

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2018

PRONOUNCED ON : 01.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.1125 of 2018
and Crl.M.P.Nos.384 and 5067 of 2018

1.Abitha Banu
2.A.Mansoor Alikhan ... Petitioners

Vs.

1.State rep. by
Inspector of Police
Choolaimedu Police Station
Chennai.
(Crime No.2915/2017)

2.Pari. ... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records and quash the FIR registered against the petitioners by the 1st respondent in FIR No.2915 of 2017 dated 21.12.2017 on the file of the 1st respondent based on the complaint given by the 2nd respondent dated 08.01.2017.

For Petitioners: Mr.A.R.Nixon

For R1 : Mr.C.Raghavan
Government Advocate (Crl.Side)

For R2 : Mr.A.Pari [party-in-person]

O R D E R

This petition has been filed to call for the records in FIR No.2915 of 2017 on the file of the first respondent and quash the same.

2. The second respondent [de facto complainant] gave a complaint to the first respondent police and thereafter, filed Crl.O.P.No.23632 of 2017 under Section 482 Cr.P.C. for a direction to the police to register an FIR. Based on the template order passed by this Court directing the first

respondent police to register an FIR if the complaint discloses commission of a cognizable offence, the police have registered a case in Cr.No.2915 of 2017 on 21.12.2017 under Sections 447, 420, 468, 471, 506(i) IPC against Abitha Banu [A1] and her husband Mansoor Alikhan [A2] for quashing which, the accused are before this Court.

3. Heard Mr.A.R.Nixon, learned counsel for the accused, Mr.Pari, the second respondent and Mr.C.Raghavan, learned Government Advocate [Crl.Side] for the first respondent-State.

4. To appreciate the contention of the accused, it may be necessary to briefly state the averments in the complaint. The property in question at plot no.5 in 4th Street, Thirukumarapuram, Chennai measuring 3375 sq.ft. originally belonged to one Appavoo, the father of Pari; in that property, there is a house in the middle and vacant land around; Appavoo gave a Power of Attorney dated 18.05.1998 to one Gunasekaran in respect of 1,000 sq.ft. in the said property, pursuant to which, Gunasekaran was in the occupation of that portion of the property since 1998; the accused, being neighbours, requested Appavoo to permit them to park their car in the vacant portion, which Appavoo permitted; Appavoo entered into a sale agreement on 18.04.2000 with the accused agreeing to sell 1,480 sq.ft. for a total sale consideration of Rs.4 lakhs and received an advance of Rs.1 lakh; Pari, the de facto complainant has signed as a witness in the said sale agreement; Appavoo issued a legal notice to the accused cancelling the agreement; the accused had taken Appavoo and Gunasekaran forcibly on 11.08.2003 to the Office of the Sub Registrar and had made them execute a Power of Attorney in favour of Abitha Banu [A2]. This is the sum and substance of the allegation of Pari in the FIR.

5. After the execution of the sale, the accused appeared to have been put in possession of the property and they built a house thereon. Appavoo filed a suit in C.S.No.207 of 2010 in the High Court for a declaration that the said property belongs to him and for a direction to the accused to demolish the superstructure put up in the said property and consequently, hand over vacant possession of the property. The said suit was transferred to the City Civil Court, Chennai on account of enlargement of pecuniary jurisdiction of the City Civil Court, pursuant to which, the case has been renumbered as O.S.No.10171 of 2010 and the matter is still pending. Admittedly, Appavoo died and Pari and other heirs have been impleaded as legal representatives in the said suit. The accused have filed their written statement and trial has begun with the examination of Pari as a witness.

6. Pari, the de facto complainant contended that the police should proceed further with the investigation and collect materials to establish that Appavoo was forcibly made to execute the Power of Attorney on 11.08.2003 in favour of Abitha Banu [A2].

7. The fact remains that when Appavoo was alive, he himself has filed only a suit for a declaration that the property belongs to him and after his death, Pari has given the present complaint in the year 2017 alleging that in the year 2003, his father was made to forcibly execute the Power of Attorney.

8 In the opinion of this Court, the present FIR is clearly an abuse of process of law and therefore, this petition is allowed and the prosecution in Cr.No.2915 of 2017 is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms
To

1.The Inspector of Police,
Choolaimedu Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.R.Nixon, Advocate Sr.53031
+1cc to Mr.A.Pari, Advocate Sr.52075 [30/08/2018]

Cr1.O.P.No.1125 of 2018

vsn II[co]
srg 16/08/2018