



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2018

Delivered on : 20.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.823 of 2013

and

M.P. (MD) No.1 of 2013

Muniyandi

...Petitioner/1st Accused

Vs.

1.State Rep. by,
The Inspector of Police,
District Crime Branch,
Madurai District.

...1st Respondent/Complainant

2.J.Vijaya Kumar

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.163 of 2012 on the file of first respondent and quash the same as illegal.

For Petitioner : Mr.N.Vijay Rajan
for Mr.M.Saravanan

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

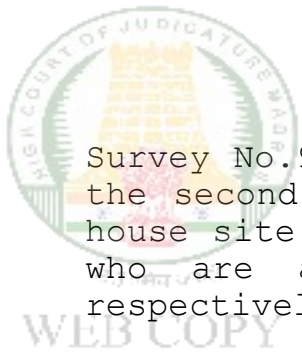
For R2 : No Appearance

ORDER

The petitioner herein is the first accused in Crime No.163 of 2012 on the file of the Inspector of Police, District Crime Branch, Madurai District.

2.This Criminal Original Petition has been filed to quash the abovesaid FIR, which was registered against the petitioner.

3.Admittedly, the petitioner herein at the initial stage, having the position of Ward Councillor of Perungudi Village. In the complaint given by the second respondent/de-facto complainant, he made an allegation that he purchased and kept in possession a house site measuring 5 cents in Plot Nos.7 and 8 in Perungudi Village, Old



Survey No.96, New Survey No.119/1/IA. After purchasing the same by the second respondent, the petitioner herein sold a portion of the house site to one Deivam and remaining portion to his wife Shanthi, who are all arrayed as A3 and A2 in the alleged offences respectively.

4.On the other hand, the learned counsel appearing for the petitioner submitted that one Periakaruppan Ambalam purchased 1 acre of land in S.No.96 at Perungudi Village on 08.01.1962. Thereafter, on 15.10.1963, the said property was purchased by one N.Maheswari, K.Rajagopal and Indirani from the said Periya Karuppan Ambalam. Subsequently, the petitioner is having right over the said property. After getting right over the said property, the petitioner formed layout, converted the land into house sites and sold Plot No.9 to one K.Muthaiyan Asari on 27.01.1999, who in turn sold it to Deivam (A3) on 10.09.2003.

5.One Mariam Beevi filed a Civil Suit in O.S.No.188 of 2006 against the said Deivam before the the District Munsif Court, Madurai, in respect of the abovesaid transaction. So, now, suppressing all these facts, the second respondent herein lodged a complaint levelling false allegations against the petitioner herein.

6.In fact, the petitioner is not having any role in the transaction made between the second respondent/de-facto complainant and the other accused in this case.

7.The learned counsel appearing for the petitioner relied on a judgment of the Hon'ble Supreme Court in Inder Mohan Goswami and another Vs. State of Uttaranchal and others reported in 2007 (12) SCC 1, and vehemently submitted that since the transaction made between the petitioner and the second respondent/de-facto complainant is purely civil in nature, allowing investigation, is nothing but abuse of process of law.

8.Now, considering the submission made by the learned counsel appearing for the petitioner, it is to be noted that the allegations levelled against the petitioner are all based on the documents executed between the petitioner and other accused in this case. Even though the case is registered for the offences punishable under Sections 406, 420 and 506(i) IPC, now, pending investigation, this Court cannot come to the conclusion that the allegation levelled by the second respondent is not attracted towards the petitioner. Even assuming that the transaction made between the petitioner and one Deivam is civil in nature, after the purchase made by the de-facto complainant subsequent to selling the same land, without any right, is attracted the criminal law in motion. Without examining any evidence and without collecting any material, the Court cannot come to the conclusion that the transaction made by the petitioner is purely civil in nature.



9. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in Ajay Kumar Das Vs. State of Jharkhand and another reported in 2011 (12) SCC 319, wherein it has been held as follows:

'15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.'

10. Further, in Inder Mohan Goswami and another Vs. State of Uttaranchal and others reported in 2007 (12) SCC 1, which was relied on by the learned counsel appearing for the petitioner, wherein at Paragraph Nos. 17 and 22, it has been held as follows:

'17. The High Court by order dated 16.7.2004 dismissed the petition under Section 482 Cr.P.C. filed by the appellants on the ground that the records show that the allegations in the FIR constitute an offence as alleged by the complainant. The said order is challenged in this appeal by special leave.

22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and Respondent No. 3 has already instituted a civil suit in the Court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.'

<https://hcservices.courts.gov.in/hcservices/>
10. Applying the principles laid down in the abovesaid judgment with the case on hand, it is necessary great caution for this Court before invoking Section 482 Cr.P.C. As of now, the



alleged FIR is under investigation. The circumstances in and around the allegations levelled by the second respondent/de-facto complainant are having the factual aspects. Therefore, this Court is not inclined to allow this petition. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub-Assistant Registrar9

To

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

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

+One cc to Mr.M.Saravanan, Advocate, SR.No.50075

+One cc to M/s.P.Subbiah, Advocate, SR.No.50119

smn2
RL/5C/4P/KKR/SAR4/28/2/2018

Order in

Cr1.O.P. (MD) No.823 of 2013

20.02.2018