



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.11020 of 2015

and

M.P. (MD) No.1 of 2015

S.Sivakumar

..Petitioner/3rd Accused

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Thoothukudi,
Thoothukudi District.
Crime No.23/15

... 1st Respondent / Complainant

2.Rajendran

...2nd Respondent / De-facto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to crime No.23 of 2015 dated 05.05.2015 on the file of the Inspector of Police, District Crime Branch, Thoothukudi and quash the same as against the petitioner/A3.

For Petitioner : Mr.N.Tamil Mani

For Respondents :Mr.M.Anantha Devi

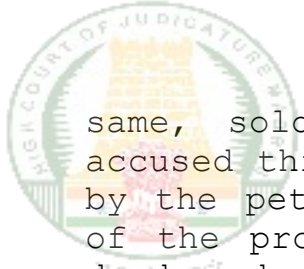
G.A.(Crl. Side) for R1

No Appearance for R2

O R D E R

This quash petition is filed to quash the first information report in crime No.23 of 2015 dated 05.05.2015 on the file of the Inspector of Police, District Crime Branch, Thoothukudi registered as against the petitioner.

2.The case of the prosecution is that the petitioner is the third accused and at the time of occurrence, he was working as Joint 1 Sub Registrar. The property in S.No.138/1A4, to the extent of 32 cents situated at Sankaraperi Villae, Thoothukudi Taluk belongs to the defacto complainant and his two brothers and one sister. Patta stands in the name of their father and he died on 24.07.2008. The first accused having the knowledge of the



same, sold the part of the property on 12.06.2002 to the 2nd accused through a fraudulent sale deed and the same was registered by the petitioner. Further, on 28.08.2002, A1 sold another part of the property to the fourth accused through a fraudulent sale deed and that was also registered by the petitioner. The 5th accused has given loan on the basis of mortgage deed executed by the fourth respondent. Therefore, the case has been registered for all the accused for the offence under Sections 467, 468, 323, 464 and 471 of I.P.C.

3.The learned counsel appearing for the petitioner would raise the following ground to quash the first information report as against the petitioner:

The petitioner was working as Sub Registrar and while he was discharging his duty in his official capacity, the first respondent ought not to have registered the case as against the Sub Registrar petitioner herein. The first respondent also failed to obtain any sanction under Section 197 of Cr.P.C. before filing charge sheet from the Inspector General of Registration. It vitiates the entire investigation as against the petitioner. The first respondent has not considered the legal powers vested on the petitioner as envisaged in Rule 55 of the Registration Rules. At the time of registration of the sale deeds, there was no complaints or objection or protest in any manner raised from any individuals. Therefore, he prayed for quashment of the criminal proceedings as against the petitioner.

4.Though notice was served on the second respondent and proof of service memo has been filed, none appears on behalf of the second respondent/defacto complainant.

5.The learned Government Advocate (criminal side) appearing for the State would submit that there are totally five accused in this case and there are materials to connect the third petitioner with the crime and since the investigation is pending, he prayed for quashing the petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the State and also perused the materials available on record.

7.Admittedly, the petitioner/A3 while he was working as Joint 1 Sub Registrar, Tuticorin, he registered two sale deed dated 12.06.2002 and 28.02.2002. Therefore, it is clear that the petitioner, when he was working as Joint 1 Sub Registrar, he discharged his duties in his official capacity.

8.Further, the first respondent did not obtain any sanction before filing the charge sheet as against the petitioner from the Inspector General of Registration under Section 197 of Cr.P.C. In this regard, it is relevant to rely upon the judgment reported in



(2012) 6 Supreme Court Cases 228 - **Army Head Quarters V. CBI**, wherein, the Hon'ble Supreme Court of India has held as follows:

"82.Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction."

9.In the case on hand, the petitioner was being the Joint 1 Sub Registrar has acted in good faith while performing his duty. In order to prevent the unnecessary harassment on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. Therefore, if the alleged act or omission of the public servants can be shown to have a reasonable connection, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction. Admittedly, the first respondent did not obtain any sanction to prosecute the petitioner herein.

10.It is also relevant to rely upon the judgment of this Court reported in **2018(1) TLNJ 177 (Criminal) - S.Annamalai Vs. State through By Superintendent of Police, Land Grabbing Preventive Cell, Virudhunagar District and another**, wherein, this Court has held as follows:

"9.So, the above said judgments show that the Sub-Registrar is having only duty to register the document until an objection is raised by some other party. In this case, at the time of registering the document, nobody was appeared before him and raised an objection. Furthermore, as of now, the disputed document registered at the time of alleged occurrence was cancelled on 27.02.2013. So, the entire facts clearly reveal that the petitioner herein is doing his duty only according to the norms fixed in Section 52 of the Registration Act, 1908, for which, laying the charge sheet against him without showing any evidence for conspiracy is nothing but erroneous. Therefore,



this Court comes to the conclusion that the proceedings in C.C.No.351 of 2012 on the file of the Judicial Magistrate Court No.II, Virudhunagar, (subsequently, transferred to the Special Court constituted for Anti Land Grabbing Cases, Virudhunagar and renumbered as C.C.No.9 of 2013) pending against the petitioner, is liable to be quashed and accordingly, the same is quashed in respect of the petitioner/A6 alone.

11.The petitioner while serving as Joint 1 Sub Registrar at Tuticorin, when he performed his duty, he roped in a criminal case for performing his duty. On a perusal of Section 52 of Registration Act, 1908, it is found that the Registering Officer has not been mandated to verify the title and the ownership of the person, who alienates the property. He is just to bound to register the document, if the document is effected with the stamp duty levied on the document and the registration charges. It is relevant to extract Section 52 of the Registration Act, which read as follows:

"52.Duties of registering officers when document presented.- (1)(a) The day, hour and place of presentation, the photographs and fingerprints affixed under section 32-A and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of presenting it; and

(b)a receipt for such document shall be given by the Registering Officer to the person presenting the same;

(1-A) Subject to the provisions contained in section 62, where any document not being of the class specified in the rules made under sub-section (3) is admitted to registration, it shall, without unnecessary delay, be copied in the appropriate book according to the order of its admission.

(1-B) Subject to the provisions contained in section 62 and in the rules made under sub-sections (3) and (4) and under section 89-A, where any document of the class specified in the rules made under sub-section (3) is admitted to registration, a true copy there of shall, without unnecessary delay, be filed in the appropriate book according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

(3)The State Government may, from time to time, specify by rules the classes of documents in respect of which true copies shall be filed in the appropriate book under sub-section (1-B).



(4) The true copy referred to in sub-section (1-B) shall be neatly handwritten, printed, typewritten, lithographed or otherwise prepared in accordance with such rules as may be made in this behalf.

(5) The provisions of this Act shall, in their application to the classes of documents specified in the rules made under sub-section (3), have effect subject to the modification set out in the Schedule."

12. Considering the said provision, the Registration authority cannot sit over the document presented for registration questioning the title and ownership of the persons, who execute the documents. The petitioners herein has simply discharged his official function in his capacity as Registering authority. Therefore, inclusion of the registering authority as one of the accused in this case is concerned is an abuse of process of law. It is also relevant to extract Rule 55 of the Registration Rules, which reads as follows:

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but, he is bound to consider objections raised on any of the grounds stated below.-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

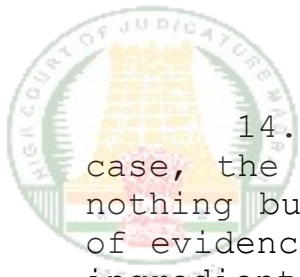
(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the person executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic."

13. A close reading of the said Rule would show that the registering authority is bound to consider the objection only on the ground stated in the said Rule. This rule does not provide enquiry by the registering officer with regard to the right and ownership of the property. Thus, the authorities concerned are bound to act only in accordance with the Act and Rules framed therein. For the said proposition, the learned counsel appearing for the petitioner would rely upon the judgment of this Courts dated 02.01.2006, 04.09.2006 and 22.11.2007 made in CrI.O.P.(MD) Nos. 33076 of 2006, 6447 of 2006 and 774 of 2007 respectively. The above said decisions are squarely applicable to the present Court.



14. Considering the above decisions along with the present case, the petitioner cannot be implicated as an accused and it is nothing but malicious prosecution. Admittedly, there is no piece of evidence to rope the petitioner into this offence. There is no ingredients to attract the offence as against the petitioner. The entire criminal proceeding as against the petitioner is liable to be quashed.

15. In view of the above discussions, this criminal original petition is allowed and the first information report in crime No.23 of 2015 dated 05.05.2015 on the file of the Inspector of Police, District Crime Branch, Thoothukudi is quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Inspector of Police,
District Crime Branch,
Thoothukudi,
Thoothukudi District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. N. Tamil Mani, Advocate, Sr.No.92762.

order made in
CrI.O.P. (MD) .No.11020 of 2015
and
M.P. (MD) No.1 of 2015
29.10.2018

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