

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2018

PRONOUNCED ON : 12.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.15675 of 2012

M.Natarajan ... Petitioner/Sole Accused

Vs.

1. The State

Rep. By Inspector of Police,
District Crime Branch,
Tiruppur District.

... 1st Respondent

2.R. Kalpana

... 2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records in C.C.No.657 of 2017 pending on the file of the learned Judicial Magistrate No.III, Tiruppur and quash the same.
(Amended as per the order of this Honourable Court dated 04.10.2018 made in Crl MP No.12166 of 2018 in Crl.O.P.No.15675 of 2012)

For Petitioners : Mr.K. Govi Ganesan

For Respondents : Mr.T. Shanmugarajeswaran for R1
Government Advocate (Crl.Side)

Mr.M. Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates for R2

ORDER

This petition has been filed by the accused to quash the proceedings against him in C.C.No.657 of 2017 on the file of the Judicial Magistrate, No.III, Tiruppur.

2. The second respondent herein had lodged a complaint before the first respondent alleging that she had purchased 10 cents from the petitioner herein under a registered sale deed dated 05.03.2003 and at that time, the petitioner herein had

mentioned wrong survey number and wrong boundaries and hence the petitioner had executed a rectification deed on 27.06.2005 and in the said rectification deed also, purposely with an intention to cheat her, correct survey number and boundaries not given and inspite of repeated requests made by her, the petitioner did not come forward to set right the aforesaid defects.

3. Based on the said complaint, the first respondent had registered a case in Cr.No.374 of 2011 under Sections 341, 447, 420 IPC. After investigation, the first respondent had filed a charge sheet against the petitioner herein stating that he has committed offences punishable under Sections 341, 447 and 420 IPC. Based on the said chargesheet, the learned Judicial Magistrate No.III, Tiruppur, had taken the case on file in C.C.No.657 of 2017. The accused had filed the present petition under Section 482 Cr.P.C., to quash the proceedings against him in the aforesaid C.C.

4. Heard Mr.K.Govi Ganesan, the learned counsel for the petitioner and Mr.T.Shanmugarajeswaran, learned Government Advocate (Crl.Side) for the first respondent and Mr.M.Ajmal Khan, learned Senior Counsel for the second respondent.

5. Mr.K.Govi Ganesan, the learned counsel for the petitioner has submitted that on 28.03.2002, the owners of the property bearing S.No.235/1J to an extent of 17 cents of Vellamapalayam Village, Tiruppur, had executed a power of attorney in favour of the petitioner to deal with the said property and in pursuance of the said power of attorney, the petitioner had developed the property by forming layout under the name and style of Swarnapuri Enclave. He further submitted that on 05.03.2003, the petitioner had sold the suit property to the second respondent herein admeasuring 4200 sq.ft bearing plot No.145 comprised in S.No.235/1J to the second respondent herein. He further submitted that subsequently the rectification deed dated 27.06.2005 was executed and thereafter the second respondent had created a equitable mortgage on 17.10.2005 with the Indian Overseas Bank, Vellamapalayam Branch and obtained loan for constructing house. He further submitted that thereafter the second respondent had claimed that she is entitled for a property in S.No.235/1A which was purchased by the petitioner by way of sale deed in his personal capacity on 28.06.2004. The petitioner had sold the property to the second respondent only in respect of the property situated in S.No.235/1J S.No.235/1J and not the individual property purchased by the petitioner in S.No.235/1A. He further submitted that after a lapse of four years from the date of execution of the rectification deed, the second respondent issued lawyer's notice dated 05.03.2009 stating that in the rectification deed, survey number is still wrongly reflected as S.No.235/1J and

hence it has to be corrected as S.No.235/1A. He further submitted that the second respondent again sent a letter dated 09.03.2009 to the original owners including the petitioner herein and for that, the petitioner had sent a suitable reply on 12.03.2009. He further submitted that in the end of the year 2006, the petitioner was shocked and surprised to see that the second respondent had constructed the building erroneously at S.No.235/1A instead of S.No.235/1J. He further submitted that the petitioner had approached the second respondent and enquired about the illegal construction. She informed him that she is ready for amicable settlement and required further more time. He further submitted that the adjacent land owners viz., Duraisamy and Kasim were constantly trying for road access to their lands and had hatched conspiracy with the second respondent and created a false document as if the second respondent is the owner of the property bearing S.No.235/1A to an extent of 4200 sq.ft and out of 4200 sq.ft the land, 2100 ft land has been exchanged to the said Duraisamy and the said Duraisamy in turn, had exchanged his land bearing old S.No.233/2 new S.No.233/2B to an extent of 4235 sq.ft.

6. The learned counsel for the petitioner has further submitted that the second respondent had filed a suit in O.S.No.73 of 2007 on the file of the Sub-Court, Tiruppur, to declare his title and for mandatory injunction to execute a rectification deed with correct survey numbers. He further submitted that the second respondent had filed an application in I.A.No.238 of 2009 in O.S.No.73 of 2009 seeking interim injunction but the learned Principal Sub-Judge, Tiruppur had dismissed the said application by the order dated 22.07.2000 against which, the second respondent herein had filed an appeal in CMA.No.94 of 2011 and the same is still pending. The petitioner herein had filed a suit in O.S.No.49 of 2009, Tiruppur, seeking permanent injunction. He further submitted that the petitioner had lodged a complaint before the police against the second respondent and the said Duraisamy on 01.04.2009 and the same was registered as Cr.No.10 of 2009 in the City Crime Branch, Tiruppur, police station and after investigation, a charge sheet has been filed against them and the case was taken on file in C.C.No.264 of 2010 on the file of the Judicial Magistrate No.1, Tiruppur and the same is still pending.

7. The learned counsel for the petitioner has further submitted that the second respondent had filed a petition in CRL.O.P.No.3177 of 2011 before this court to quash the charge sheet in C.C.No.264 of 2010 and the same was dismissed by this court on 11.01.2012 and only thereafter as a counter blast, the second respondent had lodged a complaint against the petitioner herein and the first respondent also had mechanically filed a

charge sheet without proper investigation and therefore, he prayed to quash the proceedings against the petitioner herein in the aforesaid C.C.

8. Per contra, Mr.M.Ajmal Khan, learned Senior Counsel for the second respondent has submitted that the petitioner herein with an intention to defraud and cheat the second respondent executed a sale deed by mentioning wrong survey number and boundaries and thereafter though he executed a rectification deed, he had not mentioned the correct survey number and hence, after exchange of notices, the second respondent had filed a suit in O.S.No.73 of 2009 on the file of the Additional Sub-Judge, Tiruppur, for the relief of declaration of her title and also for mandatory injunction to direct the petitioner herein to execute the rectification deed. He further submitted that the petitioner herein also filed a suit in O.S.No.49 of 2009 on the file of the Additional Sub-Judge, Tiruppur, for the relief of permanent junction. He further submitted that one Duraisamy also filed a suit in O.S.No.84 of 2009 on the file of the same Sub-court seeking permanent injunction against the petitioner herein. He further submitted that though the Sub-court, Tiruppur had dismissed the application filed by the second respondent herein seeking interim injunction in I.A.No.238 of 2009 in O.S.No.73 of 2009, the first appellate court had allowed the appeal which was filed by the second respondent in CMA.No.94 of 2011 and against which, the petitioner herein had filed a civil Revision in CRP.No.308 of 2013 and the same was also dismissed confirming the order passed in CMA.No.94 of 2011.

9. The learned Senior Counsel for the second respondent has further submitted that the learned Additional Sub-Judge, Tiruppur had conducted joint trial in O.S.Nos.49,73, and 84 of 2009 and passed a common judgment dated 29.12.2015 and thereby decreed the suit filed by the second respondent herein in O.S.No.73 of 2009 as prayed for and directed the petitioner herein to execute a rectification deed within two months. He further submitted that the learned Additional Sub-Judge, Tiruppur, had dismissed the suits filed by the petitioner herein and one Duraisamy in O.S.Nos.49 and 84 of 2009. He further submitted that the learned Judicial Magistrate No.1, Tiruppur, by the judgment dated 06.02.2017 in C.C.No.264 of 2010 had acquitted the second respondent and one Duraisamy. He further submitted that there is a prima facie case against the petitioner herein to proceed further and therefore, he prayed to dismiss the petition.

10. The learned Government Advocate (Crl.Side), who is appearing for the first respondent had adopted the arguments advanced by the learned senior counsel for the second respondent and prayed to dismiss the petition.

11. The learned counsel for the petitioner by way of reply has submitted that as against the judgment and decree passed in O.S.Nos.49 & 73 of 2009, the petitioner had filed an appeal before the District Court, Tiruppur and they are still pending and therefore, no reliance can be placed upon the judgment and decree passed in the suits.

12. The learned senior counsel for the second respondent has submitted that the pendency of civil dispute between the parties cannot be a bar to any criminal proceedings between the parties nor the same can be a ground for quashing of the criminal proceedings against the accused. He further submitted that the proceedings cannot be quashed only because the petitioner had filed an appeal against the judgment and decree passed in the Civil Suit. He further submitted that in a criminal court, the allegations made in the charge sheet has to be established independently notwithstanding the adjudication of the civil court and therefore, he prayed to dismiss the petition. In support of the said contentions, he relied upon the decision in M. Krishnan Vs. Vijay Singh and another (2001) 8 SCC 645:

13. The charge against the petitioner herein is that on 04.03.2009, at about 12.00 p.m., when the witness Duraisamy had laid a road to reach his property in pursuance of the exchange deed executed between the second respondent and the witness Duraisamy dated 12.03.2008, the petitioner herein criminally trespassed into the aforesaid property and prevented the witness Duraisamy from laying the road. Further, though the second respondent had purchased the property situated in S.No.235/1A, with an intention to cheat the second respondent, the petitioner had executed the sale deed dated 05.03.2003 in favour of the second respondent by mentioning the wrong S.No.235/1J and also wrong boundaries and subsequently, a rectification deed has been executed by the petitioner on 27.06.2005 and in that document also, the correct survey number has not been mentioned and hence the petitioner has committed the offences punishable under Sections 447, 341, 420 IPC.

14. According to the petitioner, on 28.03.2002, the owners of the property bearing S.No.235/1J to an extent of 17 cents of Vellampalayam Village, Tiruppur had executed General Power of Attorney in his favour and on the strength of the said Power of Attorney, he developed the said property by forming a layout under the name and style of Swarnapuri Enclave and the second respondent had purchased 4200 sq.ft in S.No.235/1J on 05.03.2003 with specific boundaries and subsequently, a rectification deed was executed on 27.06.2005 correcting the boundaries. His further case is that on 28.06.2004, he had purchased the property situated in S.No.235/1A and developed a lay out in the

name and style of Swarnapuri Enclave and in the said property, the second respondent cannot claim any right.

15. The petitioner herein had filed a suit in O.S.No.49 of 2009 on the file of the Additional Sub-Judge, Tiruppur, against the second respondent herein and two others seeking permanent injunction in respect of the property situated in S.No.235/1A. Likewise the second respondent herein also filed a suit in O.S.No.73 of 2009 on the file of the same court to declare that she is the owner of the property situated in S.No.235/1A and also for mandatory injunction to direct the petitioner herein to execute a rectification deed with correct survey number. One Duraisamy also filed a suit in O.S.No.84 of 2009 before the same Court against the petitioner herein seeking permanent injunction. The learned Additional Sub-Judge, Tiruppur had tried all the three suits jointly and disposed of the same by the common judgment dated 22.12.2015.

16. In the said judgment, the learned Additional Sub-Judge, Tiruppur, had observed that as per the plan submitted by the Advocate Commissioner, the S.No.235/1J has been sub-divided into three parts and in the middle of the said property, a tar road is running and well with channels also in existence and as such, no construction can be made in the said property. He further observed that the petitioner had sold only the property situated in S.No.235/1A and in that property, the second respondent herein had constructed a house also, but the petitioner herein had filed a suit in O.S.No.43 of 2009 for bare injunction only and he has not asked for delivery of possession and accordingly, he dismissed the petitioner's suit and decreed the second respondent's suit.

17. The petitioner himself had admitted in paragraph No.8 of this petition that he inspected the property in the end of the year 2006 whereby he was shocked and surprised to see that the second respondent had constructed the building erroneously at S.No.235/1A instead of S.No.235/1J. But he has not filed any suit for delivery of possession of the said property. On the contrary, he filed a suit for bare injunction. Further, the suit which was filed by the petitioner for bare injunction had been dismissed and the suit which was filed by the second respondent had been decreed on 22.12.2015. Though the learned counsel for the petitioner had submitted that as against the aforesaid judgment and decree of the Additional Sub-Judge, Tiruppur, the petitioner had filed appeals, he has not furnished the appeal numbers. Even assuming that the appeals have been filed by the petitioner against the judgment and decree of the Additional Sub-Judge, Tiruppur, as rightly contended by the learned senior counsel for the second respondent, pendency of the civil dispute

between the parties cannot be a ground to quash the criminal case.

18. In M. Krishnan Vs. Vijay Singh and another, (cited supra), the Hon'ble Supreme Court in paragraph No.5 has observed as follows:

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe : "In my view, unless and until the civil court decides the question whether the document are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

19. In view of the aforesaid decision of the Hon'ble Supreme Court, if mere pendency of a suit is made a ground for quashing criminal proceedings, the unscrupulous litigants apprehending the criminal action against them would be

encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of the criminal proceedings or in anticipation of such proceedings. In a criminal court, the allegations made in the charge sheet have to be established independently notwithstanding the adjudication by a civil court. Therefore, even if appeal is filed against the judgment and decree passed by the Additional Sub-Judge, Tiruppur and that will not be a ground for quashing the criminal proceedings against the petitioner herein.

20. This petition has been filed mainly on two grounds. One is that Interlocutory Application filed by the second respondent seeking interim injunction has been dismissed by the civil court and the second one is that the second respondent lodged a complaint as a counter blast to the complaint filed by the petitioner herein. In so far as the first ground is concerned, as already pointed out that though the trial court had dismissed the interim injunction application filed by the second respondent, the appellate court had allowed the CMA.No.94 of 2011 and the same has been confirmed by this court in CRP.No.308 of 2013. Further, the main suit itself has been decreed in favour of the second respondent and therefore, the petitioner cannot rely upon the dismissal of the interim injunction application which was filed by the second respondent herein.

21. Insofar as the second ground is concerned, though the CrI.O.P.No.3177 of 2011 which has been filed by the second respondent herein to quash the proceedings against him in C.C.No.264 of 2010 on the file of the Judicial Magistrate No.1, Tiruppur, has been dismissed by this court, subsequently, the learned Judicial Magistrate No.1, Tiruppur had disposed of the case in C.C.No.264 of 2010 by the judgment dated 06.02.2017 and acquitted the second respondent herein and therefore, the petitioner cannot contend that the second respondent gave a complaint only as a counter blast to his complaint.

22. For the aforesaid reasons, this court is of the view that there are materials to proceed against the petitioner herein and therefore, this petition has to be dismissed. Accordingly this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Judicial Magistrate No.III,
Tiruppur.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
District Crime Branch,
Tiruppur District.
4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Govi Ganesan, Advocate, Sr.No. 23346

+1 cc to M/s.Ajmal Associates, Advocate, Sr.No. 23037

Order made in
Crl.OP.No.15675 of 2012
and M.P.No.1 of 2012

RV(CO)
CSL/16.05.2019



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