

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.19391 of 2018
and CRL.M.P.No.10242 & 10243 of 2018

Dr.G.Kothandaraman .. Petitioner

Vs

1.The State rep. By,
The Inspector of Police,
District Crime Branch,
Kancheepuram.

2.J.Shanthi .. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the entire records in C.C.No.318 of 2016 on the file of the Judicial Magistrate-II, Chengalpattu.

For Petitioner : Mr.A.Natarajan, Sr. Counsel
for Mr.C.Paulraj
For 1st Respondent : Mr.C.Iyyappa Raj, APP

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.318 of 2016 on the file of the Judicial Magistrate Court No.II, Chengalpattu.

2.Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent. 1st

3.The short point that falls for consideration is that the property in question originally belongs to one Chinnakullan and Periyakullan; they lost their property in a Court auction in the year 1951 and the property was purchased by one Kathirvel Udayar, by document No.2333 of 1951 dated 10.09.1951; that from Kathirvel Udayar, the property was purchased by Chandra Ammal on 25.12.1965; from Chandra Ammal, the property was purchased by

Ramakrishnan by document No.2582 of 1970; from Ramakrishnan, the property was further purchased by Somasundara Iyer by document No.1380 of 1971 dated 10.12.1971; after the death of Somasundara Iyer, his legal heirs sold the property to Shanti the de facto complainant by document No.1280 of 2010 dated 03.03.2010. While so, it is alleged by the de facto complainant that A1 and A2, who are the legal heirs of Chinnakullan and Periyakullan created a Release Deed, as if their sister had title to the property and that, they are releasing their interest in favour of A1 and A2, vide document No.10114 of 2006 dated 07.08.2006. On the strength of the Release Deed, the petitioner herein has purchased the property vide document No.7304 of 2007 dated 23.05.2007.

4.Mr.A.Natarajan, learned Senior Counsel appearing for the accused submitted that Shanthi the de facto complainant is only a subsequent purchaser, inasmuch as she has purchased the property only on 03.03.2010. Therefore, he submitted that the entire prosecution stands vitiated. He also submitted that Perumal [A1] and Paramasivam [A2] have initiated certain civil suits, which are pending in respect of the said property.

5.Per contra, learned Additional Public Prosecutor refuted the contentions.

6.Though Shanti has purchased the property only in the year 2010, yet in the year 2007, the petitioner has purchased the property merely on the Release Deed document dated 07.08.2006, without anything more. The fact remains that the property had gone out of the hands of Chinnakullan and Periyakullan, wayback in the year 1951 and the property has changed hands three times. The last sale was on 10.12.1971, which is the mother document. This mother document was not available with the petitioner herein, but is available with Shanthi. Thus, when there are prima facie materials, this is not a fit case to quash the prosecution. Hence, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

7.However, Mr.Natarajan submits that presence of the petitioner before the trial Court may be dispensed with.

8.Accepting the submission, personal appearance of the petitioner before the trial Court shall be dispensed with, on condition that he shall file an affidavit that he will not dispute his identity and that, his counsel will cross-examine the witnesses, when they examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab (2015[1] MLJ [Cr1] 288). The petitioner shall present before the trial Court for receiving copies under

Section 207 Cr.P.C., for answering charges, for questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if the petitioner files an application under Section 317 Cr.P.C., the same shall be liberally construed. If the accused adopts any dilatory tactics, the trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against him under Section 229-A of IPC. Whatever stated herein is of limited purpose only for deciding this quash petition and the trial Court shall proceed with the trial, without in any manner being influenced by what is stated above.

Gya

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. Judicial Magistrate-II,
Chengalpattu.

2. The Inspector of Police,
District Crime Branch,
Kancheepuram.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Paulraj Advocate SR.NO. 53289 (10/08/2018)

CRL.OP.No.19391 of 2018

NRI (CO)

ASK (06/08/2018)

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