IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.28439 of 2009 and
M.P.Nos.1 and 2 of 2009

K.Selvan .. Petitioner

Vs

1.State by Inspector of Police,
Tiruppur South Police Station,
Tiruppur
subsequently transferred to
CB CID, Coimbatore District
Crime No.418 of 2001

2.S.K.S.Sivakumar .. Respondents

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.84 of 2004 on the file of the Judicial Magistrate No.II, Tiruppur and quash the same.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.P.Govindarajan (for R1)
Addl. Public Prosecutor

Mr.K.Balakrishnan (for R2)

ORDER

The petitioner has filed this Criminal Original Petition to call for the records in C.C.No.84 of 2004 pending on the file of the learned Judicial Magistrate No.II, Tiruppur and to quash the same.

2. The petitioner herein is the 3rd accused in C.C.No.84 of 2004 and was charged with the offences under Sections 468, 419, 420, 120-B of the Indian Penal Code.

3. The case of the prosecution is that 1st accused is the son of the 2nd accused. Accused Nos.1 to 4 are the residents of Tiruppur and 5th accused was the resident of Palladam. Accused Nos.3 to 5 were associates of Accused Nos.1 and 2. The complainant Sivakumar was the brother of Accused Nos.1 and 2 and the 2nd accused had previous enmity against the complainant qua partition of their ancestral property.

4. Prior to 10.10.1994, the accused committed criminal conspiracy by agreeing to do certain acts of offences of forgery using the forged documents as genuine with intent to fraudulently gain the landed property of an extent of 1344 sq. feet of house site comprised in T.S.No.111/5/3 of Tiruppur Village. In this regard, a case in Crime No.84 of 2004 was registered by the respondent police against the accused persons and the respondent police filed charge sheet before the Judicial Magistrate No.II, Tiruppur. Hence, the petitioner had filed the petition seeking to quash the criminal proceedings in C.C.No.84 of 2004.

5. Resisting the petition, the 1st respondent filed counter stating that pursuant to the order of this Court in Crl.O.P.No.7665 of 2002, dated 10.12.2002, the 1st respondent investigated the matter further and the investigation reveals that the 1st accused and four others conspired together and forged the signature of the complainant and created forged power of attorney for the vacant land measuring area about 6.25 acres in S.F.No.6, Tiruppur Town and registered the documents. Further, based on the forged power of attorney, the title of the property was transferred to the 1st accused and later to the 5th accused. Thus, Accused Nos.1 to 5 committed forgery and used the forged documents as genuine and caused wrongful gain to themselves and wrongful loss to the complainant. It is stated that the Judicial Magistrate No.II, Tiruppur has taken cognizance of the offence in C.C.No.84 of 2004 and out of 25 witnesses, 16 witnesses were examined as on 21.5.2010. According to the 1st respondent, the prosecution evidence in trial Court was almost complete and there was adequate evidence to establish the involvement of the petitioner in the criminal conspiracy.

6. I heard Mr.S.Sivakumar, learned counsel for the petitioner, Mr.P.Govindarajan, learned Additional Public Prosecutor for the 1st respondent and Mr.K.Balakrishnan, learned counsel for the 2nd respondent and also perused the materials available on record.

7. The learned counsel for the petitioner argued that the petitioner was not at all connected with the crime and in fact, in the charge sheet filed by the 1st respondent, the role of the petitioner was not at all mentioned. There was absolutely no evidence to connect the petitioner to the crime alleged against him and therefore, prayed for quashing of criminal proceedings in C.C.No.84 of 2004 pending on the file of the Judicial Magistrate No.II, Tiruppur in so far as the petitioner is concerned.

8. Per contra, the learned Additional Public Prosecutor submitted that the investigation reveals that Accused Nos.1 to 5 have committed forgery and used the forged documents as genuine and caused wrongful gain to themselves and wrongful loss to the complainant. He would submit that after taking cognizance, the Judicial Magistrate No.II, Tiruppur examined 16 witnesses as on 21.5.2010 and because of stay order, further trial could not be proceeded with. Since, the prosecution evidence in trial Court was almost complete and there was adequate evidence to establish the involvement of the petitioner and if the petition is entertained, the entire trial would be collapsed.

9. The learned counsel for the 2nd respondent reiterated the arguments advanced by the learned Additional Public Prosecutor. He added that it is incorrect to state that there was absolutely no evidence against the petitioner to connect him and he was implicated to safeguard the interest of other person. He would further submit that the civil suit being O.S.No.265 of 1997 alleged by the petitioner has already been withdrawn. Hence, prayed for dismissal of the petition.

10. The grievance of the petitioner is that in the charge sheet filed by the respondent, there was no whisper about the role played by the petitioner and absolutely, there was no evidence to connect the petitioner to the crime alleged against him in C.C.No.84 of 2004.

11. It is relevant to extract the charge sheet filed by the 1st respondent, which reads thus:

> "Charges under section 120B, 467, 471, 420 and 109 IPC
>
> A1 is the son of A2, A1 to A4 are residents of Tiruppur. A5 is a resident of Palladam. A3 to A5 are associates of A1 and A2.
>
> Witness Sivakumar a resident of Tiruppur is the brother of A2. A1 and A2 had previous enmity against witness S.K.S.Sivakumar in respect of the partition of their ancestral property.

Witness Sivakumar has 1344 sq. feet house site comprised him T.S.No.111/5/3/ of Tiruppur village at Tiruppur.

On or prior to 10.10.94, the accused committed a criminal conspiracy by agreeing to do certain acts of offences of forgery, using the forged documents as genuine with intent to fraudulently gain the said landed property of witness Sivakumar.

Thereupon, in pursuance of the said conspiracy the accused committed the following offence:-

On or prior to 10.10.94, on the instigation of A2, A1 committed forgery of a power of attorney document purporting to be a genuine power of attorney executed by witness Sivakumar in favour of an imaginary person called Muthuramalingam authorising to him to sell the said site of witness Sivakumar to any person of his choice.

During the period between 15.9.94 and 10.10.94, A1 created a forged sale deed purporting to have been executed by the said imaginary person called Muthuramalingam in person of A1 Senthilkumar in respect of the said land at a bogus consideration for Rs.10,300/-. Thereupon on 10.10.94 A1 used the said forgery document as genuine and fraudulently registered the said land in his name at the Sub Registrar Office, Kolinjamparai, knowing very well that it was a forged document.

Thereupon, on 22.7.95, A1 used the said forged sale deed by registering the said land in favour of A5 Thevisamani at sub Registrar, Kolinjamparai, Kerala at a bogus consideration of Rs.36,000/- knowing well that it was a forged document. A3 & A4 abetted A1 in this offence by attesting the sale document.

Thereupon on 12.7.96, A5 cheated witness Krishnaswami by making a false representation that the above said sale deed was a genuine document in his favour and inducing him to deliver an advance of Rs.4 lakh to A5 Divisamani by a document of agreement for sale of the said land to witness Krishnasamy by A5 Divisamani.

Therefore, the accused committed offences punishable under sections mentioned below:

A1 - 120B r/w 467 (2 counts) and 471 (2 counts), 420 r/w 109 IPC

A2 - 120B r/w 467, 467, 420 r/w 109 IPC
A3 - 120B r/w 467, 467 r/w 109, 471 r/w 109 IPC
A4 - 120B r/w 467 & 467 r/w 109, 471 r/w 109 IPC
A5 - 120B r/w 467and 420 IPC"

12. The perusal of the charge sheet would show that the 1st respondent has not specifically stated the role played by the petitioner/A3 in the alleged commission of offence. Moreover, to show that the petitioner has direct involvement in the crime, the respondents have not produced any material.

13. According to the respondents, in their statement under Section 161 Cr.P.C., the witnesses have stated the role played by the petitioner for the forgery committed by the accused persons.

14. The learned counsel would submit that only based on the alleged confession statement of Accused Nos.1 and 2, the petitioner has been falsely implicated in the case and the confession of co-accused was not admissible. It is to be noted that in the FIR, the name of the petitioner has not been mentioned.

15. The law is well settled that if there was no materials on record to attract ingredients of the offences alleged, the accused is entitled to get discharge in the case.

16. In their counter, the 1st respondent stated that the civil cases between the defacto complainant and Accused Nos.1 and 2 were pending before several Civil Courts to claim title of the property, whereas the charge against the petitioner was in respect of the involvement in the offence of creating forged document dated 22.7.1995, which constitutes the criminal liability towards him.

17. On overall consideration of the materials available on record, I am of the view that there was no direct materials to implicate the petitioner in the alleged crime. However, the acts said to have been done by the petitioner would constitute civil in nature.

18. In Thermax Limited and others v. K.M.Johny and others, reported in (2011) 13 SCC 412, the Hon'ble Supreme Court held thus:

> "34. ..... If thee is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding."

19. In the case of State of Haryana vs. Bhajan Lal, reported in 1992 Suppl. (1) SCC 335, one of the guidelines which enumerated, when inherent power under Section 482 Criminal Procedure Code can be invoked, is quoted hereunder:-

> "Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. In the case of Inder Mohan Goswami vs. State of Uttaranchal, reported in (2007) 12 SCC 1, it was observed that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

21. In the case on hand, civil proceedings are pending between the parties, particularly, the defacto complainant and Accused Nos.1 and 2 with regard to the property and/or the document in question. In such view of the matter, this Court is of the view that the petitioner should not be made to face the the criminal prosecution. Moreover, this Court is prima facie of the view that the criminal prosecution is used as an instrument of harassment for seeking private vendetta with an ulterior motive to pressurise the petitioner.

22. Considering the overall aspects of the matter, this Court is of the opinion that the criminal proceedings in C.C.No.84 of 2004 is maliciously prosecuted with oblique motive to pressurize the petitioner in the civil dispute and the same is nothing but sheer and clear abuse and misuse of process of law and Court. In my considered view, this is a fit case to exercise extraordinary powers under section 482 of the Code of Criminal Procedure and to quash and criminal proceedings.

23. In such view of the matter, this criminal original petition is allowed and the criminal proceedings in C.C.No.84 of 2004 pending on the file of the learned Judicial Magistrate No.II, Tiruppur is quashed as far as the petitioner is

concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate No.II,
   Tiruppur.

2. The Inspector of Police,
   Tiruppur South Police Station,
   Tiruppur.

3. The Public Prosecutor,
   High Court, Madras.

4. The CB CID, Coimbatore

5. The Section Officer,
   Criminal Section,
   High Court, Chennai 104.

+1cc to Mr.K.Balakrishnan, Advocate Sr.No.62387
+1cc to Mr.S.Sivakumar, Advocate Sr.No.63084

order made in
CRL.OP.No.28439 of 2009 and
M.P.Nos.1 and 2 of 2009

KJI(CO)
CSL/08.11.2018