



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P.(MD).No.6542 of 2013
and
M.P(MD).No. 1 of 2013

Mohammed Farooq

..Petitioner/ Accused No.1

Vs.

1.The State Represented by
The Sub-Inspector of Police,
Moonradaippu Police Station,
Nanguneri Taluk
Tirunelveli District.

2.Thayammal

3.Venkatesan

4.Shanthi

...Respondents 2 to 4

/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceeding in Crime No.116 of 2012 on the file of the first respondent police herein.

For Petitioner :Mr.S.Siva Thilakar

O R D E R

The petitioner herein is the first accused in Crime No.116 of 2012 on the file of the first respondent police. He filed this application to quash the said F.I.R., as illegal.

2.As per the case of the petitioner, he has purchased the disputed property on 27.07.1994 from Sankaran. Subsequently, the said Sankaran died on 24.09.1998. Meanwhile, the respondents 2 to 4 herein have contended and lodged a complaint before the respondent police, in which, they claimed that the owner of the property, namely, Sankaran died on 06.02.1994. Since his death happened on 06.02.1994, it would have not been possible at all to execute the sale deed on 27.07.1994. Eventhough the alleged complaint was lodged after a period of 8 years, on going through the documents submitted by the petitioner, it appears that the respondents 2 to 4 herein had filed a suit before the learned Principal District Munsif Court, Nanguneri in O.S.No.207 of 2009 for the relief of declaration and consequential injunction restraining the petitioner and two others from interfering with their peaceful possession and enjoyment of the property in dispute. They had also filed an interlocutory



application in I.A.No.379 of 2009 seeking interim injunction. After elaborate enquiry, the said application was dismissed by the learned Principal District Munsif Court, Nanguneri.

3. Aggrieved over the same, they filed an appeal in C.M.A.No.17 of 2011 on the file of the learned Sub Court, Valliyoor, in which, the learned Subordinate Judge, Valliyoor had categorically mentioned in paragraph-14 is as follows:

"14. Though it was argued by the learned counsel for the petitioner that Sankaran died on 06.02.1994 and so he could have executed a sale deed in favour of the respondent on 27.07.1994 yet the respondent also has filed death certificate Ex.R.7 of one Sankaran, son of Somu Reddiyar of Thalaikulam, Tirunelveli and as evident from it Sankaran died on 24.09.98. Under these circumstances the fact regarding the death of Sankaran can be established and proved through oral and documentary evidence only during the time of full fledged trial, and though the learned counsel for the petitioner argued that the sale deed dated 27.07.1994 executed in favour of the respondent is a fraudulent one, yet once again this aspect regarding the sale deed dated 27.07.1994 is a fraudulent one or not? can be gone into only at the time of trial".

4. Therefore, the learned Subordinate Judge, Valliyoor came to the conclusion that only evidence, can prove, who is the owner of the property. Despite of that, in the year 2012, the respondents 2 to 4 lodged a complaint before the first respondent for the same allegations that the petitioner had forged the signature of Sankaran and committed the offence. In general, on going through the observations made in the Judgement reported in 2013 II SCC P-559, it has held that the F.I.R cannot be quashed ordinarily except into an extraordinary stage. Eventhough the complaint lodged by the respondents are having the delay, the offence committed by the petitioner is punishable for 7 years and fine. Thereby, only extraordinary investigation has to say whether the signature found in the alleged sale deed belongs to the deceased Sankaran or not. So, without completing the investigation, we cannot come to the conclusion that the petitioner has not committed any offence as mentioned in this application.

5. For the reasons stated above, this Court is not inclined to quash the F.I.R., in Crime No.116 of 2012 on the file of the first respondent police, against the petitioner herein. Accordingly, the criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (Crl side)

/True copy/



1.The Sub-Inspector of Police,
Moonradaippu Police Station,
Nanguneri Taluk
Tirunelveli District.

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

+1cc to Mr.S.T.SASIDHARAN, Advocate, SR.No.54823

+1cc to Mr.S.SIVA THILAKAR, Advocate, SR.No. 54808

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