

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.04.2017

CORAM

THE HON'BLE JUSTICE MR.JUSTICE C.T.SELVAM

Crl.OP.No.27553 of 2014
and
M.P.Nos.1 of 2014 and 1 of 2015

1. Marayal
2. Ponnusamy
3. Soundararajan
4. Gandhimathi
5. Karuppayal
6. Jothi @ Rasammal
7. Kavitha @ Pappathy
8. Arukkayal
9. Ramasamy
- 10.S.Gunasekaran
- 11.K.Mohanasundaram
- 12.P.Eswaramurthy

...Petitioners

Vs

1.State rep. by
The Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Special Cell),
[Crime No.4 of 2014]
Tiruppur District.

2.C.PonnusamyRespondents

Criminal Original petition filed under section 482 of CrI.P.C., to call for the records pertaining to the FIR in Cr.No.4 of 2014 on the file of the first respondent police, quash the same.

For Petitioners : Mr.N.Manokaran

For Respondents :Mr.M.Mohamed Riyas
Govt. Advocate (CrI.side) for R1
Mr.A.S.Palanisamy for R2

ORDER

Petitioners seek to quash proceedings in Cr.No.4 of 2014 on the file of first respondent police.

2. Heard learned counsel for petitioners and learned Government Advocate for first respondent.

3. The case in Cr.No.4 of 2014 on the file of the first respondent has been registered for offences under Sections 420, 423, 467, 468, 471, 294(b)

and 506(ii) IPC.

4. In a line, the complaint of respondent is that quite against an exchange deed entered into between forefathers of second respondent/complainant and petitioners, petitioners had executed a Sale Deed wherein they had included the property which did not fall to their share under the Exchange Deed of 1970.

5. Learned counsel for petitioners submits that petitioners 1 to 9 were legal heirs of three original owners who had exchanged properties. Such petitioners traced title to property also through a Exchange Deed dated 09.08.2004 (Document No.1008/2004) and Partition Deed dated 10.10.2012 (Document No.5933/2012). Tenth petitioner (A14) had purchased an extent of 2.505 acres under a sale deed dated 25.08.2004 (Document No.1065/2004) from a successor in interest of one of the parties to the original Exchange Deed of the year 1970. He had effected sale in favour of eleventh petitioner (A15) in the year 2005. Twelfth petitioner (A18) had purchased an extent of 87 cents from petitioners 5 to 7 (A5 to A7) under a sale deed dated 03.06.2013 (Document No.1798/2013). Without disclosing the correct position, second respondent had preferred a private complaint before the Special Court for Land Grabbing cases and upon a direction u/s.156(3) Cr.P.C., first respondent had registered a case in Crime No.4 of

2014 against petitioners on 21.01.2014. Learned counsel submitted that having failed to exercise his right in civil law within the prescribed period of limitation, second respondent had resorted to abuse of the criminal law process.

6. Learned counsel for second respondent submitted that in executing documents between themselves viz., Exchange Deed dated 09.08.2004 and Partition Deed dated 10.10.2012, they had included therein properties which second respondent legally was entitled to and thus had sought to use the same against his interest.

7. This Court accepts the submission of learned counsel for petitioners that even if the allegations made in the First Information Report be true, no offences u/s.420, 423, 467, 468 and 471 IPC would be attracted following the rationale of the decisions of the Apex Court referred to hereunder:

(i) **Thermax Limited and others Vs. K.M.Johny and others [(2011) 13 SCC 412].**

"23. It is clear that in view of inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Section 420 IPC and also of the fact that at the most it is the dispute of civil nature, this Court quashed the orders of the Magistrate and the High Court.

34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding."

(ii) **Mohammed Ibrahim and Others Vs. State of Bihar and Another**
 [(2009) 8 SCC 751].

"15. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was

made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed."

**(iii) Devendra and others Vs. State of Uttar Pradesh and another [2009]
7 SCC 495**

"19. Making of any false document, in view of the definition of "forgery" is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

20. The appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, it would be the vendees and not the co-sharers. The appellants have not been alleged to be guilty of creating any false document.

8. As regards allegation of commission of offences u/s.294(b) and 506(ii) IPC, it is only to be stated allegations of such offences too easily can be made. In the instant case, such offences stand included upon second respondent informing that he was threatened and also informed that he would be done away with. No allegation in the First Information Report attracts offence u/s.294(b) IPC. As regards offence u/s.506(ii) IPC, there is nothing to indicate that second respondent was alarmed upon the threat allegedly meted out to him.

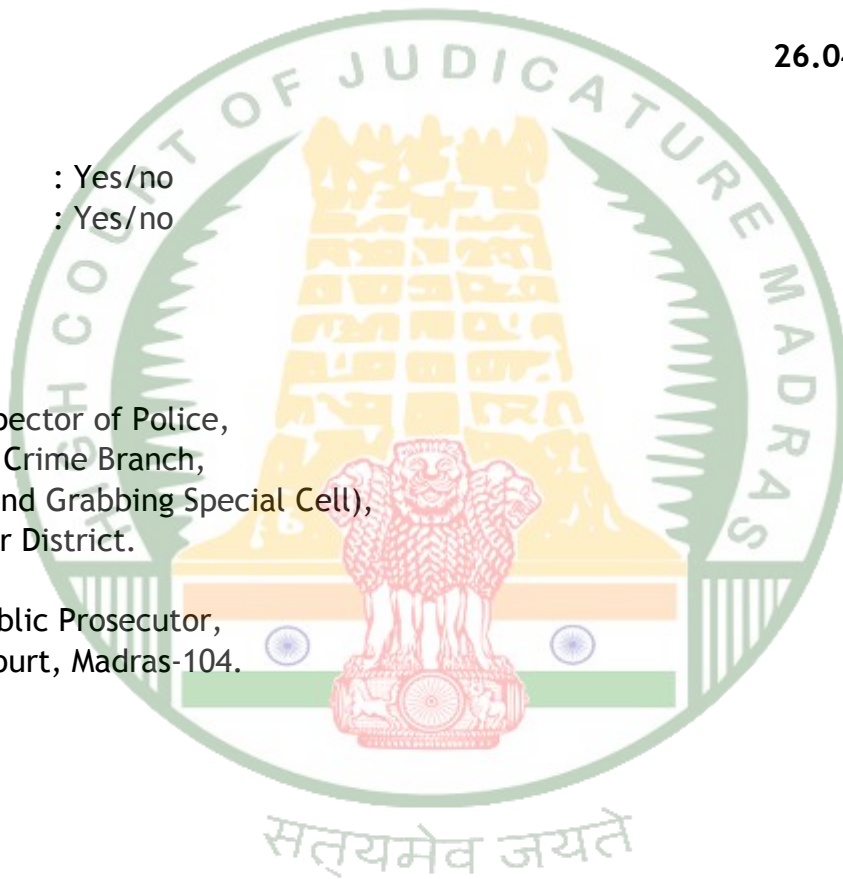
For the above said reasons, the Criminal Original Petition shall stand allowed and the proceedings in Cr.No.4 of 2014 on the file of the first respondent police is quashed. Consequently, connected miscellaneous petitions are also closed.

26.04.2017

Index : Yes/no
Internet : Yes/no
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To

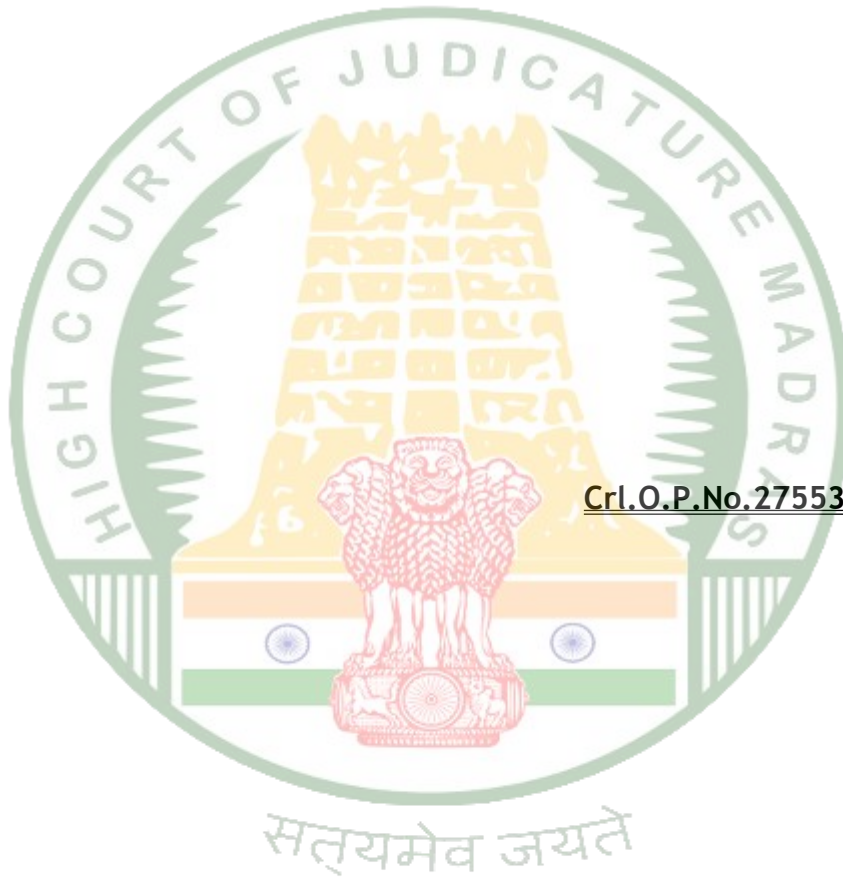
- 1.The Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Special Cell),
Tiruppur District.
2. The Public Prosecutor,
High Court, Madras-104.



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C.T.SELVAM, J

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