

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2018

Pronounced on : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.24282 of 2011

and

M.P.Nos.1 & 2 of 2011

1.K.Balaji,
S/o.Krishnamoorthi.

2.P.Baskar,
S/o.Periyannah

.... Petitioner/Accused
Nos.6

& 7

Vs.

1.State Rep. by:
The Inspector of Police,
CCIW CID Police Station,
Salem,
Crime No.3 of 2010.

...Respondent/Complainant

2.The Joint Registrar,
Co-operative Societies
(Housing Development),
Salem Division, Salem.

.... Respondent/Defact-
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of the C.C.No.105 of 2011 on the file of the Judicial Magistrate Court No.III, Salem and quash the same.

For Petitioner : Mr.R.Nalliyappan

For R1 : Ms.V.Saratha Devi,
Government Advocate

For R2 : Not ready in notice

O R D E R

The petitioners who are accused A.6 and A.7 in CC.No.105 of 2011 have filed the above quash petition to quash the proceedings as against them from the charge sheet filed by the 1st respondent for offence under Sections 120-B(1), 408, 467, 468, 471 & 477(A) of the Indian Penal Code.

2.The prosecution case is that the 1st accused, who had joined Dr.Ambedkar Salem City Co-operative Housing Society later became Secretary incharge of the society during the period 2008 to 2009 had committed certain irregularities for which 81 enquiry was conducted by the defacto complainant, which revealed that the 1st accused along with 2nd and 3rd accused, who were Special Officers of the Society had colluded along with other accused and sold the societies property to the other accused. The said accused persons had executed various sale deeds for different sale considerations and misappropriated huge sums of the society which have not been included in the Societies record. As far as A.6 and A.7 they have colluded with other accused in the execution of sale deeds of lands allotted to the society by the Government to non members of the society.

3.It is now submitted that the 2nd petitioner P.Baskar A.7 had filed a Criminal Revision petition before this court in CrI.R.C.No.1310 of 2015 against the dismissal of the discharge petition in CrI.M.P.No.1196/2015 in C.C.No.105/2011. This Criminal Revision Petition along with CrI.R.C.No.1364 and 1310 of 2015 was allowed by this court by common order dt:19-1-2016 discharging the 2nd petitioner A.7 from all charges in C.C.No.105/2011 since the petitioner/A.7 role is limited only in preparing the sale deeds for which he cannot be said to be in conspiracy with the other accused. Further in absence of any material to show 2nd petitioner/A.7 prepared such document and he was aware about A.1 was not holding office. Hence nothing survives as regards 2nd petitioner/A.7.

4.The only petitioner in this case is the 1st petitioner K.Balaji who is A.6. The contention of this petitioner is that the petitioner has signed as witness in the sale deed document which was registered before the Sub-Registrar office for the sale deed executed by the society in favour of A.4 who was not a member of the society. Hence, this petitioner was arrayed as an accused. Other than this imputation, there is no other material against the petitioner. The petitioner contention is that being a witness to the sale deed is only for the limited purpose in identification and execution of the sale deed. This would not amount to any criminality. Further, there is no material to show

that the petitioner was aware about A.4 not being a member of the society. On these grounds the quash petitioner was assailed.

5.The learned Government Advocate had filed a counter stating about the irregularities committed in the Society by the Secretary, Special Officers along with the other accused and after thorough investigation, collection of documents and recording of statements of witnesses had filed the three charge sheets namely CC.No.103 of 2011, CC.No.104/2011 and CC.No.105/2011. Though the charge sheet has been filed due to one or the other accused filing either discharge petition or quash petition charges in these cases are yet to be framed and trial of the case has been stalled successfully and sought the petition to be dismissed. Further, it had admitted that as regards the 2nd petitioner, this Hon'ble Court was pleased to discharge him from all the cases. Further, it is not disputed that this petitioner is only a witness to the sale deed and no other material. Further it is contended that the petitioner is charged for offence of conspiracy with the other accused which could be found only during trial.

6.Considering the rival submissions and according to the prosecution the case in so far as this petitioner is that he is the person who is a witness to the document. The prosecution alleges that he had acted in conspiracy with other accused. This court in Crl.R.C.No.1310 of 2015 by order dated 19-11-2016 discharging the other accused who is placed on the similar footing as of this petitioner and his role as witness to the sale deed and there is no material to show that the petitioner was aware about the purchaser was not a member of the society. In view of the above continuation of the proceedings against the petitioner is unwarranted.

7.However, it is made clear that if in course of trial there is reason for involvement of this petitioner in the wrong doing alleged it is always open to the court below to proceed under section 319 of the Code of Criminal Procedure.

8.With regard to the 2nd petitioner/A.7 no order is issued since 2nd petitioner A.7 has been already discharged by this court in Crl.R.C.No.1310 of 2015 by order dated 19-11-2016.

9.In view of the above, the quash petition of the petitioner who is A.6 in C.C.No.105 of 2011 is allowed and the proceedings as against the petitioner stands quashed.

10.Accordingly, this Criminal Original Petition stands partly allowed, since the case is pending from the year 2011 and

the Trial Court is directed to complete the trial expeditiously within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.III, Salem.

2.The Inspector of Police,
CCIW CID Police Station,
Salem,
Crime No.3 of 2010.

3.The Joint Registrar,
Co-operative Societies
(Housing Development),
Salem Division, Salem.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.65946

GMV (22/10/2018)

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