

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2019

Pronounced on : 04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13617 of 2012

and

Crl.M.P.No.1 of 2012

S.K.Paramasivam

... Petitioner

Vs.

1.State by,

Inspector of Police,
Edapady Police Station,
Edapady Circel,
Salem Dist.
Crime No.669 of 2012.

2.A.Krishnasamy

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.109 of 2011 on the file of J.M.No.II, Sankari and quash the same.

For Petitioner : M/s.S.Kalyanaraman

For R1 : M/s.S.Thankira
Government Advocate [Crl. Side]

For R2 : M/s.M.Rajasekar

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.109 of 2011, pending on the file of the Judicial Magistrate Court No.II, Sankari.

2.The petitioner is the single accused, who is facing trial for the offence under Sections 4 of Tamil Nadu Prohibition Charging of Exorbitant Interest Act, 2003 r/w Section 506(i) of IPC. The case in Crime No.669 of 2011 came to be registered by the 1st respondent based on the complaint given by the 2nd

respondent. On completion of the investigation citing LW1 to LW23, the 1st respondent filed charge sheet and the same is taken on file as C.C.No.109 of 2011 by the learned Judicial Magistrate No.II, Sankari.

3.The gist of the case is that during 1995, the 2nd respondent/defacto complainant's father Andi Gounder purchased one acre of agricultural land from one Ramasamy in Samudhiram Village, Edapady Taluk. Due to his family condition and financial needs, the said Andi Gounder has borrowed loan from the petitioner of Rs.20,000/-, Rs.5,000/- and Rs.3,750/- in three instalments, totally Rs.28,750/- on interest and he had been paying the interest regularly for some time. Thereafter, due to family situation, he was unable to make the payment of interest. During 1997, the petitioner demanded a sum of Rs.1,48,540/- with principal and interest, pressurized the father of the 2nd respondent/defacto complainant to make the payment. Since he was unable to make the payment, he executed a sale deed for 62 cents of land in favour of the petitioner for the loan availed. Thereafter, repaid a sum of Rs.60,000/-, for which 12 cents out of 62 cents had been re-conveyed to Andi Gounder and the balance 50 cents in S.No.226/1 in 18.5 cents, 226/5 in 17.5 cents and 226/6A in 14 cents were retained by the petitioner.

4.During 2010 the said Andi Gounder passed away, the petitioner executed a sale deed in favour of his son Balasundaram usurping the properties from the family of Andi Gounder. According to the 2nd respondent, despite sale deed executed in the year 1997, the family members of Andi Gounder was in possession and enjoyment of the property and after his father's death, the petitioner attempted to dislodge from the said property. Hence, the 2nd respondent gave a criminal complaint against the petitioner.

5.The contention of the learned counsel for the petitioner is that the petitioner is the lawful owner of the property. The father of the 2nd respondent/Andi Gounder executed a sale deed for 50 cents of land in Survey Nos.226/1, 226/5, 226/6A situated in Samudhiram Village on 22.08.1997 by way of registered sale deed in document No.1063 of 1997 in Sub-Registrar Office, Jalakandapuram for himself and for his minor sons and one of his son Paramasivam had signed in the document. From there on, the petitioner is in possession and enjoyment of the property. The petitioner got the property and sub-divided, for which the revenue authorities had given patta in his name as early as on 19.06.1998. Thereafter, computerized patta was obtained on 19.10.2005. After the death of Andi Gounder, the family members led by the 2nd respondent preferred a false complaint as though

the petitioner demanded exorbitant interest from the year 1997, after a lapse of 13 years.

6.It is further submitted that the the petitioner had a family partition on 12.03.2010 which was registered as document No.1023 of 2010 and settled the properties to his sons and daughters, in which the earlier family partition dated 08.02.1988 registered as document No.128 of 1988 has been mentioned and the execution of document No.1063 of 1997 is also recorded. The petitioner was in possession and enjoyment of the property and he availed agriculture loan from primary agriculture society, Samudhiram and Canara Bank. Thus, the petitioner's possession and enjoyment of the property is uninterrupted. The petitioner's son Balasundaram filed a Civil Suit in O.S.No.136 of 2010 before the learned District Munsif, Sankari against the 2nd respondent, his siblings and legal heirs of Andi Gounder, who are defendants in the said suit. In O.S.No.136 of 2010, the petitioner filed I.A.681 of 2010 seeking interim injunction restraining the defendants in any manner interfering with the petitioner's son peaceful possession and enjoyment of the suit property and the civil Court granted interim injunction in favour of the petitioner on 14.02.2011.

7.The 2nd respondent and his family members are the defendants in the said suit and suppressing the civil proceedings lodged the above complaint. Despite the petitioner informing about the pendency of the civil proceedings, the 1st respondent did not conduct any investigation. It is further contended that since the findings of the civil suit is in favour of the petitioner. A false complaint has been lodged by the 2nd respondent/defacto complainant. The civil dispute is being given a criminal colour and this case has been used as arm-twisting to grab the property of the petitioner. The above case is an abuse of process of law and is maliciously instituted with ulterior motive to wreck vengeance.

8.The learned Government Advocate [Crl. Side] for the 1st respondent would submit that on the complaint of the 2nd respondent, the 1st respondent registered a case in Crime No.669 of 2011 on 03.08.2011. Thereafter, examining the witnesses and collecting the documents, citing LW1 to LW23 filed the charge sheet before the learned Judicial Magistrate No.II, Sankari and the same was taken on file in C.C.No.109 of 2011. The points raised by the petitioner are to be decided only during the trial.

9.The learned counsel for the 2nd respondent would submit that the 2nd respondent and his family members are uneducated and the petitioner is a retired Teacher, taking advantage of their illiteracy, projected the loan as sale and got execution of sale deed in his favour. It was on clear understanding that the

property would be re-conveyed after the repayment of the entire loan amount. Initially, the petitioner had repaid the loan amount and on repayment of Rs.60,000/-, 12 cents out of 62 cents of land was re-conveyed by the petitioner, the balance 50 cents of land have been illegally retained, despite the 2nd respondent ensured to repay the balance loan amount with interest. In a similar loan transaction with two other persons, who cited as witnesses in the above case, on repayment of loan, they had re-conveyed the land. The charge of interest by the petitioner is one of the exorbitant interest and further threatened the 2nd respondent and his family members and used force against them and attempted to dislodge them from their peaceful possession of the property. Further, after the death of the 2nd respondent/defacto complainant's father in the year 2010, the petitioner had clandestinely executed a sale deed in favour of his son Balasundaram. Hence, this quash petition has to be dismissed.

10.This Court considered the rival submission and perused the available material on record.

11.It is admitted that the registered sale deed is executed in Document No.1063 of 1997 on 22.08.1997 by the father of the 2nd respondent/defacto complainant in favour of the petitioner. Further the said Andi Counder had executed the sale deed for himself as well as for his minor children. This document has not been disputed. The only contention is that this sale deed was in lieu of loan and an understanding was that on repayment of loan, the property to be re-conveyed. Further, the allegation of demand of exorbitant interest has been made after 13 years.

12.On perusal of the document, it is seen that it is an absolute sale. No such recital is found in the said document. After the sale patta have been transferred in the name of the petitioner, loan was obtained from primary agriculture society as well as from the nationalized bank for the purpose of agriculture. The petitioner's son filed a civil suit in O.S.No.136 of 2010 against the 2nd respondent/defacto complainant and the legal heirs of Andi Gounder. The interim injunction is in favour of the petitioner's family and further in the complaint as well as in the statement of witnesses, there is no mention about the civil suit. It is seen that after the civil Court passing an order in favour of the petitioner, this criminal complaint has been lodged against him.

13.Considering the above facts and circumstances, this Court finds that this case is manifestly attended with malafidy and instituted with ulterior motive, which would amount to abuse of process of law.

14.In view of the above, the proceedings against the petitioner in C.C.No.699 of 2011, pending on the file of the Judicial Magistrate Court No.II, Sankari is hereby quashed. Accordingly, this Criminal Original Petition is Allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vv2

To

- 1.The Judicial Magistrate No.II,
Sankari.
2. -do- Through The Chief Judicial Magistrate,
Namakkal
- 3.The Inspector of Police,
Edapady Police Station,
Edapady Circle,
Salem District.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kalyanaraman, Advocate SR.No.84801

+1cc to Mr.M.Rajasekar, Advocate SR.No.84814

Cr1.O.P.No.13617 of 2012

SPD (CO)
GMY (04/11/2019)

WEB COPY