

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.23642 of 2018
and CrI.M.P.Nos.13285 & 13286 of 2018

K.Vidyarani ... Petitioner

Vs

1.The State rep. by
The Inspector of Police,
District Crime Branch,
Coimbatore.
(Crime No.26 of 2014)

2.M.Kamatchi ... Respondents

Criminal Original Petition filed under Section 482 of
Cr.P.C., praying to call for the records in Charge Sheet in
C.C.No.432 of 2017 on the file of the Judicial Magistrate No.VI,
Coimbatore.

For Petitioner : Mr.B.Kumarasamy

For 1st Respondent : Mrs.M.Prabhavathi, APP

O R D E R

On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.26 of 2014 on 01.07.2014 under Section 465, 468, 471 and 420 IPC against the accused herein and after completing the investigation, have filed a Charge Sheet in C.C.No.432 of 2017 before the Judicial Magistrate No.VI, Coimbatore against the accused/petitioner herein for the offences under Section 471, 420 and 467 IPC, for quashing which, the accused is before this Court.

2.Heard Mr.Kumarasamy learned counsel for the accused and the learned Additional Public Prosecutor.

3.To appreciate the contentions of Mr.Kumarasamy, it may be relevant to set out the allegations in the Final Report. It is the case of the de facto complainant that the accused was into real estate business and that she promoted a housing plot layout by name Sri Nagar layout; the de facto complainant approached the accused for purchasing a plot; the accused showed a plan said to have been approved by the authorities and the layout plan had the number LP/R(CPN) No.26/1987; the de facto complainant purchased plot No.81; similarly, other persons also purchased plots from the accused; like the de facto complainant, others also obtained loans from various financial institutions and built houses on the plots purchased by them; while so, the de facto complainant and the others approached the Panchayat requesting the Panchayat to lay roads in their colony; at that time, the de facto complainant and others came to know that the layout plan that was shown by the accused was not the original layout that was approved by the authorities; that the accused had created her own layout plan, as if it was issued by the authorities and on the strength of such a layout plan, she has sold the plots to various persons; that the accused had not surrendered the common area, park area etc., to the authorities, in compliance with the original layout. Hence, the FIR and the consequent Charge Sheet.

4.Mr.Kumarasamy submitted that the question of forgery will not arise in this case, inasmuch as the accused had submitted a revised plan to the authorities for approval, even prior to the registration of the FIR. He further placed reliance on the judgment of the Supreme Court in Mohammed Ibrahim and Others Vs State of Bihar and Another (2009) 8 SCC 751, in support of his contention. He further contended that the accused has filed a comprehensive Suit in O.S.No.293 of 2015 against all the purchasers including the concerned authorities for approving the altered plan submitted by her.

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

6.This Court gave its anxious consideration to the rival submissions. In Mohammed Ibrahim (Supra), the issue before the Supreme Court was, whether a false averment in a Sale Deed that the accused is the owner of the property would attract the offence of forgery or making false document. In that context, the Supreme Court held that such a false averment will not attract Section 464 IPC. In this case, it is the specific case of the de facto complainant that the accused had produced a plan

purported to have been issued by the authorities and represented that it is an approved plan. On the strength of such a plan, the de facto complainant and others purchased plots in the layout.

7.The statement of the Member Secretary, CMDA shows that the present layout is not in consonance with the approved plan, that was issued by the authorities. On the strength of this, Mr.Kumarasamy submitted that, it can at the most be violation of the approved plan, for which, a prosecution can be launched only under the concerned Municipal Act for violation of the plan and not for an offence under Section 464 IPC.

8.Though, this argument did appear attractive at the first blush, however, the allegations against the accused is that she had given a fabricated plan to the de facto complainant and others and had made them believe that it was an approved plan. On the strength of the fabricated plan, the de facto complainant and others purchased plots and constructed their houses. The plan that was given by the accused to the purchasers is not the plan issued by the authorities. Thus, there are prima facie materials to show that there has been fabrication of the layout plan shown by the accused and hence, the prosecution cannot be quashed at the threshold. Just because the accused had submitted a revised plan prior to the registration of the FIR, it cannot obliterate the act of the accused fabricating a plan, as if issued by the authorities. Similarly, the pendency of the Suit would also not be a bar for proceeding with the prosecution in the instant case, where the fact in issue is whether the accused had sold the plots to innocent purchasers, based on a fabricated plan.

9.In such view of the matter, when there are prima facie materials for the trial Court to frame charges, the prosecution cannot be quashed at the threshold. Hence, this petition is devoid of merits and dismissed. Consequently, connected Miscellaneous Petitions are closed.

10.However, Mr.Kumarasamy submitted that the presence of the petitioner before the trial Court may be dispensed with.

11.Accepting the submission, petitioner/accused is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order and execute a bond for Rs.5,000/- without sureties. The accused shall be present before the trial Court to receive the charge sheet under Section 207 Cr.P.C., for framing charge under Section 239 Cr.P.C., questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if the accused files an application under Section 317 of Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-

examine the prosecution witnesses on the day, they are examined in-chief, without adopting any dilatory tactics, her presence can be dispensed with. 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 them under Section 229-A of IPC.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dua/gya

To
1.Judicial Magistrate No.VI,
Coimbatore.

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

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Gunalan, Advocate sr.no.69324

Cr1.O.P.No.23642 of 2018

ppa(co)
nr 24/10/2018

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