

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018
Pronounced on : 01.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.5395 of 2011
and
M.P.Nos.1 & 2 of 2011

1.Nachimuthu,
S/o.Nachimuthu Gounder.

2.Ramasamy,
S/o.Nachimuthu Gounder.

3.Palanisamy,
S/o.Nachimuthu Gounder.

4.N.Nachimuthu,
S/o.Late.Palanisamy Gounder.

5.P.Muthusamy,
S/o.Nachimuthu Gounder.

6.Easwaramoorthy,
S/o.Nachimuthu.

... Petitioners/Accused
Nos.1 to 5 & 8

Vs.

Nachimuthu Gounder,
Muthu Gounder.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.136 of 2008 on the file of the Judicial Magistrate Court, Dharapuram, quash the same in so far as the petitioners are concerned.

For Petitioners: Mr.R.Ashrafkhan

For Respondent : No appearance
[Private notice sent name printed]

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.136 of 2008 on the file of the Judicial Magistrate Court, Dharapuram, quash the same in so far as the petitioners are concerned.

2.The petitioners, who are accused Nos.1 to 5 and 8 in C.C.No.136 of 2008, which is pending trial on the file of Judicial Magistrate, Dharapuram, on a private complaint filed by the respondent/complainant herein for the offences under Sections 467, 468, 471 and 420 of the Indian Penal Code had preferred the above quash petition.

3.Notice has been served to the respondent on 24-04-2017 and proof of service has been submitted by the learned Judicial Magistrate, Dharapuram. Despite receipt of notice, the respondent had failed to appear in the above case. The name of the respondent has been printed in the cause list, the respondent had chosen not to appear. Absence of the respondent and adjourning the case would be of no use. Hence, I proceed to dispose of the case on merits, on the submissions of the petitioner, typed set of papers and on the available materials on record.

4.The respondent filed the above Private complaint against eight persons stating that the property of an extent of 3.80.0 hectare of lands comprised in Old Ka.Sa.No.139 and New.Ka.Sa.No.121 situated in Thalavaaipattinam Village, Dharapuram Taluk, Erode District originally belong to one Muthu Gounder and his brother Ramiah Gounder and they had a partition of their properties on 26-07-1926 and as per the partition, the above said property was allotted to the share of the respondent's father and after the death of the respondent's father, the respondent and his brothers were enjoying the property by paying Kist and the property stands in the name of the respondent and the Patta number for the above said property is 737.

5.The respondent's father Muthu Gounder and his brother is Ramiah Gounder and the said Ramiah Gounder had three sons namely Muthusamy Gounder, Nachimuthu Gounder and Palanichamy Gounder. The accused Nos.1 to 3 are the legal heirs of Nachimuthu Gounder and accused Nos.4 and 5 are the legal heirs of Palanisamy Gounder. By executing a registered partition deed dated 10-04-1949, Ramiah Gounder gave the property to his sons Muthusamy Gounder, Nachimuthu Gounder and Palanichamy Gounder and in that partition, old Survey No.139 and New Survey No.121 was not mentioned.

6.The respondent/complainant was enjoying the property in New Survey No.121 and Old Survey No.139 of an extent of 9.85 acres, while this being so, the accused Nos.1 to 5 and 8

sold the above said property to one K.Mohan A6, as if they were the owners of the property and they got the property ancestrally and executed a registered sale deed on 29-03-2007 and the said document was prepared and typed by one P.Gandhi A7 and Easwaramoorthy A8, who is the son of the 4th accused has attested the said document. As the Petitioners herein who are accused Nos.1 to 5 and 8 have no right over the property and sold the property to K.Mohan A6, who is also said to have purchased the same knowing fully well that the petitioners herein A1 to A5 and A8 have no title over the property, hence, the respondent filed a private complaint against the petitioners and two others for the offences under Sections 467, 468, 471 and 420 IPC.

7.The contention of the respondent/complainant is that he is in possession and enjoyment of the property, since the property was inherited by him, being so, petitioners knowing that they don't have any share or right in Old Survey No.139, New Survey No.121 of 9.85 acres had sold the property to one Mohan (A6) on 29-03-2007, knowing that they don't have any right over the property. The document writer P.Gandhi (A7) had prepared a document knowing it to be false with false particulars without the knowledge of the respondent.

8.Further, contention is that on 09-02-2007 the respondent/ complainant's son Murugasamy had questioned the petitioners herein, for trespassing into the said land and had given a complaint to the Alangiam Police Station for which CSR No.42/2007 was given. The petitioners had appeared before the Police and had given an undertaking that they won't interfere in the peaceful possession of the respondent and hence, the complaint was closed.

9.On coming to know about the execution of the sale deed, dated 29-03-2007, the respondent/complainant had sent a complaint through post to the Inspector of Police, Alangiam Police Station on 30-03-2007 as the police failed to take any action. The respondent had approached this Court in CrI.O.P.No.9962 of 2007 and thereafter, the Sub-Inspector of Police, Alangiam Police Station had registered a case in Crime No.98 of 2007 for the offences under Sections 467, 468, 471 and 420 IPC.

10.Further, as it could be seen from the complaint that after registration of the FIR, no enquiry was conducted and no statement was recorded or documents were obtained from the respondent since, the Alangiam Police failed to take any action against the petitioners/accused herein, as they were resourceful persons with men and money. Despite several representations to the Alangiam police, no proper response was given.

11.Further, on 16-06-2007, when the respondent/complainant was bedridden due to his old age and sickness, The Alangiam police had come to his residence, without giving any reason informed the respondent that the complaint in Crime No.98 of 2007 has been closed and closure Notice dated 17-05-2007 was served to the respondents and hence, the respondent had filed the private complaint against the petitioners and two others before the learned Judicial Magistrate, Dharapuram for the offences under Sections 467, 468, 471 and 420 of the Indian Penal Code, which was taken on file as C.C.No.136 of 2008.

12.The learned counsel for the petitioners submitted that the petitioners and the respondent/complainant are hailing from common ancestor namely Nachimuthu Gounder. The said Nachimuthu Gounder's sons Ramiah Gounder and Muthu Gounder had jointly purchased many properties, during 1920, of which this disputed property is one among them. Thereafter, the Partition had taken place between Ramiah Gounder and Muthu Gounder, during 1926. In the said partition, the above said property has not been mentioned and it has been left in common.

13.The respondent claims that he and the legal-heirs of Muthu Gounder had been enjoying the property and revenue records have been obtained in their name. The said Ramiah Gounder's legal heirs namely the petitioners have no right over the property. This claim of the respondent is not correct and sustainable since the property has not been mentioned in the partition between Muthu Gounder and Ramiah Gounder and the said property had been left in common. Hence, the petitioners have right over the property and no offence of forgery, cheating have been committed by the petitioners.

14.The learned counsel for the petitioners further contended that the property in dispute is a common ancestral property wherein and whereby both the legal heirs of Ramiah Gounder and Muthu Gounder are entitled for their share. If at all, there is any dispute with regard to inheritance and ownership over the property, it could be decided only through Civil Court, the respondent for a Civil dispute has falsely made a criminal complaint against the petitioners as a short circuit measure and the criminal complaint is not maintainable, both on the facts and on legality, hence the criminal complaint is not maintainable.

15.Further, the learned counsel for the petitioners produced the order copy of this Court in Crl.O.P.No.2305 of 2009 dated 24.04.2015, by which the Proceedings as against K.Mohan A6 has been quashed. On perusal of the same, it is seen that the said Mohan A6 had filed a Civil suit on the file of the Sub Court, Dharapuram against 41 persons including the respondent for partitions stating that through the sale deed dated 29-03-2007, which is the disputed document and question in issue in this case. In the said suit, the

respondent/complainant is the 7th defendant. The said suit was dismissed by the Sub Court, Dharapuram against which, an appeal in A.S.No.41 of 2011 was filed before the learned III additional District Judge, Dharapuram, which allowed the appeal by judgment dated 03-06-2013 and a Preliminary decree was passed and application for passing final decree is pending. This Court cannot lose sight of the decree made in A.S.No.41 of 2011 passed by the III Additional District Judge, Dharapuram.

16.The petitioners further submit that the respondent is attempting to give a criminal colour to a civil dispute, using the criminal complaint as a clog to settle the Civil dispute between the petitioners and the respondent. Hence, the initiation of the criminal complaint by the respondent is with *mala fide* intention.

17.The learned counsel for the petitioners submits that the Lower Court ought not to have taken the complaint on file, when the complaint on the face of it is explicit that the dispute between the petitioners and the respondent is purely civil in nature.

18.The learned counsel for the petitioners further submits that the respondent having admitted in the complaint about the earlier complaint of the respondent which was registered in Crime No.98 of 2007 for the same offences against the petitioners which have been closed as "Mistake of fact" by the Alangiam Police Station and RCS Notice dated 17-05-2007 has been served to the respondent on 16-06-2007 and the case has been closed. It is a well settled principle that after closure report filed and RCS notice served and no protest petition filed challenging the closure report. The acceptance of the closure report and closing of the case by the concerned Court being a Judicial order, without setting aside the said Judicial order, the private complaint for the same offence is not maintainable. Such being the case, the above complaint is ought not to have been taken on file and the complaint is not legally maintainable.

19.The petitioners had placed reliance on the citations of the Hon'ble Apex Court of India in the case of *MOHAMED IBRAHIM AND OTHERS VS. STATE OF BIHAR AND ANOTHER* reported in 2009 (8) *Supreme Court Cases*, 751 wherein it has categorically held that what constitutes a false document and had further held that mere execution of sale deed by claiming that property being sold was executants property did not amount to commission of offences under Sections 467 and 471.

20.Further it is held that disputes which are essentially civil in nature filed as criminal complaints, the duty is cast upon the Courts to check the abuse of process and to see that the criminal proceedings are not misused for settling scores or pressuring parties to settle civil disputes.

21.Thus, on perusing the complaint, typed set of papers and on submissions made, it is clear and apparent that both the petitioners/accused and the respondent/complainant belong to the same family and the dispute is with regard to the ancestral property. Further for the same offence a police complaint has been given, which has been closed as "Mistake of fact" and no protest petition has been filed setting aside the judicial order.

22.Further, this court for one of the accused had quashed the proceedings on the ground that Civil Court has given a finding with regard to the said property taking all these facts into consideration, it is clear that the complaint filed by the respondent is manifestly attended with *mala fide* and the proceedings is maliciously instituted with an ulterior motive for settling scores to settle the civil disputes by the respondent against the petitioners.

23.In view of the above the quash petition is allowed. The proceedings as against the petitioners, who are accused Nos.1 to 5 and 8 are hereby quashed. This Hon'ble Court in CrI.O.P.No.2305 of 2009 has quashed the proceedings as against A6 by order dated 24-04-2015. In view of the above, taking the complaint as a whole, which do not make out any offence against any of the accused, it would be an exercise in futility to allow the criminal proceedings to continue against A7 alone, hence, the case against A7 is also quashed.

24.In the result, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Co)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Dharapuram.

2.Do-Thro The Chief Judicial Magistrate, Erode

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Asokan, Advocate Sr.No.52774

KK(CO)

sm:21.8.2018