

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM:

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

Crl.O.P. No.20175 of 2018 & Crl.M.P. No.10771 of 2018

M. Shanmugasundaram

Petitioner

Vs.

1 The District Crime Branch
Tiruppur District, Tiruppur

2 Denzil D Souza

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., seeking to call for the records relating to Cr. No.4 of 2018 dated 10.04.2018 on the file of the District Crime Branch, Tiruppur District and quash the same.

For petitioner Mr. P. Wilson, Sr. Counsel
for Mr. G. Sankaran

For R1 Mrs. M. Prabhavathi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records relating to Cr. No.4 of 2018 dated 10.04.2018 on the file of the District Crime Branch, Tiruppur District and quash the same.

2 On the complaint lodged by one Denzil D Souza, the second respondent herein, the first respondent police have registered a case in Cr. No.4 of 2018 on 10.04.2018 under Sections 120-B, 468, 471, 419 and 420 IPC against Shanmugasundaram, the petitioner herein, for quashing which, this Criminal Original Petition has been filed.

3 Heard Mr. P.Wilson, learned Senior Counsel representing Mr. G. Sankaran, learned counsel on record for the petitioner and Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent-State.

4 To appreciate the contentions of Mr. Wilson, learned Senior Counsel for the petitioner, it may be necessary to narrate the allegations in the FIR.

5 It is the case of the de facto complainant that the land in question measuring 1.87 acres in S.No.312/5 in Karadivavi Village was assigned to his father Edgar Francis D Souza vide assignment order dated 31.08.1970 and thereafter, the land was in the possession and control of his father, who breathed his last on 26.12.2006 leaving behind the de facto complainant and his brother Daril D Souza as his heirs. While so, the de facto complainant was paying the land kist regularly to the authorities. When the de facto complainant approached the Revenue authorities on 04.01.2018 to pay tax, he was informed that the land does not stand in the name of his father, viz., Edgar Francis D Souza. Therefore, smelling a rat, the de facto complainant conducted an enquiry and he was shocked to learn that one Edgran Frans, S/o Jose, had executed a sale deed dated 19.01.2010 registered as Document No.992 of 2011 in favour of the petitioner and the petitioner had given a power of attorney in respect of the said land to one Kumar for further sale of the property. On this allegation, the FIR has been registered.

6 The learned Senior Counsel appearing for the petitioner contended that the land in question was not assigned to Edgar Francis D Souza as contended by the de facto complainant, but, was allotted to one D.J. Edgran Frans, S/o Jose, as could be seen from the photocopy of the assignment order dated 31.08.1970; as per the order of assignment, the land cannot be transferred for 20 years and thereafter, if all the dues to the Government are paid, the assignee gets the power to alienate; the assignee, viz., D.J. Edgran Frans paid all the dues to the Government and obtained clearance from the authorities on 22.02.2010 for alienation of the land and the Tahsildar had also issued patta to D.J. Edgran Frans; and only thereafter, the said D.J. Edgran Frans had executed a sale deed in favour of the petitioner; after obtaining the sale deed, patta has been transferred in the name of the petitioner; further, the de facto complainant has given a similar complaint to the Anti-Land Grabbing Cell, but, no action has been taken on the same.

7 Per contra, the learned Additional Public Prosecutor appearing for the first respondent-State refuted the aforesaid contentions.

8 The sum and substance of the allegations in the FIR is that the land in question was not assigned to the father of the de facto complainant, but, was assigned to one D.J. Edgran Frans, S/o Jose.

9 From a perusal of the sale deed dated 19.01.2010 bearing document no.992 of 2011, it is seen that the photograph of the alleged vendor, D.J. Edgran Frans, has been affixed therein, as required under the Registration rules. The alleged vendor's thumb impression is also

available in the said document. The short point that falls for consideration of this Court is as to who this vendor is and where he is, which fact has to be investigated by the police thoroughly. The allegation of the de facto complainant in the FIR is that the land was assigned to his father Edgar Francis D Souza and an impostor with the name of D.J. Edgran Frans has manipulated the records and has sold the property to the petitioner herein. When this Court posed a pointed question to Mr. Wilson, learned Senior Counsel, as to whether the petitioner can produce his vendor D.J. Edgran Frans, he had no satisfactory answer. That is why, as stated above, a thorough police investigation is required to find out who this D.J. Edgran Frans is and whether he was set up by the petitioner to usurp the de facto complainant's land. The genuineness of the Revenue records should be investigated by the police.

10 Mr. Wilson, learned Senior Counsel submitted that the de facto complainant has no title and therefore, he has no locus standi to file a complaint for registration of an FIR.

11 This Court is unable to persuade itself to agree with the aforesaid submission, because, it is a trite law that criminal law can be set into motion by anyone. Even assuming for a moment that the de facto complainant does not have title qua the land in question, if it is found during investigation that someone else has been impersonated by the person whose photograph is found in the sale deed, then, the prosecution should be taken to its logical conclusion and the lack of title on the part of the de facto complainant pales into insignificance under such circumstances.

12 Since there are more than prima facie materials for the police to proceed with the investigation to find out about the genuineness of the vendor, especially in the light of the assertion of the de facto complainant that his father had died as early as on 26.12.2006, the police should have to proceed further with the investigation so as to take it to its logical conclusion. Hence, this Court is of the view that in the light of the law laid down by the Supreme Court in State of Haryana v. Bhajan Lal & Others [AIR 1992 SC 604], this is not a fit case to quash the FIR at the threshold.

In the result, this Criminal Original Petition stands dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-

cad

Deputy Registrar(CS)

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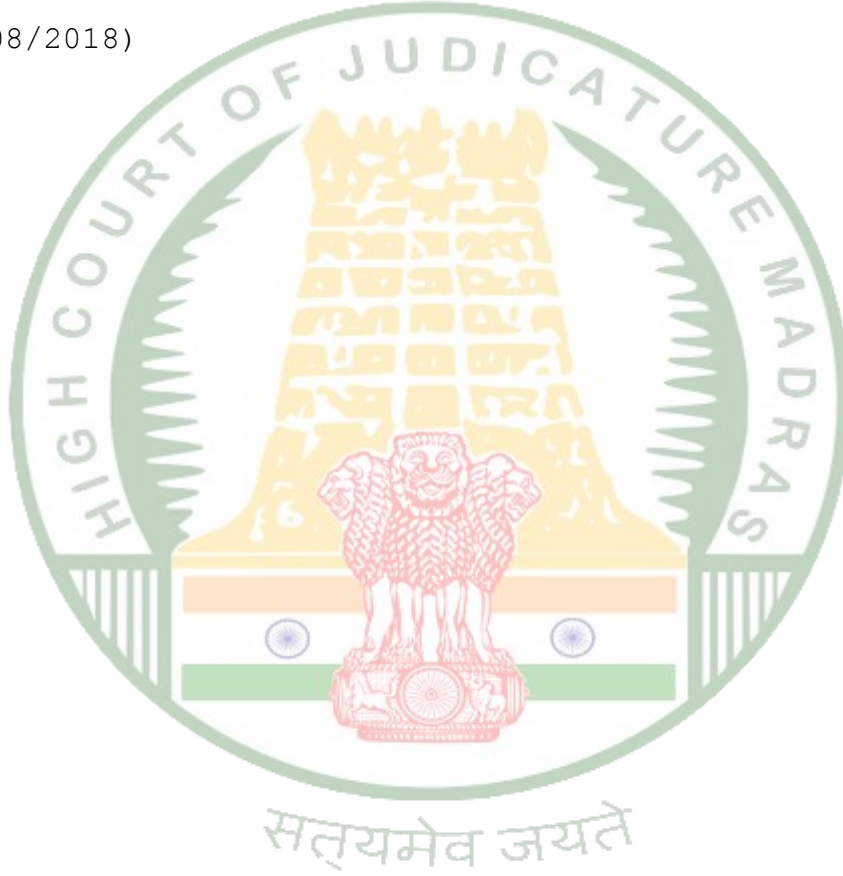
Sub Assistant Registrar

To

- 1 The District Crime Branch
Tiruppur District
Tiruppur
- 2 The Public Prosecutor
High Court, Madras
Chennai 600 104

CrI.O.P.No.20175 of 2018

ASK(30/08/2018)



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