

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2018
Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19239 of 2011
and
Crl.M.P.Nos.1 & 3 of 2011

Ms.Claire Cacclandra,
W/o.Vittorio Cacclandra.Petitioner/Accused

Vs.

Station House Officer,
Muthialpet P.S.,
Puducherry.
Cr.No.202 of 2010.Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.R.No.6058 of 2011, pending on the file of the Judicial Magistrate Court No.II, Puducherry and quash the same.

For Petitioner : Mr.C.A.Diwakar

For R1 : Mr.D.Bharathachakravathy,
Public Prosecutor (Pondy)
Assisted by Mr.V.Balamurugane,
Additional Public Prosecutor (Pondy)

For R2 : Mr.P.Chandrasekar

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O R D E R

This Criminal Original Petition is filed by the petitioner, who is an accused in S.T.R.No.6058 of 2011 pending on the file of the Judicial Magistrate Court No.II, Puducherry, based on the complaint given by the Manager of the N.Selvaradjalou Chetty Trust.

2.The gist of the case is that, the property in R.S.No.216, T.S.No.49 and 50, situated at Advocate Chinnathambi Street, Kuruchikuppam Revenue village, Puducherry was an item of property in Civil Suit in O.S.No.6 of 1968. The suit was filed by one Jayalakshmi Ammal, after her death one Anasuya Ammal was

brought on record as plaintiff. In the said Civil Suit Padmini Chandrasekaran, S.Sarvothamman and his father Somasundaram Chettiyar were parties. While the suit was pending, the parties including Saravothamman has arrived at a compromise and accordingly, a comprise decree was passed on 29.04.1970.

3.As per the decree in O.S.No.6 of 1968, the entire property in schedule A and B were allotted to Padmini Chandrasekaran. The property in dispute pertaining to this case is Item No.10 in Schedule 'B'. As per the Court decree Saravothaman was entitled to a sum of Rs.7,00,000/- (Rupees seven lakh only) towards its 6/14 share in the schedule 'A' property. Therefore, Saravothamman filed a petition before the Settlement Officer, Puducherry to transfer the patta from the name of Padmini Chandrasekaran to his name and the said application was dismissed by the Settlement Officer by order dated 29.01.2004.

4.In the meantime, Saravothamman created a false document and sold the said property to Claire Cacclendre appeared as a petitioner herein. As per the document No.2677/2002, dated 18.07.2002 on the file of the Sub-Registrar, Pondicherry. When the petitioner found that Saravothamman has no title or possession to the property and had filed a complaint before the Muthialpet Police Station against Saravothamman, which was registered in Crime No.89/2004 under Sections 420, 418 and 471 of the Indian Penal Code.

5.From the complain in Cr.No.89/2004 it shows that Mrs.Claire Cacclendre has no title or possession of the property. When the petitioner attempted to trespass into the property and on the complaint to the Muthialpet Police Station, she had retracted from her attempt. It is further stated that the petitioner is taking efforts to make efforts to put up a construction in the property, for which she has no right or title in the property. Therefore, preferred a complaint before the 1st respondent, who had registered a case in Crime No.202 of 2010 for the offences under Sections 447 and 427 of the Indian Penal Code.

6.The contention of the learned counsel for the petitioner is that the petitioner is an elderly British citizen residing in India from her child hood on a resident permit and she is a disciple of Sri Aurobindo, pursuing her in the path of integral yoga at Aurobindo Ashramam. The petitioner had purchased the property, pursuant to the legal opinion under a Sale Deed dated 18.07.2002. From the title documents, it is seen that the property, which was originally purchased by one Dakshinamurthy by the Sale Deed dated 02.06.1937. Those property on devolution was inherited by Sarvothaman, the vendor of the petitioner.

7.The petitioner contended that by over sight in the settlement records and patta in respect of the property now in issue in S.T.R.No.6058 of 2011 was changed in the name of Mrs.Padmini Chandrasekaran two years after her death. It is further contended that the property in issue in S.T.R.No.6058 of 2011 was not a property enroll to the said trust. As such the 2nd respondent has no right or entitlement for the said property. The petitioner was forced to lodged a complaint against the said Sarvothaman, since, he was forced to get a patta to transfer to her name. The petitioner submits that on 01.04.2007, the Puducherry Planning Authority granted her permission for constructing two storied building on the said property vide PPA/1920/1784/Z(2)/2007, after verification of documents and inspection of site. Pursuant to the planning permission construction was commenced and completed the work. The petitioner had purchased the property only through a rightful owner.

8.The learned Public Prosecutor, Puducherry admitted that the case is only for the offences under Section 447 for the Criminal trespass and Section 427 for Mis-Chief causing damage to an amount of Rs.50/- (Rupees fifty only) only.

9.Considering the rival submissions and the nature of complaint, it is an admitted fact that, the petitioner had obtained a planning permission from the Puducherry Government after scrutiny of documents, after the site inspection only, now the construction has been completed.

10.The claim and counter claim of the petitioner and the 2nd respondent is of Civil in Nature, which has to be decided only by a Competent Civil Court. The petitioner has put up construction and in is possession after obtaining planning permission from the authorities could not be said to have committed the offence as mentioned in the charge sheet.

11.In view of the same, this Court finds that, the pendency of the proceedings against the petitioner would amount to abuse of process of law.

12.Hence, this Criminal Original Petition is allowed and the continuation of the proceedings as against the petitioner in S.T.R.No.6058 of 2011, which is pending before the learned Judicial Magistrate No.II, Puducherry is Quashed and consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate Court No.2,
Puducherry.

2.The Station House Officer,
Muthialpet P.S.,
Puducherry.

3.The Public Prosecutor,
High Court, Madras.

+3 ccs to M/s.C.A.Diwakar, Advocate, S.R.No.3191, 2565

+1 cc to Office of the Public Prosecutor for Puducherry,
S.R.No.2913

SR(CO)
SSM(19/02/2019)

ORDER IN
Crl.O.P.No.19239 of 2011

सत्यमेव जयते

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