



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.03.2017

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WEB COPY

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.2910 of 2016
& Crl.M.P.(MD) No.1436 of 2016

1. Sivasubramanian
2. Prema

... Petitioners/A1 & A2

-vs-

1. The State of Tamil Nadu
Rep. by The Inspector of Police,
District Crime Branch,
Kanyakumari District
(Crime No.69/2015)

2. S.Nagar ... Respondent/Informant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the criminal case now pending in Cr.No.69 of 2015 on the file of District Crime Branch, Kanyakumari District and quash the same.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)
For R2 : Mr.G.K.R.Pandian

Reserved on	Pronounced on
13.03.2017	22.03.2017

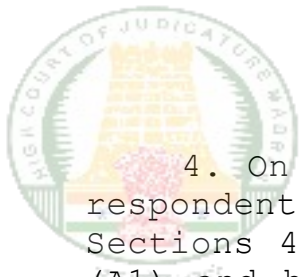
O R D E R

This petition has been filed to call for the records relating to the criminal case now pending in Cr.No.69 of 2015 on the file of District Crime Branch, Kanyakumari District and quash the same.

2. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) appearing for the State and the learned counsel for R2.

<https://hcservices.ecourts.gov.in/hcservices/>

3. For the sake of convenience, the parties will be referred to as the defacto complainant and the accused.



4. On the complaint given by the defacto complainant, the 1st respondent police registered a case in Crime No.69 of 2015 under Sections 468, 469, 471, 420 and 120(B) IPC against Sivasubramanian (A1) and his wife Prema (A2), for quashing which, the accused are before this Court.

5. The facts admitted by both sides are as under:

i) The accused are the owners of a land in S.Nos.142/4 and 142/5 and they have promoted a layout of seven plots. As a pre-requisite, the accused executed a Gift Deed dated 27.08.2009 in favour of the Governor of Tamil Nadu, gifting 64.416 sq.mtrs (1.591 cent) for common pathway and thereafter, obtained permission for layout.

ii) It is the case of the defacto complainant that he had purchased a property adjacent to the layout and that the access to his property is through the pathway measuring 64.416 sq.mtrs (1.591 cent) and that the accused had sold a portion of the land in that pathway to one Arulraja and therefore, the accused had committed the aforesaid offences.

6. Learned counsel for the petitioners submitted that the defacto complainant is the neighbour and he has not purchased any land in the layout promoted by the accused. If at all he needs a right of way, he will have to work out his remedy only through the Civil Court and criminal prosecution cannot be maintained.

7. Per contra, learned counsel for the defacto complainant placed strong reliance on the communication dated 30.10.2015 sent by the Block Development Officer, Agastheeswaram Panchayat Union to the Tahsildar, Nagercoil, wherein it is stated that the accused had sold a portion of the pathway to Arulraja and requested the Tahsildar to cancel the sub-division of S.No.142/4A of the said property and further remove the encroachments thereon.

8. As contended by the learned counsel for the accused, the defacto complainant is only a neighbour and he cannot assert any right of way by way of filing a criminal complaint. However, if the accused had sold a portion of the property that was in fact gifted by Gift Deed dated 27.08.2009 to the Panchayat, the same cannot be sold, as it amounts to selling the Panchayat is property.

9. Mr.Dilip Kumar, learned counsel for the petitioners/accused submitted that the accused had not sold any portion of the pathway to Arulraja and that whatever was gifted by Gift Deed dated 27.08.2009 is in tact.

10. Mr.G.K.R.Pandian, learned counsel for the defacto



complainant / R2 submitted that the approved layout has only seven plots and the accused had sold Arulraja the 8th plot, which does not form part of the layout.

11. In reply to his submission, Mr. Dilip Kumar, learned counsel for the petitioners/accused submitted that if the accused had sold a plot belonging to him in violation of the approved plan, a criminal case against the accused cannot be registered on the instance of a third party.

12. There is sufficient force in the submission of Mr. Dilip Kumar, learned counsel for the petitioners/accused, inasmuch as if there is a plan violation, that will not attract the provisions of Indian Penal Code. However, if it is found that the property sold by the accused to Arulraja was already gifted to the Panchayat through Gift Deed dated 27.08.2009, then such sale would amount to cheating the Panchayat.

13. The best way to resolve this dispute is only by having the land measured through a Taluk Surveyor in the presence of the Revenue Officials and the accused.

14. In the result, this petition is dismissed with a direction to the respondent police to immediately take steps to have the East-West pathway (described as 2nd Item) measured according to the measurement given in the Gift Deed dated 27.08.2009. If it is found that the accused had not sold the land that was gifted to the Panchayat, it is needless to state that the prosecution against the accused should be dropped. If it is found otherwise, then the prosecution should proceed against the accused and the land should be reclaimed by Tahsildar, Nagercoil. The Tahsildar, Nagercoil is directed to render all assistance to the Investigating Officer by deputing a Taluk Surveyor and the Village Administrative Officer for measurement of the property within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Inspector of Police,
Dangur, Police Station, Crime Branch,
Kanyakumari District.
Crime No.69/2015



2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3. The Block Development Officer,
Agastheeswaram Panchayat Union,
Kanyakumari District.

4. The Tahsildar,
Agastheeswaram at Nagercoil.

+ 1 CC TO Mr.G.K.R.PANDIAN, ADVOCATE IN SR No. 14549
+1cc to M/S.N. DILIP KUMAR, ADVOCATE SR.No. 16449

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TE/SV-MMS/SAR-II : 06/04/2017 : 4P/7C

PRE-DELIVERY ORDER IN
Crl.O.P.(MD)No.2910 of 2016 and
Crl.M.P.(MD) No.1436/2016
22.03.2017