

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.11261 of 2013
and
MP.Nos.1 and 2 of 2013

K.G.Abraham

... Petitioner

Vs.

1. The Inspector of Police,
Central Crime Branch Team - I,
Egmore,
Chennai - 600 008.
(Crime No.99 of 2012)

2. R.Rajesh ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records relating to F.I.R. in Crime No.99 of 2012 on the file of the first respondent police and quash the same.

For Petitioner: Mr.N.S.Siva Kumar

For Respondents: Mr.R.Surya Prakash,

Government Advocate
(Crl.Side) for R1

सत्यमेव जयते
: Mr.R.Bharath Kumar for R2

ORDER

This petition has been filed by the accused No.2 to quash the F.I.R in Crime No.99 of 2012 on the file of the first respondent.

2. The second respondent lodged a complaint stating that the property admeasuring 44.5 cents situated in Survey No.203/3 of Soorapattu Village belongs to their company viz., Hygrodyn Private Ltd., (amalgamated with the Company M/s.Ambattur Clothing Ltd.,). He further stated that their company has sold the said property to one Sabeena Baskaran under the registered

sale deed dated 20.02.2013 registered as the Document No.2060/2003 in the Sub-Registrar Office, Ambattur. He further stated that one Pon Baskaran informed that the petitioner herein has also claiming ownership of the same property and immediately they obtained encumbrance certificate and found that one Selvam claimed himself as Power Agent of their Company and sold the property to the petitioner herein on 12.05.1995 under the registered sale deed and the same has been registered as document No.1363 of 1995 on the file of the Sub-Registrar Office, Ambattur. He further stated that their Company did not appoint the said Selvam as Power agent and hence he requests the first respondent to register the case against the said Selvam and the petitioner herein.

3. Based on the said complaint, the first respondent has registered a case in Crime No.99 of 2012 against the petitioner herein and the said Selvam under Sections 420, 465, 668, 471 r/w 34 I.P.C. The second accused has filed the present petition under Section 482 of Cr.P.C to quash the said F.I.R.

4. Heard Mr.N.S.Siva Kumar, learned counsel for the petitioner, Mr.R.Surya Prakash, Government Advocate (Crl.Side) for the first respondent and Mr.R.Bharath Kumar, learned counsel for the second respondent.

5. The learned counsel for the petitioner has submitted that the petitioner has purchased the suit property through the accused No.1 viz., Selvam as a bonafide purchaser for valid consideration. He further submitted that since the accused No.1 had informed the petitioner herein that he got general Power of Attorney which is said to have been executed by the Ambattur Clothing Ltd., and on believing his words, the petitioner had purchased the property. He further submitted that subsequently, the Government had acquired the entire property for laying the Bye-pass road and in the land acquisition proceedings, one Pon Baskaran who is the husband of Sabeena Baskaran, had appeared and claimed that he had purchased the property from the aforesaid company and only thereafter, the petitioner came to know that the first accused had played fraud on him and hence immediately he stated that he has no objection for paying compensation to the said Pon Baskaran. He further submitted that since the petitioner after knowing the fact that the first accused had played fraud, he has given up the right over the suit property, it cannot be said that he cannot be committed any offence. He further submitted that admittedly, the second respondent herein had already sold the property to one Sabeena Baskaran and that being so, it cannot be said that the second respondent is an aggrieved person and therefore, he prayed to quash the F.I.R against the petitioner herein.

6. Per Contra, the learned Government Advocate (Crl.Side) who is appearing for the first respondent has submitted that the petitioner herein knowing fully well that the said Selvam (Accused No.1) had no authority to execute the sale deed on behalf of the second respondent, purchased the property with a view to grab the land of the second respondent. He further submitted that inspite of the several requests made, neither the petitioner nor the accused No.1 had produced the alleged Power of Attorney. He further submitted that already investigation has been completed and since the matter has been stayed by this Court, the final report has not been filed and therefore, he prayed to dismiss this petition.

7. The learned Counsel for the second respondent has submitted that in the sale deed, the first accused has been described as a General power agent and the Power of Attorney has been registered in the Sub-Registrar Office, Villivakkam in the year 1990 but, the said Document number has not been mentioned. He further submitted that if the petitioner is a bonafide purchaser, he should have insisted the accused No.1 to produce the said Power of Attorney. Further, he should have mentioned the Document number and the date of the Document in the sale deed. He further submitted that the petitioner herein and the accused No.1 have colluded together and conspired, with a view to grab the property of the second respondent and created a forged Power of Attorney and with the help of said Power of Attorney, they have further created the sale deed dated 12.05.1995. He further submitted that merely because the petitioner gave a consent before the Land Acquisition proceedings for giving compensation to Pon Baskaran, husband of Sabeena Baskaran, it cannot be said that he has not committed any offence. He further submitted that since the first accused has executed the sale deed in favour of the petitioner herein stating that he is the Power of Attorney of the second respondent. Certainly, the second respondent is the aggrieved person. He further submitted that already the petitioner herein had filed two suits on the file of the District Munsif, Thiruvottiyur and subsequently, he allowed the said suits for dismissal for default. He further submitted that this Court may allow the first respondent to complete the investigation and file a final report and therefore, he prayed to dismiss the petition.

8. It is an admitted fact that the property measuring 44.5 cents situated in Survey No.203/3 of Soorapattu Village originally belongs to M/s.Hygrodyn Pvt. Ltd., (now amalgamated

with M/s.Ambattur Clothing Ltd.,). It is also an admitted fact that the petitioner herein had purchased the aforesaid property through one Selvam who has been arrayed as accused No.1. The said Selvam has executed the sale deed on 12.05.1995 in favour of the petitioner herein stating that he is the General Power Agent of the Company viz., M/s.Hygrodyn Pvt Ltd.,. In the said sale deed, it is stated that the said Power of Attorney has been registered in the office of the Sub-Registrar, Villivakkam in the year 1995, but, the said Document Number and also the date on which it was registered are not mentioned in the said sale deed. If a person purchases the property through Power agent, it is his duty to verify whether the said Power Agent has been duly authorized by the principal in accordance with law, But in this case, in the sale deed would show that not even the Document Number and date of the Power of Attorney are not mentioned. Under the said circumstances, the contention of the petitioner that he is the bonafide purchaser, cannot be accepted.

9. It is also to be pointed out that the first accused has executed the sale deed stating that he has been appointed as Power of Attorney by the second respondent, but the second respondent is denying the said allegation and contended that the alleged Power of Attorney is a forged one. In such a case, it cannot be said that the second respondent is not an aggrieved person.

10. It is also to be pointed out that it is the duty of the second respondent being the vendor it is bound to protect the interest of the purchaser. Since the petitioner claims title over the aforesaid property, it has become necessary for the second respondent to lodge a complaint before the police.

11. It is also to be pointed out that merely because the petitioner gave a consent in the land acquisition proceedings for giving compensation to the said Pon Baskaran, it cannot be said that the Sections 465, 468 and 471 of IPC will not attract. If the petitioner is having enough materials to show that he is a bonafide purchaser, it is open to him to produce the same before the first respondent and it is for the first respondent to consider the said materials at the time of filing final report. Therefore, at this stage, this court is of the view that a prima facie case is made out against the petitioner to proceed against him and therefore, this petition is liable to be dismissed.

12. In the result, this petition is dismissed.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv

To

1. The Inspector of Police,
Central Crime Branch Team - I,
Egmore,
Chennai - 600 008.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.S.Sivakumar, Advocate Sr.6285

+1cc to Mr.R.Bharathkumar, Advocate Sr.6882

Cr1.OP.No.11261 of 2013

and

MP.Nos.1 and 2 of 2013

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srg 12/03/2019

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