IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

PRONOUNCED ON : 06.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.1128 of 2013
and
M.P.Nos.1 and 2 of 2013

A.K.Anikuttan ... Petitioner/Accused No.6

Vs.

1. The Inspector of Police,
Central Crime Branch,
XVIII - Team,
Egmore, Chennai - 8,
X.Cr.No.251 of 2008. ... Respondent /complainant

2. K.Umapathy ... Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the Final Report in C.C.No.2765 of 2012 (respondent X.Cr.No.251 of 2008) on the file of the Chief Metropolitan Magistrate Court, Chennai Egmore, and quash the same.

For Petitioners :Mr.S. Doraisamy

For Respondents :Mr.T.Shanmugarajeswaran for R1
Government Advocate (Crl.Side)
Mr.AR.L. Sundaresan,
Senior Counsel
for M/s.AL. Gandhimathi for R2

ORDER

This petition has been filed by the Accused No.6 to quash the proceedings against him in C.C.No.2765 of 2012 on the file of the Chief Metropolitan Magistrate, Chennai.

2. The second respondent herein lodged a complaint to the first respondent on 02.05.2008 alleging that he and his brother jointly purchased the property at No.140, P.H Road, Koyambedu,

measuring about 58 cents and had constructed a compound wall to the said property, but some land owners showing the adjacent bushy lands to their buyers, fabricated the documents mentioning Survey Numbers of his property and sold the lands to one Prakash Bojwani (Accused Nos.8). Based on the said complaint, the first respondent had registered an FIR in Cr.No.251 of 2008 and investigated the matter and filed a charge sheet stating that the accused persons have committed offences punishable under Sections 465, 466, 467, 468, 471, 474 r/w.120-B and 420 IPC. Based on the said charge sheet, the Chief Metropolitan Magistrate, Chennai, has taken the case on file in C.C.No.2765 of 2012. The sixth accused has filed the present petition under Section 482 Cr.P.C., to quash the proceedings against him in the aforesaid C.C.

3. Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.T.Shanmugarajeswaran, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.AR.L.Sundaresan, learned Senior Counsel for M/s.AL. Gandhimathi for the second respondent.

4. Learned counsel for the petitioner has submitted that the entire extent of 5.64 acres comprising in S.Nos.149 and 150 of Koyambedu village originally belonged to one Varadappa Naidu and out of 5.64 acres, the second respondent had purchased only 58 cents in S.No.149/2(T.S.No.6/2) in the year 2002. He further submitted that the property of the second respondent was not included in the sale deed executed by the other accused persons in favour of the 7th accused viz., E.V.Jothi and hence the second respondent is not entitled to lodge a complaint. He further submitted that in so far as the petitioner herein is concerned, the only allegation is that he being an advocate, and the document writer, ought to have verified the fact before executing the document and since he had not properly verified the document will amount that he is also a party for the fraud. He further submitted that it is not the duty of the advocate to conduct the investigation as to whether the documents placed before him are fabricated or real one and hence the allegation made against the petitioner is not sustainable. He further submitted that unless there is an allegation that he himself indulged in fraud, the advocate cannot be prosecuted for giving a legal opinion and drafting the sale deed and therefore, he prayed to quash the proceedings against the petitioner in the aforesaid C.C. In support of the aforesaid contention, he relied upon the decision in Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao 2012 (6) CTC 569.

5. Per contra, the learned Government Advocate (Crl.Side), who is appearing for the first respondent has submitted that after registering the case, the matter has been taken up for

investigation and during investigation, as many as 22 witnesses were examined and the investigation reveals that one G. Varadappa Naidu possessed 5.15 acres in Koyambedu village in S.No.149; out of that , the second respondent and his brother had purchased 58 cents during the year 2002. While so, the accused Nos.1 to 4 viz., Prema, Vijayalakshmi, Chitra and Sathesh along with one Vilvamani (A5) have jointly fabricated the documents as if the said Varadappa Naidu had mortgaged 3.76 acres in S.Nos.149 and 150 in favour of one Sadhu Gangayyasami on 11.04.1949. He further submitted that A1 to A5 created two Wills bearing Nos.98/1992 and 114/1993 as if the said Sadhu Gangayyasami had registered the same at SRO, North Chennai in favour of one Nayagam who took care of him and in the said Will No.114/1993, accused Nos.1 to 5 were included the said 58 cents belonging to the second respondent and the same was probated before this court in O.P.Nos.321 and 322 of 1999.

6. He further submitted that the investigation further reveals that the said O.P.Nos.321 and 322 of 1999 corresponding to one Chockalingam and Rajendran respectively which were filed and disposed of in connection with the case pertaining to railways. He further submitted that after the death of the said Nayagam, his legal heirs viz., A2 to A4 executed a forged power of attorney in favour of A1 in respect of the said 3.76 acres and registered as document No.330/07 dated 29.10.2007 at SRO, Srivilliputhur. He further submitted that A1 to A5 also created a forged sale agreement vide Doc.No.2965/2007 as if the same was executed by one Murugesan, power agent of the said Nayagam in favour of Vilvamani (A5) before Nayagam's death and subsequently A1 cancelled the said sale agreement vide document No.52/2008 at SRO, Annanagar. He further submitted that A5 along with A6 to A8 conspired together and with the help of A1 executed a forged sale deed vide Doc.No.75/2008 registered at SRO, Annanagar in favour of A7 and A8 for a sale consideration of Rs.8.20 Crores and for that, the A1 to A4 received Rs.25 lakhs and the balance amount was shared between A5 and A6 (petitioners).

7. The learned Government Advocate (Crl.Side) has further submitted that the said sale deed was drafted by the petitioner herein and he himself signed as a witness. He further submitted that the criminal activities of the petitioner herein was condemned by this court while granting anticipatory bail in Crl.O.P.No.25964 of 2008. He further submitted that by utilising the aforesaid sale deed, A7 and A8 got the patta transferred in their name, but the same was cancelled by the District Collector, Chennai, on the petition filed by the second respondent. He further submitted that A5 being aware of the entire facts of forgery, attempted to sell the said property to one Sundaramurthy and Mathew and obtained Rs.5000/- as advance. He further submitted that after completing the investigation,

the charge sheet has been filed against the Accused persons including the petitioner herein and based on the said chargesheet, the Chief Metropolitan Magistrate, Chennai, has taken the case on file in C.C.No.2567 of 2012 and issued a non-bailable warrant against the petitioner herein. He further submitted that there is a prima facie case against the petitioner and hence he prayed to dismiss the petition.

8. Mr.AR.L.Sundaresan, learned Senior Counsel who is appearing for the second respondent has adopted the arguments advanced by the learned Government Advocate (Crl.Side) and further he has submitted that the petitioner has not only given a legal opinion, but also conspired with the other accused persons and created a false document in the name of the accused Nos.1 to 4 and sold the property measuring 3.76 acres comprised in S.Nos.149 and 150 of Koyambeu village, Egmore, Nungambakkam Taluk, Chennai City in favour of the accused Nos.7 and 8 for Rs.8.20 Crores. He further submitted that though the petitioner is a native of Kerala and advocate by profession, procured A1 to 4 who are the natives of Srivilliputhur Taluk, Virudhunagar District in Tamil Nadu and fabricated a false document in their favour as if they are owners of the property situated in Chennai city. He further submitted that the petitioner herein has created false records stating that the original owner viz., Varadappa Naidu had executed an unregistered equitable mortgage deed in favour of one Sadhu Gangayyasami in respect of 3.76 acres and subsequently, the said Sadhu Gangayyasami executed two Wills in favour of his adopted son viz, Nayagam and thereafter the said Sadhu Gangayyasami died on 03.04.1994. He further submitted that the petitioner has further created records stating that the said Wills were probated before this court and as per the said Wills, the said Nayagam acquired the property and subsequently, the said Nayagam died and after his death, his legal heirs viz., A1 to A4 have acquired the said property. He further submitted that the petitioner had not only drafted the sale deed but also signed as witness and also identified the parties before the Sub-Registrar. He further submitted that the investigation would clearly reveal that the petitioner is the person who has perpetrated the entire crime and therefore he prayed to dismiss the petition.

9. A perusal of a copy of the cancellation deed of the agreement of sale dated 17.12.2007 executed between A1 to A4 and A5 would show that the said document has been drafted by the petitioner and signed as one of the witnesses. Further, he has identified the parties before the Sub-Registrar. Further, the copy of the sale deed dated 03.01.2008 also would show that the said document has been drafted by the petitioner herein and also signed as witness. In that document also, he signed as one of the persons, who identified the parties before the Sub-

Registrar. In the said sale deed, it is stated that the aforesaid property devolved to the husband of the A1 and father of the A2 to A4 viz., P. Nayagam under two registered Wills bearing Nos.98/1992 and 114/1993 and probated by the High Court, Madras in O.P.Nos.321 of 1998 and 322 of 1998. But according to the first respondent, the investigation reveals that the said O.P.Nos.321 and 322 of 1998 corresponding to one Chockalingam and Rajendran respectively which were filed and disposed of pertaining to Railways.

10. It is seen from the typed set of papers filed by the second respondent, the petitioner herein gave a legal opinion dated 22.10.2009. In the said legal opinion, he has stated that originally the property was belonging to one Varadappa Naidu and the said Varadappa Naidu had borrowed a loan from one Sadhu Gangayyasami and to settle the said loan, the said Varadapa Naidu executed an unregistered sale deed in favour of the said Sadhu Gangayyasami for release of two-third share of the land situated in S.No.149 having an extent of 3.76 acres out of 5.64 acres. But in the list of documents enclosed with the said legal opinion, it is stated that the said Varaddappa Naidu executed a mortgage cancellation deed dated 11.04.1948 in favour of Sadhu Gangayyaswami. If the said Varadappa Naidu executed a mortgage cancellation deed, the mortgage would have been redeemed and in such a case, the petitioner should not have given an opinion stating that the said Varadappa Naidu executed an unregistered sale deed in favour of Sadhu Gangayyaswami. Further, even assuming that the said Varadappa Naidu executed an unregistered sale deed, as per Section 54 of the Transfer of Property Act, 1882 in the case of tangible immovable property of the value of one hundred rupees and upwards, sale can be effected only by a registered instrument and therefore through an unregistered sale deed, title cannot be conveyed. The petitioner being an advocate, he knows that the immovable property of a value of Rs.100/- and upwards can be sold only by a registered instrument, but, he gave a legal opinion stating that the title has been transferred through an unregistered sale deed.

11. In the Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao (supra), in paragraph No.27, the Hon'ble Supreme Court has held as follows.

> “27. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other

conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

12. In this case as already pointed out that the petitioner had not only drafted the sale deed but also signed as witness and also signed as one of the persons who identified the parties before the Sub-Registrar. Further, he gave an opinion against the provisions of law. Further, according to the first respondent, the investigation reveals that the petitioner had conspired with other accused persons and created false documents with a view to grab the property worth about 8.20 Crores. In the aforesaid decision itself, the Hon'ble Supreme Court has observed that if there is link or evidence to connect the advocate with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Further, this court while disposing of the anticipatory bail application filed by the petitioner had observed that though the petitioner's name is not mentioned in the FIR, his involvement is spoken by all the other accused. Further, it has observed that it appears that he had played a major role in the said transaction from the beginning. Further, it has observed that the petitioner being an advocate, before preparing the sale deed and recommending to the purchaser, he ought to have verified Wills and the letter of probations. It also observed that the contention of the accused Vijayalashmi points out the illegal act of the petitioner herein. Therefore, this court is of the view that there is a prima facie case against the petitioner herein to proceed further and hence, this petition is liable to be dismissed.

13. In the result, this petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Inspector of Police,
   Central Crime Branch,
   XVIII - Team,
   Egmore, Chennai - 8.

2. The Chief Metropolitan Magistrate Court,
   Egmore, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.S.Doraisamy, Advocate, S.R.No.21135

+1 cc to M/s.AL.Gandhimathi, Advocate, S.R.No.21224

Crl.OP.No.1128 of 2013
and
M.P.Nos.1 and 2 of 2013

RK(CO)
SSM(29/04/2019).