

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Third day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL ORIGINAL PETITION Nos.5627 and 5628 of 2018

1 K.K.PONNUSAMY,
2 K.THENMALAR,

[PETITIONERS / ACCUSED in
BOTH THE PETITIONS]

Vs

STATE BY,
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
(ANTI LAND GRABBING SPECIAL CELL),
ERODE. (CRIME NOS. 3 and 2 OF 2018)

[RESPONDENT IN BOTH THE PETITIONS]

For Petitioner : M/S.S.JAYAKUMAR Advocate IN BOTH THE PETITIONS

For Respondent : MR. C.IYYAPPARAJ, ADDL. PUBLIC PROSECUTOR
IN BOTH THE PETITIONS

For INTERVENER : M/S.M.GURUPRASAD, Advocate in BOTH THE PETITIONS

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

CrI.O.P.No.5627 of 2018 was filed in Crime No.3 of 2018 on the file of the respondent police. Like that CrI.O.P.No.5628 of 2018 was filed in Crime No.2 of 2017 on the file of the respondent police.

2.In both cases, the petitioners are same. The alleged offences against the petitioners in both cases is under Section 120(b), 420 , 467, 468 and 471 of IPC.

3. I have heard the learned counsel appearing for the petitioners and Mr.C.Iyyapparaj, learned Additional Public Prosecutor and Mr.Guruprasad, learned counsel appearing for the intervener.

4. According to the intervening party as well as the prosecution, that the land with an extent of 81 1/2 cents situated in S.No.179/1 at Veerappanchatram, Erode District, within the jurisdiction of Erode Sub Registrar office belongs to A2 and A3. It was claimed by the defacto complainant in both the cases that by sale deed dated 02.06.2004, they purchased the entire extent of 81 1/2 cents and has been enjoying the property.

5. It is the further case of the defacto complainant and the prosecution that, when that being so, after several years, in the year 2016, this A2 and A3 executed the Power of Attorney on 17.02.2016 in favour of A1 who, in turn with the strength of such power of attorney, executed a sale deed on 19.09.2016 to and in favour of A4, A5 , A7 and A8.

6. It is the further case of the defacto complainant and the prosecution that A2 father, A3 daughter are the owners of the property. A4 is the wife of A2. A5 is the wife of A1, Power of Attorney holder. Therefore, according to the prosecution and defacto complainant, the property already sold in favour of the complainant in the year 2004, has once again been re-sold to these accused persons as stated above by creating a Power of Attorney and executing the sale deed by altering the survey number as 179/1B as a different one in order to escape from the clutches of law to state that as if it is different property. Only in that circumstance, the defacto complainants since had claimed as the bonafide purchasers and owners of the property, right from the year 2004, had given separate complaint to the respondent police which had been registered into crime numbers as stated above where all these accused persons have been arrayed as accused. In so far as the present petitions are concerned, A6 is the document writer, except in the capacity as a document writer, he has not played any other role with regard to the alleged sale deed. In so far as A7 is concerned, the learned counsel appearing for the petitioner/A7, who is the second petitioner, would submit that, she is a bonafide purchaser and she purchased the property for the value of Rs.31,36,500/- by paying the entire money to the A2 and A3, who are the owners of the property.

7. It was complained by the defacto complainants that the property sold to A7 also is covered in the 81 1/2 cents of extent of property at S.No.179/1B, which was sold to these complainants by A2 and A3 in the year 2004 itself and therefore in the entire conspiracy of cheating and other offence, A7 was also involved.

8. I have considered the submissions made by the respective counsel appearing for the parties.

9. As far as these petitions are concerned it is filed only by the A6 document writer and the A7, purchaser of a part of the property.

10. In so far as A6 is concerned since he is a document writer, it cannot be attributed any motive against him as he only acted as a document writer, subject to further investigation.

11. In so far as A7, i.e., this second petitioner is concerned, it is the case of A7 that she purchased a part of the property for bonafide consideration by paying the entire sale consideration for which she produced a receipt for purchasing the property and when she applied for Encumbrance Certificate it did not reflect in the encumbrance that the said property was purchased by the defacto complainant earlier.

12. In the circumstances, unless the extent of property allegedly purchased by the A7 covered all the entire extent of property of S.No.179/1B, which was already purchased by the complainant in the year 2004, it cannot be concluded at this stage that the second petitioner, i.e., A7 also committed an offence prima facie. But that factor can be unearthed only if the complete investigation is under taken by the respondent police. However, learned counsel for the intervenor already raised an objection that unless the document such as, sale deed etc., which are in possession of A7 are produced and verified, the alleged offences committed by the accused, especially A7, who is the second petitioner herein cannot be proved and therefore, if the second petitioner is let on bail at this stage, she may tamper those documents which will hamper the progress of the investigation.

13. Though such a submission was made by the learned counsel for the intervening party, the said apprehension can be met, by imposing suitable condition by this court in order to protect those documents without being subjected to any tampering.

14. In view of the aforesaid facts and circumstances and discussions made above, this Court is inclined to pass the following order:

(i) That the petitioners in the event of arrest shall be enlarged on bail on condition that they shall execute a bond for a sum of Rs.25,000/- each with two sureties for a like sum to there satisfaction of the learned Judicial Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases, Erode.

(ii) Further, the second petitioner shall not encumber the property in question i.e., the property she claimed to have been purchased from A2 and A3, through the Power of Attorney on 19.09.2016 or any other date in the year 2016 and further, if the said document is required for further investigation by the respondent police, as and when it is called for, the second petitioner shall produce the same to the respondent investigating agency for further investigation.

(iii) That the petitioners shall also appear before the respondent police as and when required for interrogation.

With these conditions, these petitions are ordered.

-sd/-
23/03/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF LAND
GRABBING CASES, ERODE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
(ANTI LAND GRABBING SPECIAL CELL), ERODE.

+1 CC to M/S.S.JAYAKUMAR Advocate on payment of necessary
charges-Sr.5816

CRL OP.Nos.5627 and 5628/2018

Date :23/03/2018

ths : 02.04.2018