

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

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

Crl.O.P. No.11683 of 2018

and

Crl.M.P.No.6101 of 2018

1. T.V.Subramani Chettiar

2. S.Rajavel

3. S.Sathyanathan

...Petitioners

vs.

1. The State Represented by

The Inspector of Police,
Kancheepuram District and Taluk.

2. M.Rajendran

...Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records of the proceedings C.C.No.90 of 2016 dated 28.11.2016 on the file of the Court of the Judicial Magistrate - II, Kancheepuram and to quash the same.

For petitioners: Mr.V.Lakshmi Narayanan

For R1 : Mrs.Kritika Kamal.P

Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed seeking to call for the records of the proceedings in C.C.No.90 of 2016 dated 28.11.2016 on the file of the Judicial Magistrate Court No.II, Kancheepuram and to quash the same.

2. On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.50 of 2011 and after completing the investigation, has filed a charge sheet in C.C.No.90 of 2016 before the Judicial Magistrate No.II, Kanchipuram, for the offences under Sections 120-B, 420, 423, 465, 468 and 471 of IPC against six accused, challenging which, A1, A2 and A3 are before this Court.

3. Heard Mr.V.Lakshmi Narayanan, learned counsel for the petitioners and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the first respondent.

4. The crux of the allegation in the final report is that the property in question measuring an extent of 6 acres and 40 cents belongs to the family of the de facto complainant; that Shanmuga Sundari wife of A1 and mother of A2 & A3, executed a settlement deed dated 31.10.2007, as if the property belongs to her in favour of A1, A2 and A3; that on the strength of the

said settlement deed A1, A2 and A3 had alienated a portion of the property to Sarojini (A4) and Devarajan (A6); before registration of FIR, the said Shanmuga Sundari died.

5. The learned counsel for the accused submitted that a suit for declaration in O.S.No.36 of 2012 has been filed by A1, A2, A3 before the Sub Court, Kanchipuram against the de facto complainant's family and the said suit is pending. During the pendency of the said suit, the police ought not to have registered an FIR and proceeded with the investigation. He also contended that a Criminal Court cannot give a finding as to the title to the property, since the Civil Court is seized of the title suit.

6. Per contra, learned Government Advocate (Crl.Side) refuted the contention.

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

8. The allegation in the complaint is that Shanmuga Sundari did not have any title to the property, yet, had settled the property in favour of A1, A2 & A3, by settlement deed dated 31.10.2007. On a reading of the settlement deed dated 31.10.2007, it is seen that Shanmuga Sundari has merely stated that the property in question is her ancestral property and she has been in possession and enjoyment of the same on the strength of which, she has settled the property infavour of A1, A2 & A3. It is also seen that the settlement deed has been drafted by one C.Mohan, Document Writer. The police have recorded the statement of C.Mohan, Document Writer, wherein, he has stated that he had not prepared the said settlement deed and that the settlement deed was prepared by the accused themselves and was brought to him for signature and that he merely affixed his signature as if he has drafted the settlement deed after getting some money from them. As rightly contended by the learned counsel for the accused, the criminal Court cannot decide the title, yet, the circumstance surrounding the case prima facie shows that the accused conspired to create the bogus settlement deed in respect of the land that does not belong to them and created encumbrance on the said land. Of course, the verdict of the criminal Court will not be binding on the Civil Court, but, that will not absolve the criminal liability of the accused, if it is established before the criminal Court that the accused had conspired to cheat the de facto complainant, by registering the settlement deed, over which, they had absolutely no title in order to create encumbrance thereon. Since disputed questions of fact are involved in the case, the prosecution cannot be quashed at the threshold. Hence, this petition is dismissed.

9. The learned counsel for the petitioners submitted that the presence of the petitioners / accused before the trial

Court may be dispensed with.

10. Accepting his submission, the petitioners / accused are directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On their appearance, they shall execute a bond under Section 88 Cr.P.C, 1973 for Rs.5,000/- without sureties. Thereafter, the first petitioner shall appear before the trial Court for receiving the charge sheet, for answering the charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the first petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against them under Section 229-A IPC. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dh / mk
To

1. The Judicial Magistrate - II,
Kancheepuram.
2. The Inspector of Police,
Kancheepuram District and Taluk.
- 3 .The Government Advocate (Cr1.Side)
High Court, Madras.

+1cc to M/s.V.Raghavachari, Advocate Sr.No.29057/2018

SG(CO)
sm:14.5.201

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