

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2018

PRONOUNCED ON : 28.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.3961 of 2017
and
Crl.M.P.Nos.2941 and 5081 of 2017

K.Palanisamy ... Petitioner
Vs.

1.The Inspector of Police
District Crime Branch
Land Grabbing Cell
Namakkal District.

2.R.Thangavel

3.Kalaivani D.

4.Uma Maheswari M.

... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records pertaining to FIR No.14 of 2016 dated 07.11.2016 on the file of the Inspector of Police, District Crime Branch, Land Grabbing Cell, Namakkal District so as to quash the same.

For Petitioner : Mr.N.Jothi
for Mr.M.C.Govindan
For R1 : Mr.C.Raghavan
Government Advocate (Crl.Side)
For R2 : Mr.Subramaniam
For R3 and R4 : Mr.C.Samadharm Arasu

O R D E R

This petition has been filed to call for the records pertaining to FIR No.14 of 2016 dated 07.11.2016 on the file of the Inspector of Police, District Crime Branch, Land Grabbing Cell, Namakkal District and quash the same.

2. On the complaint lodged by the second respondent/de facto complainant, the first respondent police have registered a case in Cr.No.14 of 2016 on 07.11.2016 under Sections 120-B, 468, 471, 420, 341 and 506(i) IPC against Palanisamy [A1], Kalaivani [A2] and Uma Maheshwari [A3], for quashing which, Palanisamy [A1] is before this Court.

3. Heard Mr.N..Jothi, learned counsel representing Mr.M.C.Govindan, learned counsel on record for the petitioner/accused, Mr.Raghavan, learned Government Advocate [Crl.Side] appearing for the first respondent-State, Mr.Subramaniam, learned counsel for the de facto complainant/R2 and Mr.C.Samadharna Arasu, learned counsel for respondents 3 and 4.

4. Before advertng to the rival contentions, it may be necessary to set out the allegations in the FIR. It is the case of the de facto complainant that he purchased 897 sq.ft. of land in Devanankurichi Village, Natham Survey No.89/1 on 08.03.1990 from one Palanisamy (not the petitioner herein), vide Document No.459/1990 and 99 sq.ft. of land from one Natesan on 13.11.1991, vide Document No.3358/1991; he applied patta for the said land and after survey by the revenue officials, Natham Patta No.662-A was issued for the said land and during survey, it was found that the said land has been given New Survey No.313/8; a building was constructed on the said land after obtaining due permission and the building was assigned Door No.5/103F; electricity connection was obtained for the said building; the property was mortgaged along with other properties with Andhra Bank, Erode Branch in 1995 and loan was obtained by deposit of title deeds, vide Document No.2774/2007; while so, encumbrances were created by the accused in the said land, inasmuch as a bogus assignment order was fabricated in the name of Kalaivani [A2] and her daughter Uma Maheshwari [A3], with which, the land was sold to the petitioner, vide Document Nos.4075/2016 and 4076/2016 on 04.07.2016; thereafter, on 04.11.2016, the petitioner threatened the de facto complainant calling upon him to handover vacant possession of the property to him. Hence, the complaint and the consequent FIR.

5. Mr.N.Jothi, learned counsel appearing for the petitioner neatly formulated his submissions as under:

[a] The de facto complainant has no title to the property.

[b] Information obtained under the Right to Information Act (for short "the RTI Act") from the Office of the District Collector shows that the said property was classified as 'Natham Government Poromboke' and was shown as vacant land and patta was granted to landless poor, viz., Kalaivani [A2] and Uma Maheshwari [A3].

[c] The petitioner purchased the property for a valuable consideration from Kalaivani [A2] and Uma Maheshwari [A3] after obtaining 'No Objection Certificate' from the Tahsildar.

[d] The Village Administrative Officer had issued possession certificate to the petitioner.

[e] The subsequent revenue/public documents such as adangal, chitta, reflect the name of the petitioner.

[f] The petitioner has filed a comprehensive suit in O.S.No.175 of 2017 before the District Court, Namakkal, impleading the de facto complainant and the revenue authorities for a declaration that the property belongs to him.

[g] The provisions of Sections 120-B, 468, 471, 420, 341 and 506(i) IPC will not be attracted.

[h] The petitioner and the de facto complainant are political rivals and therefore, a false case has been foisted on the petitioner and hence, the FIR requires to be quashed.

6. Per contra, Mr.Subramaniam, learned counsel appearing for the de facto complainant submitted that even in the sale deed Document No.514 of 1984 dated 09.02.1984, Kalaivani [A2] has signed as witness and therefore, the contention of the petitioner that the land was assigned to Kalaivani [A2] and her daughter Uma Maheshwari [A3] cannot be true. It is his submission that the assignment orders in favour of Kalaivani [A2] and Uma Maheshwari [A3] are themselves fabricated documents, which have been created with the connivance of the petitioner herein, who is a local politician. He further contended that the de facto complainant had clear title over the property and the property is in mortgage with Andhra Bank, Erode Branch.

7. This Court gave its anxious consideration to the rival submissions.

8. Mr.N.Jothi placed strong reliance on the replies received by the petitioner under the RTI Act from the revenue authorities in support of his contention that the Deputy Tahsildar does not have the authority to issue patta and that the land in Devanankurichi Village Survey No.313/8 has been classified as 'Natham Government Poromoboke' vacant land and does not show that the same is owned by the de facto complainant.

9. The short question that falls for consideration is, can the FIR be quashed based on the information obtained by the parties under the RTI Act from the revenue authorities? The answer to the question is an emphatic 'No'. When an FIR has been registered, it is the duty of the police to necessarily conduct a full fledged investigation under Chapter XII of the Code of Criminal Procedure by examining the authorities and the

revenue records in order to find out whether there has been any fabrication of records as alleged in the FIR.

10. Assuming for a moment that the land in Survey No.313/8 is a Government land, then, whoever had indulged in transacting Government land, be it the petitioner or the de facto complainant, will have to be prosecuted in accordance with law. Based on the replies given under the RTI Act, this Court cannot give a finding in a quash application that the two assignment orders obtained by Kalaivani [A2] and Uma Maheshwari [A3] were valid documents, especially in the light of the fact that Kalaivani [A2] is a witness to the Document No.514 of 1984 dated 09.02.1984 and strangely, she is claiming title to the said property, via an assignment order, which according to the de facto complainant, is a fabricated one. Disputed questions of fact cannot be gone into in a quash application. Hence, when there are prima facie materials for an investigation to proceed, the FIR cannot be quashed at the threshold in the light of the law laid down by the Supreme Court in State of Haryana v. Bhajan Lal [AIR 1992 SC 604],

11. As regards the allegation of mala fides, this Court is bound by the judgment of the Supreme Court in State of Bihar vs. P.P.Sharma [AIR 1991 SC 160], wherein, the Supreme Court has stated that the issue of mala fides cannot be gone into in a quash application when the complaint discloses the commission of a cognizable offence.

In the result, this petition is dismissed as being devoid of merits. However, this Court directs the Deputy Superintendent of Police to monitor the investigation that is being conducted by the Inspector of Police, District Crime Branch, in Cr.No.14 of 2016 and complete the same expeditiously and either file a closure report or a charge sheet, as the case may be, under due intimation to the de facto complainant. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gms

To
1.The Inspector of Police
District Crime Branch
Land Grabbing Cell
Namakkal District.

2. The Deputy Superintendent of Police,
District Crime Branch, Namakkal District.

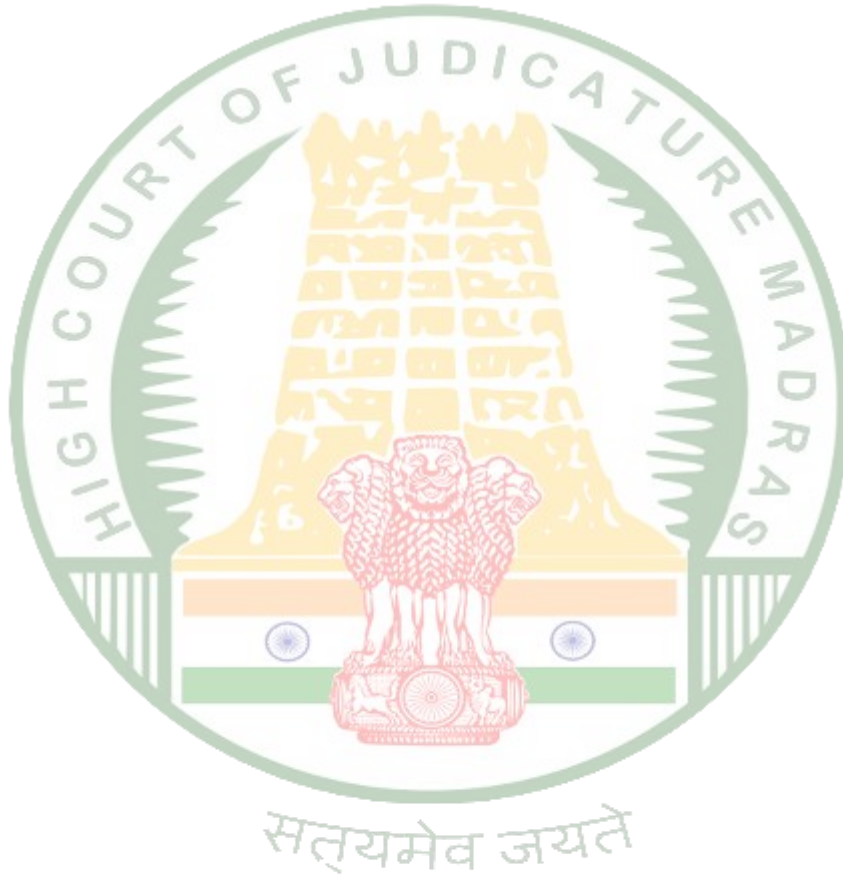
3.The Public Prosecutor
High Court, Madras.

+2cc to Mr.M.C.Govindan, Advocate, S.R.No. 58597

+1cc to Mr.Dass and Viswa Associates, Advocate, S.R.No. 59119

Cr1.O.P.No.3961 of 2017

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