

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2018

DELIVERED ON: 17.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.570 of 2013

and

Crl.M.P.Nos.1 of 2013

S.Chellappan ... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
XVIII Team, Central Crime Branch,
Egmore, Chennai. ... 1st Respondent/complainant

2. Dr.V.P.R.Varadharajan ...2nd Respondent/de-facto
complainant

Prayer : Criminal Original Petition filed under Section 482 of
Cr.P.C to call for the records in Crime No.384 of 2012 dated
18th July 2012, on the file of the 1st respondent police for the
alleged offences punishable under Section 420, 465, 468 and 120
(B) of the Indian Penal Code and quash the same.

For Petitioner : Mr. A.Ramesh, Senior Counsel
for Mr.T.R.Sathiyamohan

For 1st Respondent : Mr.T.Shunmugarejeswaran,
Government Advocate (Crl.Side)

For Respondent : Mr.G.Ravikumar

ORDER

This petition under Section 482 of the Code of Criminal
Procedure arises from the complaint given by the de-facto
complainant, 2nd respondent in this petition.

2. The petitioner is the 3rd accused in Crime No.384 of
2012 on the file of the Inspector of Police, XVIII Team Central
Crime Branch, Egmore. The case of the de-facto complainant/2nd
respondent emanates from the sequence of events narrated below.
The 2nd respondent's father Dr.Rama Pandiyaraj was the original
owner of the property measuring 1.04 acres, out of which 2
grounds and 1613 sq.ft. is the area in dispute. The 2nd
respondent in his complaint dated 02.04.2012 with the
Commissioner of Police, Egmore has alleged that the petitioner
along with one Kantha Praveen Mehta and Kumar Praveen Mehta

conspired and fabricated documents in order to grab this property of 2 grounds and 1613 sq.ft. Further one Adalarasan had fabricated a power of attorney in the year 2004-2005 for the said 2 grounds 1613 sq.ft. and obtained a patta in C.A.37/04/05 in the name of Kantha Praveen Mehta. Based on the 2nd respondent's complaint on this, the patta was cancelled by the District Collector in 2011. In the meanwhile, Kantha Praveen Mehta made a conformation deed of "an oral settlement" of the said property to her son Kumar Praveen Mehta in 2010 and document No.2019/2010 states that the oral settlement was as early as 1987. Based on this confirmation deed, the property measuring 2 grounds and 1613 sq.ft. was sold to one Mr.Chellappan through a registered sale deed dated 18.08.2010 vide document No.6083/2010 of the Sub Registrar Office, Saidapet. Hence, the complaint against the Kantha Praveen Mehta, Kumar Praveen Mehta and Chellappa, the present petitioner.

3. The petitioner herein was arrested on 06.12.2012 and later was enlarged on bail on 12.12.2012. He has filed the present petition for quashing the FIR registered in Crime No.384 of 2012 on the file of the Inspector of Police, XVIII Team, Central Crime Branch, Egmore. The petitioner's contentions are that he is a respectable senior citizen in the society, having business extending to Singapore, that he is only a subsequent purchaser of the property from one Kantha Praveen Mehta in 2010 and that the de-facto complainant/2nd respondent has not approached the police with clean hands, since he has suppressed the civil litigations and also has not given any supporting documents for the allegation of forgery.

4. On a perusal of the various important documents submitted by the petitioner, in order to throw light on the sequence of the events, it is seen that originally on 20th July 1961, late Dr.Rama Pandiyaraj, father of the 2nd respondent had executed on behalf of him and on behalf of his three minor sons, a sale deed in respect of two plots of lands one measuring 4 ground 2325 sq.ft. and another measuring 2 grounds 1613 sq.ft., situated at V.P.Rama Pandiaraj Avenue, Thiruvannamiyur Village in favour of one Kantha Praveen Mehta and registered the same as document No.1841/1961 on the file of the Sub Registrar Office Saidapet on 20.06.1961. In the year 1975, the Tamil Nadu Housing Board proposed to acquire about 6.44 acres in the land vide the Housing Department notification No.II (2) /HOU/981/75 dated 26th March 1975 and the father of the 2nd respondent retained 2.69 acres vide another notification dated 6.12.1979. The disputed land was part of the retained land. Patta also continued in the name of the father of the 2nd respondent. On 05.01.1987, Kantha Praveen Mehta, settled this property of 2 grounds 1613 sq.ft. in favour of her son Kumar Praveen Mehta, vide a settlement deed, which was not registered. The 2nd respondent in the year 1999, got the patta transferred to his name as the legal heir of late Dr.Rama Pandiyaraj. Subsequently, on 14th September 2000, the 2nd respondent preferred an application before the District Collector, Chennai seeking a change of patta in his name which was not considered by the District Collector, due to the disputed contradicting

claims made by the party, upon which a revision petition was filed by the 2nd respondent before the Commissioner of Land Administration, which again was dismissed, mainly stating that a civil proceedings in the court has to come to a conclusion to effect any change in the patta. This order dated 26.12.2005 concluded that the original name in the patta that is the late father of the 2nd respondent be restored, pending the result of the civil suit.

5. Kantha Praveen Mehta registered a deed of confirmation on 19.3.2010 confirming her unregistered deed of gift settlement on 05.01.1987 favouring her son Kumar Praveen Mehta and based on this deed, after publishing a public notice, Kumar Praveen Mehta sold this property to the petitioner on 18th August 2010 for a sale consideration of Rs.75 Lakhs paid by the petitioner vide his cheque drawn on Indian Overseas Bank, Teynampet.

6. The complaint made by the de-facto complainant/2nd respondent to the District Registrar, alleging fabrication of sale deed, forgery and impersonation did not find favour and all these facts have not been mentioned in the present complaint lodged with the police by him. The civil suit in O.S.No.4857 of 2000 before the XVI Assistant Judge, City Civil Court, Chennai filed by the de-facto complainant was not pressed by him, after the written statement filed by the Tahsildar, Mylapore-Triplicane Taluk had exposed the hollow claim made by the 2nd respondent. On the whole, it is very clear that the 2nd respondent is waging a battle for the ownership of land which was already sold by his late father as early as 1961 itself.

7. Mr. A.Ramesh, learned senior counsel, appearing for the petitioner relied on the decision in K.S.Narayanan Vs.Gopinathan reported in 1982 CrL.L.J. 1611 and contended that merely levelling a charge of conspiracy without mentioning how, where, why and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to bring the petitioner to face a trial in a criminal court. In the instant case, as already observed, every transaction had taken place since the year 1961 and the present petitioner is a purchaser in the year 2010.

8. The learned counsel also relied on the decision in Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another reported in 2004(4) SCC 168 and contended that the 2nd respondent/de-facto complainant had suppressed several material facts in the complaint lodged by him with the police and his dishonest intention to deceive the petitioner is clear from the averments made by him in the complaint and therefore, the proceedings in Crime No.384 of 2012 on the file of the Inspector of Police, XVIII Team Central Crime Branch, Egmore, Chennai is liable to be quashed. He would also contend that to constitute an offence of cheating, two ingredients have to be satisfied [1] to deceive a person either by making a false or misleading representation or by any other action and [2] fraudulently or

dishonestly inducing any person to deliver any property or to consent to the retention thereof by any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit and that since in the instant case, there are no ingredients to attract Section 420 of the Indian Penal Code against the present petitioner, he cannot be prosecuted for the said offence. Reliance was also placed on the decision in V.Y. Jose and another Vs. State of Gujarat and another reported in 2009(3) SCC 78 in this regard.

9. Mr.G.Ravikumar, learned counsel appearing for the de-facto complainant/ 2nd respondent would contend that a perusal of the confessional statement recorded by the police officer during the course of investigation clearly indicates the offence committed by the accused and therefore, the proceedings in Crime No.384 of 2012 on the file of the Inspector of Police, XVIII Team Central Crime Branch, Egmore, Chennai cannot be quashed.

10. It is to be noted that the confession of an accused made to the police officer during the course of investigation is inadmissible, except to the limited extent indicated in Section 27 of the Evidence Act. The learned counsel appearing for the 2nd respondent at one stage argued that the disputed land was encroached upon by the petitioner and in the same breadth, he argued that the de-facto complainant is in possession of the said land. When this court posed a question to him whether he has filed a civil suit to recover the possession of the land, which is alleged to have been encroached upon by the petitioner, he contended that the present criminal complaint is sufficient to get back his property. As already observed, the 2nd respondent/ de-facto complainant has not pressed the civil suit in O.S.No.4857 of 2000 and therefore, the said suit was dismissed by the XVI Assistant Judge, City Civil Court. From this, it is very clear that having failed in all other possible legal attempt to retrieve the land, which was legally sold by his father, he has resorted to file the present criminal complaint.

11. The learned counsel appearing for the petitioner relied on the decision in Parminder Kaur Vs. State of Uttar Pradesh reported in 2010(1) SCC 322 and contended that it is absolutely clear from the manner, in which the litigation is being fought that it is nothing but to wreak vengeance that the criminal prosecution has been started. This is a case, where the 2nd respondent having failed in all his previous battles, has filed the present criminal complaint against the present petitioner for the offences punishable under Section 420, 465, 468 and 120(B) of the Indian Penal Code.

12. It is also clear from various petitions filed by the 2nd respondent/ de-facto complainant that he is attempting to grab the property, which has already been sold by his father late Dr.Rama Pandiyaraj in the year 1961. The revenue authorities have, it appears, have strained every nerve to dig into the entire lineage of the said property and have time and

again clearly mentioned that the allegations of the 2nd respondent of forgery or impersonation has no iota of truth in it. The averments made in the complaint before the police also do not disclose the offence alleged. Therefore, I find that the complaint made by the 2nd respondent/de-facto complainant lack substance and is only a futile attempt to harass the petitioner. Therefore, I am inclined to allow the present petition.

13. In the result, this Criminal Original Petition is allowed and the proceedings in the First Information Report registered in Crime No.384 of 2012 dated 18.07.2012 on the file of the Inspector of Police, XVIII Team Central Crime Branch, Egmore, Chennai under Sections 420, 465, 468 and 120(B) of the Indian Penal Code is quashed, as regards the petitioner/3rd accused. Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Inspector of Police,
XVIII Team Central Crime Branch,
Egmore, Chennai.
2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. T.R. Sathiyamohan, Advocate Sr.47121
+ 1 cc to Mr.G. Ravikumar, Advcoate SR.46971

Cr.O.P.No.570 of 2013

CP(CO)
EU(26/07/2018)

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