that the settlement deed would affect the absolute title of the complainant over the undivided half share of the property in question.

3.It is stated in the private complaint filed by the respondent/ complainant that he lodged a complaint on 27.06.2006 before the Commissioner of Police, Chennai against the petitioner herein and the same was registered by the police as C.No.5113/COP/ Vis/06 and the complainant also appeared before the Sub-Inspector of Police, Central Crime Branch, Chennai, furnishing and explaining the entire details. Since the police was postponing further course of action on the said complaint, the complainant approached this Court by filing a Criminal Original Petition in CrI.O.P.No.7350 of 2010. When the said Criminal Original Petition came up for hearing, it was represented by the police that petition enquiry had been conducted and it was concluded that the dispute is of civil in nature. This according to the complainant, is not at all correct. Since the said conclusion arrived at by the police had not been informed to the complainant, this Court passed an order on 21.04.2010 granting liberty to the complainant to proceed against the proposed accused before the appropriate forum.

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4.Stating so, the private complainant was lodged by the respondent herein, against the petitioner herein. Challenging the same, the present Criminal Original Petition is filed.

5.The learned counsel for the petitioner submits that the allegations made in the complaint does not constitute offences punishable under Sections 463 and 465 of IPC. He submitted that the dispute with regard to partition of the ancestral property between the blood brothers had arisen on account of the respondent/ complainant trying to engulf the entire property and only in order to subdue the petitioner, the respondent herein had come forward to file the baseless criminal complaint. The allegations made in the complaint are absolutely false and it does not attract criminal jurisprudence and the contents of the complaint is insufficient to proceed against the petitioner in the criminal proceedings. Hence, it attracts only civil law and not otherwise. The learned counsel mainly contended that the petitioner was not a party to the compromise said to have been effected between the petitioner and the respondent and it was made fraudulently between the respondent and the deceased father P.S.Deivaprasad @ P.S.Veerabadran. Hence, the said compromise is not enforceable against the petitioner and the other co-owners of the property. He also specifically stated that the aforesaid compromise cannot dislodge the specific findings rendered on merits in the judgment passed in C.S.No.55 of 1996. Stating that it is only a civil dispute and the criminal proceedings will not lie against the petitioner, the learned counsel for the petitioner prayed this Court to quash the

private complaint filed by the complainant / respondent. The learned counsel also submitted that the period of limitation for filing the private complaint is one year, starting from 27.06.2006 to 26.06.2007 in the present case, and in any event the private complaint in respect of the above non-cognizable offence should have been filed on or before 26.06.2009, but the complainant had filed the Criminal Original Petition before this Court to register the complaint, belatedly after three years and without any petition to condone the delay under Section 473 of Cr.PC, the petitioner filed the private complaint on 09.07.2010, which is absolutely time barred in view of various decisions rendered by the Hon'ble Supreme Court.

6.The learned counsel for the petitioner relied upon the following decisions:

(a) Judgment of the Hon'ble Supreme Court in Crl.Appeal No.1010 of 2003 dated 18.08.2003 (Ramesh Chandra Sinha and Ors. v. State of Bihar and Ors.) to emphasise the principle that taking cognizance long after three years clearly barred by limitation under Section 468(2) of Cr.PC.

(b) Order of this Court rendered in Crl.M.P.No.2801 of 1982 dated 04.10.1985 (Kathamuthu v. Balammal) to emphasise the

principle that condonation of delay must precede the taking cognizance of the offence and that the Magistrate is not competent to condone delay after taking cognizance of the complaint. In that case, this Court quashed the order of the Magistrate on the ground that condoning the delay under Section 473 of Cr.PC after taking the complaint on file cannot stand.

(c) Order of this Court in Crl.O.P.(MD)No.6457 of 2008 dated 03.09.2010 (M.Sathianathan v. The State of Tamil Nadu by its Inspector of Police, Kalayarkoil Police Station and another), wherein the proceedings against the petitioner therein was quashed on the ground that the charge sheet filed was barred by limitation.

(d) Order of this Court in Crl.O.P.No.7425 of 2016 dated 29.04.2016 (N.Ravichandran v. The State of Tamil Nadu), wherein the entire proceedings was quashed since charge sheet was not filed within the time.

7. Stating so, the learned counsel for the petitioner prayed this Court to quash the private complaint filed by the complainant / respondent.

8.The learned counsel for the respondent submitted that the petitioner is not a party either in C.S.No.55 of 1996 or in O.S.A.No.36 of 2001, and hence the petitioner cannot claim any share in the property in question. He also submitted that the petitioner created some bogus documents as he happened to be the Councillor. Reiterating the submissions made on behalf of the respondent herein in C.S.No.55 of 1996 and O.S.A.No.36 of 2001 and also denying the averments made on behalf of the petitioner as false, the learned counsel for the respondent prayed for dismissal of this Criminal Original Petition.

9.Heard the learned counsel on either side and perused the materials available on record.

10.The property dispute relates to the landed property situated in Old Door No.108, New Door No.165, Mount Road, Chennai-2. Originally the property was owned by one Smt.T.K.T.Nayagammal. After the death of the said Nayagammal, her daughter by name Sivabhushanammal became the absolute owner of the undivided half share of the property. After the death of Sivabhushanammal on 13.04.1994, as per the settlement deed executed by her on

19.11.1979, the complainant / the respondent herein, became the absolute owner of the undivided half share of the property in question. The petitioner herein is none other than the blood brother of the respondent herein. It is seen from the materials available on record that the father of the petitioner and the respondent herein, filed a suit in C.S.No.55 of 1996 before this Court for a declaration that the said P.S.Deivaprasad @ P.S.Veerabadran alone is entitled to the undivided half share of late Smt.Sivabhushanammal and that the settlement deed dated 19.11.1979 executed by Smt.Sivabhushanammal is void in law and also for a permanent injunction restraining the complainant from collecting any rent from the property in question and the suit was decreed as prayed for. Thus it is clear that the petitioner herein was not a party in the suit filed in C.S.No.55 of 1996, even though it is stated by the respondent herein in the private complaint that at the instigation of the petitioner herein, the said suit was filed by their father.

11.Further, it is seen that an appeal was filed in O.S.A.No.36 of 2001 by the respondent herein/complainant, wherein a compromise was effected in which the title of the complainant in respect of the undivided half share of the property derived through the settlement deed said to have been executed by the late Sivabhushanammal was

confirmed and a decree was also passed in the said O.S.A. accordingly to that effect on 01.02.2006. A copy of the compromise memo has also been enclosed in the typed set of papers in which the contesting parties, ie., the appellant (the respondent herein) and the first respondent therein (father of the petitioner and the respondent herein), have signed. Thus, the petitioner herein was not a party in the appeal also, as rightly stated by the learned counsel for the respondent. In the said circumstances, according to the learned counsel for the respondent, the petitioner herein executed a settlement deed in favour of his wife relying upon the judgment made in C.S.No.55 of 1996, which action prompted the respondent to file the private complaint and the said private complaint was filed only after obtaining an order from this Court on 21.04.2010 in CrI.O.P.No.7350 of 2010, to proceed against the proposed accused before the appropriate forum, since the complaint filed by the respondent against the petitioner herein was periodically postponed.

12.In view of the above stated reasons, the Criminal Original Petition deserves to be dismissed and accordingly it is dismissed. Consequently, the connected miscellaneous petition is closed.

13.The decisions relied on by the learned counsel for the petitioner are with regard to the aspect of limitation as regards taking cognizance of the complaint and condonation of delay. These aspects have to be looked into only by the learned XII Metropolitan Magistrate, Egmore, Chennai, before whom the case in C.C.No.4434 of 2010 is pending. Considering the facts and circumstances of the case, the learned XII Metropolitan Magistrate, Egmore, Chennai, is directed to dispose of the case in C.C.No.4434 of 2010 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

Index : Yes/No
Internet : Yes/No

21.07.2017

KM

To

1.The XII Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
Madras High Court,
Chennai-600 104.

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R.MAHADEVAN, J.

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Pre-delivery Order made in
Crl.OP.No.2984 of 2011
and
M.P.No.1 of 2011

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