

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 10.03.2017

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.21574 of 2008
and
M.P.No.1 of 2008

1.S.Kasirajan
2.Selvaraj
3.K.Nagarani
4.S.Elangovan

.. Petitioners

Vs

P.Venkatesan

.. Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.11946 of 2008 on the file of X Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.D.Ravichander

For Respondent : No Appearance

ORDER

The petitioners have filed this petition to call for the records in C.C.No.11946 of 2008 on the file of the learned X Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

2. I heard Mr.D.Ravichander, learned counsel for the petitioners. No one entered appearance on behalf of the respondent. Perused the materials available on record.

3. The respondent filed a private complaint before the learned Xth Metropolitan Magistrate, Egmore, Chennai against the petitioners alleging that the petitioners 1 to 4 have jointly colluded with each other and created a false and forged sale deed to grab the respondent's property, thereby committed a fraud and cheated the respondent and therefore, they are liable to be punished under Section 420 IPC for their illegal act. The learned Xth Metropolitan Magistrate has taken cognizance of the complaint in C.C.11946 of 2008 and issued summons to the petitioners.

4. According to the petitioners, the learned Xth

Metropolitan Magistrate ought not to have taken cognizance of the complaint as the same is in nature of civil dispute and the learned Metropolitan Magistrate ought to have taken into consideration that Section 420 of IPC does not attract the present proceedings and therefore, the same is liable to be quashed. According to the petitioners, absolutely, there was no ground and a prima facie case has not been made out for Section 420 IPC.

5. In his complaint, the respondent, who is a developer of layout stated that the property measuring an extent of 35 cents bearing Survey No.29/6B originally belonged to one Manicka Chettiar and the same was subsequently transferred to his son Poongavana Chettiar. After the demise of Poongavana Chettiar, the said property belonged to his wife Rajambal and daughters Dhanam, Kasturi, Pounammal, Muniammal and son Subramanian. It is further stated that suppressing the fact that the wife of the respondent got the property by way of sale deed, Pounammal sold the property in favour of the 1st petitioner. According to the respondent, the 1st petitioner jointly colluded with the petitioners 2 to 4 dishonestly, fraudulently and cleverly cheated the respondent and thus, committed a criminal breach of trust.

6. Refuting the averments in the complaint, the learned counsel for the petitioners submitted that the learned Magistrate ought to have seen that the allegation made in the complaint is that Pounammal had executed a sale deed in favour of the 1st petitioner and hence, if at all aggrieved, Pounammal alone can make an allegation. This Court finds that there is some force in the submission of the learned counsel for the petitioners.

7. At the out set, it is to be noted that in respect of Survey No.29/6B, the 1st petitioner had filed suit O.S.No.263 of 2007 on the file of the Principal District Munsif Court, Gingee for partition and separate possession against the respondent/complainant and others. Similarly, the respondent/complainant has filed O.S.No.77 of 2007 on the file of the Principal District Court, Villupuram for specific performance and for permanent injunction in respect of Survey No.29/5 and both the suits are said to be pending before the respective Courts. Thus, it is clear that in respect of the property in question, a civil suit is pending between the parties.

8. In *Thermax Limited and others v. K.M.Johny and others*, reported in (2011) 13 SCC 412, the Hon'ble Supreme Court held thus:

"34. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal

proceeding."

9. The animosity and sour relationship of both the sides are evident by the case and counter case filed by either of the sides before the Civil Court. In the case of State of Haryana vs. Bhajan Lal, reported in 1992 Suppl. (1) SCC 335, one of the guidelines which enumerated, when inherent power under Section 482 Criminal Procedure Code can be invoked, is quoted hereunder:-

"Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In the case of Inder Mohan Goswami vs. State of Uttaranchal, reported in (2007) 12 SCC 1, it was observed that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

11. In the case on hand, civil proceedings are pending between the parties. In such view of the matter, this Court is of the view that the petitioners should not be made to face the rigmarole of the criminal prosecution. Thus, this Court is prima facie of the view that the criminal prosecution is used as an instrument of harassment for seeking private vendetta with an ulterior motive to pressurise the petitioners.

12. Considering the overall aspects of the matter, this Court is of the opinion that impugned criminal proceeding in C.C.No.11946 of 2008 is maliciously filed with oblique motive to pressurize the petitioners in the civil proceedings and the same is nothing but sheer and clear abuse and misuse of process of law and Court. In my considered view, this is a fit case to exercise extraordinary powers under section 482 of the Code of Criminal Procedure and to quash the criminal proceedings.

13. In such view of the matter, this criminal original petition is allowed and C.C.No.11946 of 2008 pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The X Metropolitan Magistrate,
Egmore, Chennai.

+lcc to Mr.D.Ravichandran, Advocate, S.R.No.15559

CRL.OP.No.21574 of 2008 and
M.P.No.1 of 2008

rrs 31/10/2018



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