

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2018

Pronounced on : 13.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRL.R.C.No.10 of 2018
and
Crl.M.P.Nos.40 and 41 of 2018**

1.Victor Jesudoss
2.S.Gurunathan
3.Sasimala
4.Veerabathiran
Petitioners

Vs.

1.State Represented by
Inspector of Police,
Mamallapuram P.S.
(Cr.No.426/2016)

2.V.Pandiselvi
Respondents

(R2 is impleaded as suo motu as per the
order of this Court dated 17.01.2018 made
in Crl.R.C.No.10/2018 & Crl.MP.Nos.40 & 41/2018)

Prayer: Criminal Revision Case filed under Sections 397 and 401(1) of Cr.P.C., to allow the above revision petition, set aside the Judgment dated 30.11.2017 passed in C.M.P.No.1516 of 2017 in C.C.No 47 of 2017, on the file of the learned District Munsif-cum-Judicial Magistrate, Tirukalikundram.

For Petitioners : Mr.R.Sankarasubbu
for M/s.J.Muthukumaran

For Respondents : Mr.B.Arulmozhimaran (for R1)
Government Advocate (Crl.Side)

Mr.M.Ravichandran (for R2)

ORDER

The petitioners herein are accused 1 to 4 in C.C.No.47 of 2017, on the file of the learned District Munsif-cum-Judicial Magistrate, Tirukalikundram for the alleged offences under Sections 465, 468, 471, 420 and 120(B) of IPC.

2.According to the learned counsel for the Petitioners the property in Survey No.278/3 (Old S.No.170/1) of Mamallapuram Village Tirukalukundram, measuring an extent of 15 cent (6215 Sq. ft.) has been registered in the name of the 1st petitioner. For the said property patta was issued in the name of the 1st petitioner on 28.05.1996 by the Special Tashildar, Natham Land Tax Scheme, Thiruporur. The 1st petitioner was in continuous enjoyment and possession of the said property. While so, on 25.10.1996 the 1st petitioner entered a sale agreement with the Defacto complainant namely Smt.Pandi Selvi with respect to the above said property.

3. On the same day the 1st petitioner executed a General Power of Attorney vide Doc. No.285 of 1996 on the file of Sub Registrar Office, Chengalpattu, in the name of son of the defacto complainant namely Gnana Bharathidhasan. Later Tmt.Pandi Selvi, defacto complainant got a sale deed executed by her son Thiru.G.Gnana Bharathidhasan for a sale consideration of Rs.3,00,000/- as per Document No.2566/1999 dated 26.10.1999.

4. Further case of the petitioners is that the patta granted in favour of the 1st petitioner was cancelled erroneously by the revenue authorities and the same was agitated by the petitioners. The issue went up to the Commissioner, Land Administration, Chennai and the patta was restored in name of the 1st petitioner vide an order dated 21.10.2010. Thereupon the 1st petitioner executed a Settlement Deed dated 15.07.2016 in favour of his wife, the 3rd petitioner herein. In turn after some time, the 3rd petitioner executed a power of attorney deed in favour of the 4th petitioner. Later the 3rd petitioner with a view to construct a residential complex in the subject property, applied for Encumbrance Certificate so as to avail a Loan. However it was

shocking to see that the 2nd respondent herein got a sale deed registered in her favour from her son having basis upon the General Power of Attorney executed by the 1st petitioner.

5. Therefore, the 3rd petitioner filed a Suit in O.S.No.125 of 2016 on the file of the learned Sub-Court, Chengalpattu, as against the 2nd respondent and her son. Along with the suit the 3rd petitioner filed an Interim Injunction application in I.A.No.506 of 2016 seeking injunction restraining the 2nd respondent herein and her son from interfering with the peaceful possession and enjoyment over above said property. An interim injunction was also granted in favour of the 3rd petitioner herein on 03.11.2016. The 2nd respondent herein filed an application in I.A.No.34 of 2017 in O.S.No.125 of 2016 to reject the plaint and the same was dismissed by an order dated 16.03.2017.

6. The Learned Counsel for the petitioners would further submit that, when the facts are as such the 2nd respondent herein lodged a complaint against the petitioners before the 1st respondent herein, alleging that the petitioners despite having executed a GPA and a Sale

Agreement in her favour, but subsequently settling the very same property in favour of the 3rd petitioner and thereby committed an Offence of Cheating and forgery. The 1st respondent police registered the 2nd respondent's complaint in Crime No.426 of 2016 on 10.11.2016 for the offences under Sections 465, 468, 471, 420 and 120(B) of IPC. After investigation the corresponding final report came to be filed against the petitioners before the District Munsif-Cum-Judicial Magistrate, Tirukalikundram, and the same was taken on file in C.C.No.47 of 2017. On receipt of summon the petitioners moved an application in C.M.P.No.1516 of 2017 under Section 239 of Cr.P.C. to discharge them from the above case on the ground that the 1st respondent police regardless of the issue on hand being Civil in nature, but had given a Criminal Colour. However, the Learned Judge on misconception of law and fact has erroneously dismissed their application filed under Section 239 of Cr.P.C. vide an order dated 30.12.2017. Aggrieved over the same, the present criminal revision case is filed.

7.The learned counsel for the Petitioners would submit that none of the offence is committed by these Petitioners as the 1st Petitioner is

the actual title holder. Moreover, when the civil suit itself is being contested, the instant criminal prosecution would be an impediment to the civil case that too for declaration. Apart from that to prove the title of the 3rd Petitioner, she has filed all the necessary documents before the civil Court. So, the launching of prosecution is nothing but an act of coercion. So, the petitioners have to be necessarily discharged from the above Criminal Case.

8. In fact, this Court while dealing with the Anticipatory bail petition filed by the revision petitioners on appraisal of the issue on hand, has precisely by holding that the question of Title of the property has to be necessarily decided by a Civil Court, after dealing with the 6 Title deeds existing pertaining to the subject property. By holding so, this Court was further pleased to hold that the issue is liable to be decided by a competent Civil Court and not by the Police Station.

9. Per contra, the learned Government Advocate (Criminal Side) appearing for the 1st Respondent and the Learned Counsel for the 2nd respondent have contended that since the investigation has revealed the commission of offence by these Petitioners, final report is filed and the same is taken on file by the Learned Magistrate concerned.

Moreover, there is no bar to launch criminal prosecution in the event of filing of a civil case in respect of a same property. Fair trial would be the remedy for the parties concerned; hence the Criminal revision petition is liable to be dismissed.

10.It is the case of the 2nd respondent that the above transactions stated by the petitioners are unfair transactions aimed to cheat the 2nd respondent and the same can be ascertained from the nature of the transactions involved that the 1st petitioner himself mortgaged the property in the year 2006 and later he redeemed it and thereafter the 1st petitioner executed a Settlement deed dated 15.07.2016 in favour of his wife, the 3rd petitioner herein. Subsequently in collusion with the other accused, a GPA was executed in favour of the 4th respondent. The above transactions made by the petitioners were solely meant to defraud the 2nd respondent.

11.I heard Mr.R.Sankarasubbu for M/s.J.Muthukumaran, learned counsel for the petitioners and Mr.B.Arulmozhimaran, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.M.Ravichandran, learned counsel for the 2nd respondent and all the

relevant material available on records are perused.

12.The materials available on record would show that this is the case, wherein the title of the properties mentioned above is disputed by the 1st Petitioner and the Defacto-Complainant. Though it is an admitted fact that a civil suit is pending in connection with the same property that was not adverted into by the investigation officer in the final report. As for as criminal case is concerned though lodging of criminal prosecution is not a bar to initiate civil proceedings, in this case not only the documents, but the evidence of parties concerned would show a detailed trial is to be conducted in order to testify the documents on either side. So, an impartial enquiry is to be conducted in the civil proceedings. In such an event the instant proceedings of the calendar case would be an impediment for the same. Moreover, all the documents pertaining to the title of the aforesaid property are subjected to be analyzed by way of a full-fledged trial in the civil jurisdiction. In these circumstances, this Court is not able to find that the petitioners are having Mensrea to cheat the Defacto Complainant.

13.From the above said factual back ground of the case, and as rightly observed by this Court in earlier occasion dealing with

Anticipatory Bail petition, according to this Court, the issue on hand is exclusively civil in nature. In this regard, this Court would like to emphasize the legal preposition laid down in the following judgments:

G.Sagar Suri –Vs- State of U.P, (AIR 2000 SC 754)

Indian Oil Corporation – Vs- NEPC India Ltd, (AIR 2006 SC 2780)

14.In the above referred Judgments the Hon'ble Apex Court clearly held that in the present, it is necessary to take notice of a growing tendency in business circle to covert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protects the interest of lenders/ creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. All efforts to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

15.It is noteworthy that in line with the above decisions of the Hon'ble Apex Court, I have also rendered a Recent Judgment reiterating the above point of law, in the matter of M.Rajaram Vs State

reported in 2018 (1) MLJ (CrI)125 holding that all efforts to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

16.The above said principle of law laid down by the Hon'ble Supreme Court and this Court would squarely applicable to the facts of the present case. In the instant case, the 2nd respondent herein through the above criminal case strive pressure to the petitioners to settle the issue and the same cannot be allowed to stand.

17.Hence, in view of the discussion made above and in the light of the settled legal proposition, it is not advisable to allow the prosecution to further proceed as against the petitioners. Hence, this Court warranting interference in the order passed in CrI.M.P.No.1516 of 2017 dated 30.11.2017 by the learned District Munsif-cum-Judicial Magistrate, Tirukalikundram and the same is liable to be set aside.

18.In the result, this Criminal Revision Case is allowed and the impugned Judgment dated 30.11.2017 passed in C.M.P.No.1516 of 2017 in C.C.No.47 of 2017 on the file of the learned District Munsif-

cum-Judicial Magistrate, Tirukalukundram, is set aside and the CMP.No.1516 of 2017 stand allowed by discharging the petitioners in C.C.No.47 of 2017, on the file of the learned District Munsif-cum-Judicial Magistrate, Tirukalukundram. No costs. Consequently, connected miscellaneous petitions are closed.

13.04.2018

vs
Internet:Yes
Index:Yes

To
The Additional District Munsif,
Srivilliputhur.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRL.R.C.No.10 of 2018
and
CrI.M.P.Nos.40 and 41 of 2018**

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