

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.09.2018
CORAM
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.O.P.Nos.26028 of 2017 & 20621 of 2018
and Crl.M.P.Nos.15008 of 2017 & 11079 of 2018

G.Krishnaraj .. Petitioner in Crl.O.P.No.26028/2017
B.Mani .. Petitioner in Crl.O.P.No.20621/2018

Vs

1.State of Tamil Nadu, rep. by
Inspector of Police
Anti Land Grabbing Special Cell
Chennai Crime Branch

2.G.Vignesh ..Respondents in Crl.O.P.No.26028/2017

1.State rep. by
Inspector of Police
Anti Land Grabbing Special Cell
Chennai Crime Branch

2.G.Vignesh ..Respondents in Crl.O.P.No.20621/2018

Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records relating to case in Crime No. 148/2015 dated 31.10.2015 on the file of the 1st respondent and quash the same with respect to the petitioners.

For Petitioner in : Mr.P.M. Subramaniam
Crl.O.P.No.26028 of 2017

For Petitioner in : Mr.M.Anandaraj
in Crl.O.P.No. 20621 of 2018

For R1 in both Crl.O.Ps. : Mr.M.Prabhavathi
Additional Public Prosecutor

For R2 in both Crl.O.Ps. : Mr.A.M.Rahmath Ali

C O M M O N O R D E R

These petitions have been filed to call for the records in Cr.No. 148 of 2015 dated 31.10.2015 on the file of the 1st respondent and quash the same.

2. On the complaint lodged by Vignesh [the second respondent], the first respondent police have registered a case in Cr.No.148 of 2015 on 31.10.2015 under Sections 419, 420, 465, 468 and 471

r/w 120-B IPC against four accused, viz., Lakshmi Narasimhan [A1], Mani [A2], Krishnaraj [A3] and Mayilvanan [A4], for quashing which, Mani [A2] and Krishnaraj [A3] are before this Court.

3. Heard the learned counsel for the petitioners, learned counsel for the de facto complainant and the learned Additional Public Prosecutor appearing for the State.

4. Today, Mr.Nagaraju, HC 42730, Team 24, CCB-LG-11, is present.

5. To appreciate the contentions raised by the parties, it may be necessary to state the allegations in the FIR. It is the case of Vignesh that the property in question measuring 3,600 sq.ft. in S.No.625/11 Kovilpathai Village, Poonamalee Taluk, originally belonged to Logayya Naidu, the grandfather of Vignesh, he having purchased the same on 10.06.1965 from Poonga and Company, vide Doc.No.1495/1965; since then Logayya Naidu was in enjoyment of the said property; Vignesh, the de facto complainant was born on 19.05.1990; after the death of Logayya Naidu, the property devolved on his son Gopi Krishnan; Gopi Krishnan executed a settlement deed dated 02.05.1991 in favour of his son Vignesh, vide Doc.No.3305 of 1991; it is the case of the de facto complainant that though he was one year old as on 02.05.1991, his father had inadvertently shown his age as 16; it is the further case of the de facto complainant that some time in the year 2002, his mother and he realised that the said property had been sold to Mani [A2] and Krishnaraj [A3] on the strength of a Power of Attorney dated 29.06.1994 purported to have been executed by Vignesh [de facto complainant] in favour of one Lakshmi Narasimhan [A1]; the said Lakshmi Narasimhan sold 1,800 sq.ft. of the property, vide Doc.No.5032 of 1994 dated 11.07.1994 in favour of Krishnaraj [A3] and 1,800 sq.ft. of the property was sold to Mani [A2], vide Doc.No.5060 of 1994 dated 11.07.1994. On coming to know of it, the de facto complainant and his mother filed O.S.No.32 of 2003 before the District Munsif Court, Ambattur for a declaration that the sale deed executed by Lakshmi Narasimhan [A1] in favour of Mani [A2] was null and void. According to the de facto complainant, the suit took a circuitous route and ultimately his counsel did not properly apprise him of the developments and so the suit was dismissed for default and restored thereafter.

In fine, it is the de facto complainant's contention that the Power of Attorney dated 29.06.1994 was not executed by him in favour of Lakshmi Narasimhan [A1] and based on the fabricated Power of Attorney, Mani [A2] and Krishnaraj [A3] cannot have proper title to the property. Hence, the FIR.

6. Per contra, learned counsel for Krishnaraj [A3] submitted that Krishnaraj is a bona fide purchaser of the property from Lakshmi Narasimhan [A1] and that Lakshmi Narasimhan [A1] had given the original title deeds, especially the original Settlement Deed dated 02.05.1991 to Krishnaraj [A3]. Learned counsel also submitted that Krishnaraj [A3] is employed in Avadi Heavy Vehicle Factory and having purchased the property in the year 1994, he obtained proper building permission from Avadi Municipality and constructed house by obtaining loan from his Office.

7. Learned counsel for Mani [A2] submitted that Mani is also an employee of Avadi Heavy Vehicle Factory and that he sold the property on 27.01.2012 to one Mayilvanan [A4] after the dismissal of the suit in O.S.No.32 of 2003 dated 14.06.2011.

8. Refuting the contentions, learned Additional Public Prosecutor and the learned counsel for the de facto complainant submitted that the accused cannot be termed as innocent purchasers, inasmuch as even in their confession to the police, they have admitted of having purchased the property illegally from Lakshmi Narasimhan [A1].

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

10. The short point that arises for consideration is, whether the two petitioners were innocent purchasers or whether they knew that Lakshmi Narasimhan [A1] had no title to the property?

11. It is seen that the de facto complainant knew about these two alienations way back in the year 2002 and that is the reason why he filed a suit in O.S.No.32 of 2003 before the District Munsif, Ambattur, for a declaration to declare the sale effected by Lakshmi Narasimhan [A1] to Mani [A2] as null and void. Strangely, the de facto complainant did not implead Krishnaraj [A3] as a defendant nor did he file any separate suit as against Krishnaraj [A3]. During the pendency of the suit, the de facto complainant filed I.A.No.571 of 2017 in O.S.No.32 of 2003 to implead Krishnaraj [A3] as one of the defendants. The District Munsif has by a well considered order dismissed I.A.No.571 of 2017 on 21.09.2017 holding that the de facto complainant knew about the transaction in the year 2002 and therefore, the petition filed in the year 2017 is clearly barred by limitation. It is a trite law that the confession given to the police would have no evidentiary value and a prosecution cannot be founded on that when there is no consequent recovery under Section 27 of the Indian Evidence Act.

12. In this case, there are overwhelming materials to show that Mani [A2] and Krishnaraj [A3] were innocent purchasers, they having purchased the property on the strength of the Power of Attorney that is said to have been given by the de facto complainant. After having purchased the property, their subsequent conduct shows that they were holding on to the property. In fact, Krishnaraj [A3] has built a house after obtaining loan from his office. Mani [A2] has sold the property to Mayilvanan [A4] only in the year 2012 after O.S.No.32 of 2003 was dismissed for default. In the light of the above, this Court is of the view that the prosecution as against Mani [A2] and Krishnaraj [A3] would be an abuse of process of law.

Accordingly, these petitions are allowed and the prosecution in Cr.No.148 of 2015 as against Mani [A2] Krishnaraj [A3] is quashed. However, the police are directed to proceed with the investigation to find out and trace Lakshmi Narasimhan [A1], in which event, Mani [A2] and Krishnaraj [A3] can be enlisted as witnesses to prosecute Lakshmi Narasimhan [A1]. Consequently, connected miscellaneous petitions are closed.

05.09.2018

To

1. The Inspector of Police
Anti Land Grabbing Special Cell
Chennai Crime Branch.

2.The Public Prosecutor
High Court, Madras.

P.N.PRAKASH, J.
gms

Crl.O.P.Nos.20621 & 26028 of 2018

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