BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Delivered on
10.10.2018	22.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

CRL.OP (MD).Nos.3993 & 3994 of 2017

and

Crl.MP(MD).Nos.2912 & 2914 of 2017

1.Stephan Jayaraj
2.Jigitha ... Petitioners in Crl.O.P.No.3993/2017

1.Sam Chandrasekar
2.M.S.Rajadurai ... Petitioners in Crl.O.P.No.3994/2017

.Vs.

1.The State Rep.by
The Inspector of Police,
Valliyoor Police Station,
Valliyoor, Tirunelveli District.

(Crime No.113 of 2013)

2.V.Nambi .... Respondents in both Crl.O.Ps.

Prayer in both Crl.O.Ps: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet taken on file in C.C.No.8 of 2017 on the file of the Special Court for Land Grabbing Cases, Tirunelveli and quash the same as illegal as against these petitioners.

For Petitioners (in Crl.OP No.3993/2017 : Mr.B.Mohan for Mr.K.Samidurai

(in Crl.OP No.3994/2017 Mr.V.Thirumal

For Respondent (both Crl.O.Ps) : Mr.M.Chandra sekaran for R 1 Additional Public Prosecutor

For Second Respondent : Mr.V.Gopinath, Sr counsel for Mr.K.Sudalaiyandi

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings in C.C.No.8 of 2017, pending on the file of the Special Court for Land Grabbing Cases, Tirunelveli.

2.The petitioners have been arrayed as A1 to A4 in the final report.

3.The case of the prosecution is that the de-facto complainant's brother viz., one Muthukrishnan and the first petitioner were doing business together and the first petitioner had invested a big amount in the business. In the said business transaction, the brother of the de-facto Complainant owed certain amounts and there was some misunderstanding between them. On 13.11.2011, the petitioners are said to have gone to the house of the de-facto Complainant and demanded the said amount and have threatened the de-facto Complainant to give the property as a security towards the repayment of the amount due and payable. Thereafter again on 14.11.2011, the petitioners went to the house of the de-facto Complainant and reiterated their demand. On the compulsion and pressure exerted by the petitioners, the elder brother of the de-facto Complainant, the de-facto Complainant and sister in law of the de-facto Complainant are said to have executed three sale deeds all dated 14.11.2011. According to the de-facto Complainant, these sale deeds were only given as a security and there was no intention to pass on the title to the first petitioner. The same will be clear from a minimum amount shown as sale consideration, as against the actual value of the properties.

4.The further case of the prosecution is that on 14.11.2011, the first petitioner namely Stephan Jayaraj executed unregistered sale agreements to the above said executant of the sale deeds, by stating that he will re-convey the properties within a period of 11 months, immediately after the amount due to the petitioners are re-paid back. In the three agreements executed on 14.11.2011, the first petitioner has categorically admitted that the sale deed was executed only as a security. That apart, on 14.11.2011, the brother of the de-facto Complainant namely Muthukrishnan had also executed a deed of undertaking, wherein he has stated that out of the total amount due and payable of a sum of Rs.1,25,00,000/-, the sale deeds covers a sum of Rs.75,00,000/- and for the balance Rs.50,00,000/-, two cheques for a sum of Rs.25,00,000/- each was also given in favour of the first petitioner.

5.It is the further case of the prosecution that even though the de-facto Complainant and the sister in law of the de-facto Complainant attempted to repay back the amount to the first petitioner and requested the first petitioner to execute a document re conveying the property in their favour, the first petitioner had refused to execute a deed of re conveyance and thereafter, the first petitioner proceeded to execute a settlement deed in favour of the second petitioner, who is his wife, on 31.01.2013 and has transferred the properties in her name. Aggrieved by the same, the second respondent had given the complaint before the first respondent Police and based on the same the respondent Police registered an FIR in Crime No.113 of 2013, for the alleged offences under Section 420 IPC, 506(i), 406 r/w 120 (b) of IPC. Thereafter, the respondent Police investigated the case and took statements from the witnesses and a final report ultimately came to be filed before the Court below for an alleged offences under Section 506(i), 406, 420 r/w 120 (b) of IPC.

6. Mr.B.Mohan, learned counsel appearing for Mr.K.Samidurai, and Mr.V.Thirumal, learned counsel for the petitioners would submit that admittedly, the second respondent's brother namely Muthukrishnan owes a sum of Rs.1,25,00,000/- to the first petitioner. Towards this amount the second respondent, the wife of Muthukrishnan and another brother have executed sale deeds on 14.11.2011 for properties worth a sum of Rs.75,00,000/-. For the remaining liability of Rs.50,00,000/-, the said Muthukrishnan issued two cheques for a sum of Rs.25,00,000/- each in favour of the first petitioner. Even though, the de-facto Complainant and others are stating that they were willing to repay the amount, no real attempt was made to repay back the amount which was due to the first petitioner. In fact, it was Muthukrishnan who has cheated these petitioners by not repaying back the amount and it is pertinent to note that the cheques that were given by Muthukrishnan was also dishonored. A case is pending against the said Muthukrishnan for an offence under Section 138 of Negotiable Instruments Act, in C.C.No.87 of 2013, on the file of the Judicial Magistrate, Valliyur. The learned counsel would further submit that the criminal complaint was filed on 28.01.2013 and cognizance was taken on 15.03.2013 and notice was issued to the said Muthukrishnan returnable by 19.04.2013. At this point of time, the second respondent had gone ahead and given a complaint against the petitioners on 03.04.2013. Therefore, according to the learned counsel for the petitioners, the entire complaint is abuse of process of law and it has been given only to cover up the cheating that was committed by the above said Muthukrishnan.

7.The learned counsel for the petitioners would further submit that as per the agreement dated 14.11.2011, the amount has to be repaid back within a period of 11 months i.e., on or before 13.10.2012. But, this amount was not repaid as promised and therefore the agreement itself became in-operational and therefore, the first petitioner as the absolute owner of the property had every right to settle the property in favour of his wife on 13.01.2013. According to the learned counsel for the petitioners, there is absolutely no offence of cheating or breach of trust that has been made out in this case and the entire complaint has been given only to cover up the mis-deeds of the said Muthukrishnan. The learned counsel would further submit that at the best the entire dispute is civil in nature and a criminal colour has been given to this case by the respondent Police and therefore the proceedings are liable to be quashed.

8.Mr.V.Gopinath, learned senior counsel for Mr.K.Sudalaiyandi, appearing for the second respondent would submit that the sale deeds were executed only as a security to the first petitioner and it was not intended to transfer the title in favour of the first petitioner. According to the learned senior counsel, the same was also admitted by the first petitioner in agreement dated 14.11.2011 wherein, he agreed to re-convey the property after the settlement of dues. According to the learned senior counsel, when the de-facto Complainant and the wife of Muthukrishnan attempted to repay back the amount, the first petitioner did not receive the amount and was demanding exorbitant interest. Thereafter, the first petitioner went ahead and executed the settlement deed in favour of his wife namely the second petitioner on 13.01.2013 and settled all the properties in her favour and the same will reflect the intention to cheat and commit criminal breach of trust against the de-facto Complainant and others. The learned senior counsel brought to the notice of this Court the statements taken from L.W-4, L.W-8, L.W-9, L.W-10, and L.W-14 and submitted that there was a business transaction between L.W-4, one Nagarajan and the first petitioner and the amount became due and payable out of these business transactions. Due to the pressure exerted by the first petitioner, 3 sale deeds were executed only as a security and not with an intention to pass on the title to the first petitioner. According to the learned senior counsel, the allegations made in the final report and the statements made by the witnesses, make out a *prima facie* case against the petitioners for an offences under Sections 406, 420, 506(i) r/w 120 (b) of IPC and there is no ground to interfere with the proceedings at this stage.

9.The learned Government Advocate would submit that there are sufficient materials collected on the side of the prosecution, in the course of the investigation and the final report clearly makes out an offence against the petitioners and there are absolutely no grounds for this Court to interfere with the proceedings at this stage.

10.This Court has carefully considered the submissions made on either side. The admitted case about which there is no quarrel is that L.W-4 namely Muthukrishnan owed money by means of business transactions to a tune of Rs.1,25,00,000/- to the first petitioner. This amount was not repaid and therefore Muthukrishnan's two brothers and his wife executed three sale deeds dated 14.11.2011 in favour of the first petitioner. A reading of the sale deed dated 14.11.2011 does not reflect about the fact that it was only given as a security for the amounts due from L.W-4. Rather these three sale deeds categorically state that the sale consideration has been received and the title in the property shall vest with the first petitioner absolutely and the vendor does not have any right, title or interest in the property. Admittedly, all these three sale deeds are registered documents.

11.The prosecution is projecting a case as if these three sale deeds were executed only as a security and there was no intention on the part of the respective owners of the property to really convey the property in favour of the first petitioner. In order to substantiate the same, the prosecution is relying upon the agreements dated 14.11.2011 executed by the first petitioner, wherein, the first petitioner is said to have admitted that the sale deed was executed only as a security. The prosecution is also relying upon the statements made by the witnesses, wherein, the witnesses state that the sale deed was executed only as a security and in fact the original title deeds to the property continues to remain in possession of the original vendors.

12.From the materials collected in the course of the investigation, except for a communication stating that the wife of L.W-4 was ready to settle the amount of Rs.30,00,000/- to the first petitioner and was asking for re conveyance of the property from the first petitioner, there is nothing to show that she actually made the payment to the first petitioner. There is big difference between expressing the willingness to make the payment and actually make the payment. If L.W-4's wife had actually made the payment to the first petitioner and thereafter, the first petitioner had refused to re convey the property, there will be some meaning in the case of the prosecution questioning the intention of the first petitioner. In this case there is no material to show that L.W-4's wife in fact made the payment to the first petitioner.

13.Similarly, a statement has been made by the de-facto complainant that he was willing to pay a sum of Rs.25,00,00/- to the first petitioner on 09.08.2012 and the first petitioner refused to receive the same. After ten days, the de-facto complainant again met the third accused with a sum of Rs.75,00,000/- seeking for re-conveyance, but however, the third accused did not receive the amount. Here again, it was merely a statement made by the de-facto complainant as if attempt was made to repay back the amount to the first petitioner and the third petitioner and the same was not received. However, if really the de-facto complainant wanted to repay back the amount, he would have done so by actually making the payment to the first petitioner. Therefore, it is very clear that the prosecution wants to project the case for cheating and criminal breach of trust, merely on the basis of statement made by the de-facto Complainant and L.W-4's wife, without there being any material to show that such payment was actually made to the first petitioner. If the first petitioner had received an amount of Rs.75,00,000/- and thereafter refused to re-convey the property and had proceeded to execute the settlement deed in favour of his wife, the prosecution would have made out *prima facie* case before this Court. However, the prosecution failed to make a *prima facie* case since there are absolutely no materials to show the amount was in fact repaid to the first petitioner.

14.Even if the agreement executed by the first petitioner on 14.11.2011 is taken into account, the effect of the agreement comes to an end on 13.10.2012 on the expiry of 11 months. Since, the amount was not settled within this period, the duty cast on the part of the first petitioner comes to an end. Thereafter there was nothing wrong on the part of the first petitioner to have executed a settlement deed in favour of the second petitioner since the first petitioner as per the sale deed, is the absolute owner of the property.

15.It will be relevant to deal with the scope of Section 54 of the Transfer of Property Act. The said provision deals with word "sale". The sale is transfer of right, title and interest in the properties which are possessed by the transferor to the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part paid and part promised. Even if the whole price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the sale deed. Once, the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property. A full Bench of this Court had an opportunity to deal with a case where it considered as to when a sale deed can be annulled or canceled by the vendor. The judgment of the Full Bench in ***Latif Estate Line India Ltd., rep.by its Managing Director, Mr.Habib Abdul Latif, No.14, Temple Road, Secretariar Colony, Kilpauk, Chennai-10.*** .vs. ***1.Hadeeja Ammal, 2.The Inspector General of Registration - Chennai 4, 3.The Sub-Registrar, Chennai*** and ***1.Habib Abdul Latid, 2.Mohideen Abdul Latif*** vs ***1.Syeda Aamina Raheem, 2.The Sub-Registrar, Registration Department*** reported in ***2011 (2) CTC 1*** and the relevant portions is extracted hereunder:

> ***52.*** *Now the question that falls for consideration is as to whether once a sale is made absolute by transfer of ownership of the property from the vendor to the purchaser, such transfer can be annulled or cancelled by the vendor by executing a deed of cancellation. This question came up for consideration before the four Judges of the Privy Council (Viscount Haldane, Lord Phillimore, Sir John Edge and Sir Robert Stout) in* **Md.Ihtishan Ali vs. Jamna Prasad** *reported in AIR 1922 Privy Council 56. The fact of that case was that one Ehsan Ali Khan, being in possession of a bazaar called Ehsaganj mortgaged it to one Sheo Prasad by a mortgage deed dated 9th November, 1873 and further encumbered it with charges in favour of the mortgagee. In the year 1882, the said Ehsan Ali sold the property, subject to the mortgage and charges to the appellants predecessors in title.*

Dispute arose with regard to the devolution of interest, and said Ehsan Ali cancelled the deed and retained his interest and that he, in fact, dealt with it subsequently by further charges in favour of the mortgagee and by professing to sell it over again to Wasi-uz-Zaman. While deciding the issue, His Lordship Lord Phillimore, speaking for the Bench, observed and held as under:- (page 58) While making these comments, their Lordships reserve their opinion as to the value of a defence founded upon such a transaction as the defendants set up. Certainly in law, no title would pass under it, for immovable property of this value can only be transferred by a registered deed, and when a deed of sale has been once executed and registered, it can only be avoided by a subsequent registered transfer. Whether in some form of suit(not this one) between some parties any equitable relief could be got out of such a transaction, it is unnecessary to pronounce, for in their Lordships opinion it was not proved.

As to the alleged subsequent dealings by Ehsan Ali Khan with the property, they could not, if regarded as declarations in his own favour, be received in evidence on behalf of those claiming under him, any more than they could be received if he were himself the defendant. They could not be regarded as acts of ownership so as to prove adverse possession, because he never was in possession, the possession remaining in the mortgagee.

53. *A similar question came up for consideration before the Orissa High Court in the case of Michhu Kuanr and Ors v. Raghu Jena and Ors. reported in AIR 1961 Orissa 19, as to the effect of cancellation of sale deed by the vendor on the allegation that consideration amount was not paid. While considering the question the Bench observed:-*

The question of intention could only arise if no consideration passed in the context of this back ground and the surrounding circumstances the subsequent deed of cancellation is irrelevant. Once by the registered sale deed Ex. 1 title had passed to the vendees, the subsequent deed of cancellation Ex.A certainly could not nullify the effect of the already completed sale deed Ex.1.

54. *There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a* *deed of cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section 39). Section 31 reads as under:-*

31.When cancellation may be ordered:- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

***59.** After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -*

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained

with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

16.It is clear from the above judgment that where a transfer is effected by way of an absolute sale, the same can be canceled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground of fraud or for any other valid reasons. The only exception is where the sale deed itself provides for a contingency to cancel the document on the ground of non payment of consideration or part of consideration. In this case, there is no such contingency found in the sale deed.

17.The prosecution wants to place reliance upon the statement given by witnesses and the agreements dated 14.11.2011 said to have been executed by the first petitioner, in order to substantiate their case that the sale deed itself was given only as a security. This attempt made by the prosecution flies against the settled principles of law that where the terms of a contract or a disposition of property has been reduced in the form of document, which requirement is imposed by law to be so made, no evidence shall be given in proof of the terms of such contract or other disposition of property, except the document itself and no evidence can be given for the purpose of contradicting, varying, adding to or subtracting from its terms.

18.It can be seen in this case that the entire dispute between the parties is purely Civil in nature. L.W-4 owed money to the first petitioner and in the course of the repayment of the money, three sale deeds were executed in favour of the first petitioner covering of a sum of Rs.75,00,000/- and for the balance Rs.50,00,000/-, L.W-4 has executed two cheques. The cheques given by the L.W-4 is admittedly dishonored and a criminal complainant has been filed against LW-4 for dishonour of cheque under Section 138 of the Negotiable Instruments Act. It will be very relevant to state that the complaint was given against L.W-4 on 28.01.2013. The cognizance was taken on 15.03.2013 and notice was issued to L.W-4 returnable by 19.04.2013. In the mean time, the de-facto complainant has given a complaint on 03.04.2013 against the petitioners. If the de-facto complainant and the wife of L.W-4 had approached the first petitioner and the third petitioner for repayment of the money in the year 2012 and the same was refused, there was nothing to prevent them, from giving the complaint in the year 2012. However, the complaint given on 03.04.2013 against the petitioners assumes a lot of significance since by then the first petitioner had initiated proceedings against L.W-4 for dishonor of cheque. The entire attempt of the complaint was to cover up L.W-4 from facing a prosecution under Section 138 of the Negotiable Instruments Act.

19.In the considered view of this Court, no offence has been made out for cheating or criminal breach of trust. Both these offences are projected against the petitioners on the ground that the sale deed was executed only as a security. Whether the sale deed was executed as a security and whether the vendors actually did not intend the title in the property to pass on to the first petitioner, are all matters which can be decided only by a competent Civil Court, in the absence of any such terms found in the sale deeds. The respondent Police ought not to have ventured to file a final report in this case since even the entire reading of the allegations made in the final report, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused persons. The criminal intimidation in this case is said to have taken place in the year 2011 and the complaint has been given in the year 2013. That by itself shows that there is no genuineness in the allegation made in the complaint.

20. A dispute which is purely Civil in nature has been attempted to be converted into a criminal liability. The complaint itself in the considered view of this Court, was a counter blast for the criminal complaint initiated by the first petitioner against L.W-4 under Section 138 of the Negotiable Instruments Act. The proceedings before the Court below in C.C.No.8 of 2017, in the considered view of this Court is a total abuse of process of law. Consequently, the proceedings in C.C.No.8 of 2017 on the file of the Special Court for Land Grabbing Cases, Tirunelveli is hereby quashed. Accordingly, both Criminal Original Petitions shall stand allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Judge,
Special Court for Land Grabbing cases, tirunelveli.

2. The Inspector of Police,
Valliyoor Police Station,
Valliyoor, Tirunelveli District.

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

+2 CC To MR.K.SAMIDURAI, Advocate SR. NO. 91197 & 91122
+1 CC To MR.K.SUDALAIYANDI, Advocate SR. NO.91247
+1 CC To MR.V.THIRUMAL, Advocate SR. NO. 91196

Pre-Delivery Common Order in CRL.OP (MD).Nos.3993 & 3994 of 2017
22.10.2018

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