

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2018

Pronounced on: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.11424 of 2015 &
MP.Nos.1 to 3 of 2015

1. N.Manoharan
2. M. Yamuna ...Petitioners/Accused

versus

1. The State of Tamil Nadu
by the Sub-Inspector of Police
Prevention of Land Grabbing Special Branch
Kancheepuram District.
Kancheepuram
(Cr.No.26/2014)

2. G. Sivakumar ... Respondents/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure for quashing of the complaint in Cr.No.26 of 2014 on the file of the Sub-Inspector of Police, Prevention of Land Grabbing Special Branch, Kancheepuram District, Kancheepuram, for the alleged offences under Sections 420, 465, 471, 477(A) of the Indian Penal Code r/w. Section 34 of IPC.

For Petitioners :Mr.J.Selvarajan

For Respondents :Mr.G. Raman for R1
Government Advocate (Crl.Side)

Mrs.Hema Sampath for R2
Senior Advocate
for M/s.K. Manimaran

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O R D E R

This petition has been filed by the accused 1 and 2 to quash the FIR in Crime No.26 of 2014 on the file of the first respondent.

2. The second respondent herein has lodged a complaint on 22.05.2014 before the first respondent alleging that he is owner of a vacant site measuring 320 sq.m situated in Old Survey No.111/6 (New Survey No.276/5) at Eri Karai Street, Thiruporur

Village, Chengalpet Taluk, Kancheepuram District. He further stated that the suit property originally belonged to his maternal grand parents namely Mani Raj and Loga Nayagi and they were in possession and enjoyment of the same and after their death, in the year 1988 under Natham Land Tax Scheme, Patta No.351 has been granted in his favour and from that date onwards, he is in possession and enjoyment of the suit property. He further stated that the first accused Manokaran is working as Deputy Tahsildar and he is not having any right over the suit property, but he claimed right over the said property on 14.11.2007 and hence he got information under the Right to Information Act on 29.02.2011 and came to know that on 25.04.2012 in the Chitta and Adangal Register, the name of the maternal grand father has been deleted and the name of the first accused's wife namely Yamuna (the second accused) has been incorporated. The first accused has misused his position as Deputy Tahsildhar and transferred the patta in favour of his wife. Further, he had executed a settlement in the year 2004 in favour of his wife (second accused) with a view to grab his property and hence he requested the first respondent to take action against the accused persons and cancel the patta and settlement deed and redeem the property from the accused persons and hand over to him.

3. Based on the aforesaid complaint, the first respondent has registered a case on 22.05.2014 in Crime No.26 of 2014 under Sections 420, 465, 468, 471, 477-A r/w Section 34 IPC against the petitioners herein. The petitioners herein have filed the present petition under Section 482 of Cr.P.C to quash the said FIR.

4. Heard Mr.J.Selvarajan, learned counsel for the petitioners and Mr.G.Raman, learned Government Advocate (Crl.Side) for R1 and Mrs.Hema Sampath, learned Senior Advocate for R2 assisted by Mr.K.Manimaran.

5. The learned counsel for the petitioners has submitted that already on 05.09.2011 itself, the second respondent has submitted a complaint before the Superintendent of Police, Kanchipuram District and in the said complaint itself, he has stated that he has obtained a encumbrance certificate and on verifying the same, he came to know that in the year 2004 itself, the first petitioner had executed the settlement deed in favour of his wife (second petitioner herein) in respect of the aforesaid property and in the year 2009, the patta has been changed in the name of the second petitioner. He further submitted that the said complaint was rejected by the Police on the ground that it was Civil in nature. He further submitted that originally, the suit property was a Gramanatham and the first petitioner has occupied the same and recognizing his possession, the patta has been issued in his name on

19.12.1995 and subsequently, he executed a settlement deed in favour of his wife (second petitioner herein) on 27.08.2004 and hence she is the absolute owner of the suit property. He further submitted that since the second respondent and his parents attempted to dispossess the second petitioner from the suit property, the second petitioner has filed a suit in O.S.No.107 of 2012 on the file of the District Munsif, Chengalpet, to restrain them from interfering with her possession and enjoyment of the suit property and also filed an application in I.A.No.566 of 2012 seeking interim injunction. He further submitted that the learned District Munsif, Chengalpet, after hearing both sides and perusing the documents produced by both sides, by the order dated 14.03.2014 has allowed the injunction application.

6. The learned counsel for the petitioner further submitted that challenging the order passed by the District Munsif, Chengalpet in I.A.No.566 of 2012, the second respondent and his parents have filed an appeal in CMA.No.1 of 2014 on the file of the Principal Sub-Judge, Chengalpet and also filed an application in I.A.No.41 of 2015 to appoint an Advocate Commissioner to take all the original Adangal extracts filed by the respondents for fasali years 1388,1392, 1393, 1398 and 1399 in respect of the suit property for scientific investigation. He further submitted that the learned Sub-Judge has dismissed the said application and as against the same, the second respondent and his parents have filed CRP(PD) No.1744 of 2016 before this Court. He further submitted that when the said CRP came up for hearing before this Court, it was represented on behalf of the petitioners therein that they want to prove by leading evidence before the Trial Court and considering the said representation, this Court gave a liberty to approach the Trial Court for the relief claimed in the said application and disposed of the said CRP. He further submitted that only after granting interim injunction in I.A.No.566 of 2012 in O.S.No.107 of 2017, the second respondent herein gave a false complaint on 14.03.2014 before the first respondent with a view to nullify the order passed by the Civil Court. He further submitted that the dispute is purely civil in nature and no criminal case is made out and therefore he prayed to quash the aforesaid FIR against the petitioners herein.

7. The learned counsel for the petitioners, in support of his contentions, relied upon the following decisions:-

(i) Udhai Shankar Awasthi, Vs. State of Uttar Pradesh and Another (2013) 2 SCC 435.

(ii) Suryalakshmi Cotton Mills Ltd., Vs. Rajvir Industries Ltd., and others (2008) 13 SCC 678.

(iii) Hari Lal Hari Lal Bhagwati Vs. CBI, New Delhi (2003) 5 SCC 257.

(iv) Amit Kapoor Vs. Ramesh Chander and another (2012) 9 SCC 460.

(v) Kalyan Chandra Sarkar Vs. Rajesh Ranjan (Alias) Pappu Yadav (2005) 2 SCC 42.

(vi) State of Haryana Vs. Bhajan Lal 1992 Supp. (1) SCC 335

8. Per contra, the learned Senior counsel for the second respondent has submitted that since the first petitioner is working as Deputy Tahsildhar, he has tampered the revenue records and removed the name of maternal grand father of the second respondent in the Chitta and Adangal and incorporated his name. She further submitted that after making such corrections in the revenue records, the first petitioner obtained patta in his name and executed a registered settlement deed dated 27.08.2014 in favour of his wife (second petitioner). She further submitted that in the Civil Court, the learned District Munsif has granted injunction in favour of the second petitioner relying upon the revenue records by the second petitioner, but the said revenue records were tampered by the first petitioner by misusing his position as Deputy Tahsildhar and only the investigation would find the person who was responsible for making corrections in revenue records and therefore, she prayed to dismiss the petition.

9. The learned senior counsel for the second respondent, in support of her contentions, relied upon the following decisions:-

(i) Kamala Devi Agarwal Vs. State of West Bengal and others, J.T.2001 (9) SC 162.

(ii) Kishorbhai Gandubhai Pethani Vs. State of Gujarat and another (2014) 13 SCC 539.

10. The learned Government Advocate who is appearing for the first respondent has adopted the arguments advanced by the learned senior counsel for the second respondent and apart from that he also submitted that after registering the FIR, the First respondent has taken the mater for investigation and during the course of investigation, relevant documents were collected from the Revenue Authorities and sent to the Sub-Registrar's Office, at Tiruporur and since this court has granted, interim stay on 13.04.2004, further investigation is stopped. He further submitted that the first respondent has to enquire some more witnesses in order to find out the real facts and also to collect relevant documents from various authorities and the same have to be verified at various levels in order to complete the investigation. He further submitted that only after completion of the investigation, it can be said that whether the first petitioner has tampered with the revenue records and fraudulently obtained patta in his name and therefore he prayed to dismiss the petition.

11. It is seen from the typed set papers filed by the petitioners that the second petitioner herein has filed a suit in OS No.107 of 2012 on the file of the District Munsif, Chengalpattu, against the second respondent and his parents for permanent injunction restraining the defendants therein from interfering with her peaceful possession and enjoyment of her house site situated in old Grama Natham survey No.111/6 part new No.273/J ad measuring 325 square meter of House site land at Tiruporur Village, Chengalpattu Taluk. She also filed an application in I.A.No.566 of 2013 seeking interim injunction and the learned District Munsif after considering the rival submissions and materials placed before him, allowed the said application by the order dated 14.03.2014. Challenging the said order, the second respondent herein and his parents have filed an appeal in CMA No.1 of 2014 on the file of the Principal Sub-Judge, Chengalpattu and the same is still pending.

12. According to the petitioners, after loosing the case before the Civil Court, the second respondent with a view to force the petitioners to loose their property, the second respondent herein gave a false complaint before the police. The case of the second respondent is that the aforesaid property originally belong to his maternal grand parents and patta also granted in their favour and after their death, patta has been issued in his favour. His further case is that since the first petitioner is working as Deputy Tasildhar, by misusing his possession, tampered with the revenue records and obtained patta in his favour and subsequently he settled the said property in favour of his wife (second petitioner) through a registered settlement deed dated 27.08.2004. His further cases that the second petitioner herein got interim injunction in her favour by using the revenue records which were already tampered by the first petitioner and therefore the first respondent should be permitted to complete the investigation and then only the truth will come out.

13. In Udai Shankar Awasthi, Vs. State of Uttar Pradesh and Another (supra), the brother of the Second Respondent/Complainant filed a complaint case No.4948 of 2009 against the officers of IFFCO on 23.11.2009 under Sections 323, 504, 506, 406 IPC before the Court of the Special Chief Judicial Magistrate, Allahabad. The same person filed another complaint in case No.265 of 2009 against the appellants therein and others under Sections 147,148, 326, 504, 506, 201 and 379 IPC. The complaint case No.4948 of 2009 was rejected by way of speaking order passed by the Special Chief Judicial Magistrate, vide order dated 20.03.2010 under Section 203 Cr.P.C. The Respondent No.2 therein filed a criminal complaint No.1090 of 2010 against the appellant therein and others under Sections 323, 504, 506, 406 and 120-B IPC before the Special Chief Judicial Magistrate, Allahabad. After investigation of the matter, the police submitted a report on 18.04.2010 stating that the allegations

made in complaint case No.1090 of 2010 are all false. The Additional Chief Judicial Magistrate, vide order dated 18.08.2011, dismissed the Compliant Case No.26528 of 2009 filed by the brother of second respondent therein. The second respondent therein filed another complaint case No.628 of 2011 on 31.05.2011 under Sections 403 and 406 IPC. Taking into consideration of the aforesaid facts, the Hon'ble Supreme Court has held that the proceedings must be labelled as nothing more than an abuse of process of Court, particularly in view of the fact that, with respect to enact the same subject matter, various complaint cases already been filed by the second respondent and his brother which were all dismissed on merits after the examination of witnesses. In such a fact situation, the Hon'ble Supreme Court has quashed the complaint case No.628 of 2011 as not maintainable. Where as in this case, no such orders were passed by any of the Courts. According to the petitioners, already on 05.09.2011, a similar complaint was filed by the second respondent before the Superintendent of Police, at Kancheepuram and the same was rejected by the police on the ground that the case is Civil in nature. But the petitioners have not produced any copy of the order passed by the Superintendent of Police. Further even assuming that the previous complaint was rejected by the police, that will not prevent the second respondent from filing second complaint before the police. Therefore, the aforesaid said decision will not apply to the facts of this case.

14. In Suryalakshmi Cotton Mills Ltd., Vs. Rajvir Industries Ltd., and others (supra), the Hon'ble Supreme Court has held that Section 415 read with Section 420 IPC indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case admittedly, it is not the case of the respondents that the petitioners herein made any inducement on the second respondent to part with any property and in pursuant to the said inducement or mis-representation, the second respondent has delivered any property to the petitioners and therefore, Section 420 IPC will not attract. However, it is the case of the respondents that the first petitioner by misusing his position as Deputy Tasildhar, had tampered with the revenue records and obtained patta fraudulently in his name and thereby he committed offence punishable under Sections 465, 468, 470 and 471 of IPC.

15. In Hari Lal Hari Lal Bhagwati Vs. CBI, New Delhi (supra) taking into consideration, the alleged criminal liability stands compounded on a settlement with respect to the civil issues, the Hon'ble Supreme Court held that the FIR was erroneously issued and it was totally unwarranted. Where as in this case, the matter has not been settled in between the parties and therefore, the aforesaid decision will not be help the petitioners.

16. In Amit Kapoor Vs. Ramesh Chander and another, the Hon'ble Supreme Court enlisted the principles with reference to which the Courts should exercise the powers either under Section 397 or Section 482 of Cr.P.C. One such principle is "where the allegations" made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence."

17. In this case, as already stated, according to the second respondent, the first petitioner by misusing his position as Deputy Tasildar, tampered with the revenue records and obtained the patta in his favour. So, it cannot be said that the aforesaid act would be purely civil in nature. Therefore, the aforesaid decision will not help the petitioners.

18. In Kalyan Chandra Sarkar Vs. Rajesh Ranjan (Alias) Pappu Yadav and another (supra), successive bail applications have been filed and in the said circumstances, the Hon'ble Supreme Court has held that the principles of res judicata, and such analogous principles, although are not applicable in a criminal proceedings, still the courts are bound by the doctrine of judicial discipline, having regard to the hierarchical system prevailing in our country. It also held that the findings of a higher court or a coordinate Bench must be serious consideration at the hands of the court entertaining at a later stage when the same has been rejected earlier. In the case on hand, the FIR was not already quashed by the court. If already the FIR was quashed then only the principles of res judicata will apply. In this case, this is the only first FIR registered against the petitioners and the same is under challenge through this petition. Therefore, the aforesaid decision also will not apply to the facts of this case.

19. In State of Haryana Vs. Bhajan Lal, (supra), the Hon'ble Supreme Court in paragraph No.102 has observed as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly

defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to

private and personal grudge."

20. In this case, as already pointed out that the case of the second respondent is that the first petitioner by misusing his position as Deputy Tasildhar, manipulated the revenue records and obtained patta in his favour. Under the said circumstances, the aforesaid decision also will not help the petitioners.

21. In Kamala Devi Agarwal Vs. State of West Bengal and others, (supra) the Hon'ble Supreme Court in paragraph No.15 has observed as follows:-

"15. We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". A constitution bench of this Court, dealing with the similar circumstances, in M.S.Sheriff @ Anr. V. State of Madras & Ors. (AIR 1954 SC 397) held that where civil and criminal cases are pending, precedence shall be given to criminal proceedings. Detailing the reasons for the conclusions, the court held:

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decisions of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weights with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial.

Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it expedient to stay it in order to give precedence to a prosecution ordered under section 476. But in this, case we are of the view that the civil suits should be stayed till the criminal proceedings have finished".

22. From the aforesaid decision, it is clear that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. It is also clear that where civil and criminal cases are pending, precedence shall be given to criminal proceedings.

23. In *Rashidha Kamaluddin Syed and Another, Vs. Shaikh Saheblal Mardan (dead) Through LRs. and Another* (2007) 2 MLJ (Cr1) 233 (SCC), the Hon'ble Supreme Court in paragraph No.27 has observed as follows:-

"27. Finally, the contention that a civil suit is filed by the complainant and is pending has also not impressed us. If a civil suit is pending, an appropriate order will be passed by the competent Court. That, however, does not mean that if the accused have committed any offence, jurisdiction of criminal court would be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other."

24. In view of the aforesaid decision, merely because the second respondent/second accused has filed a civil suit, the jurisdiction of criminal court would not be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other.

25. In *Kishorbhai Gandubhai Pethani Vs. State of Gujarat and another* (supra) the Hon'ble Supreme Court has held that if fabrication of false evidence takes place or document is tampered with, before filing in court, the provisions of Section 195 Cr.P.C. would not attract. Therefore, there is no bar for the police to investigate the matter with regard to the allegations made in the FIR that the first petitioner had tampered with the revenue records.

26. For the aforesaid reasons, this court is of the view that there is no material to show that Section 420 IPC would attract. In respect of other offences, a prima facie case

is made out to proceed further and therefore the first respondent should be allowed to complete the investigation. It is open to the petitioners to produce their documents before the first respondent and if any such documents are produced by the petitioners, the first respondent has to consider and investigate the matter in a fair manner without any bias and file a final report in accordance with law.

27. In the result, this petition is partly allowed. The FIR is quashed in respect of offence under Section 420 IPC. In respect of other offences this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vv/pds

To

1.The State of Tamil Nadu
by the Sub-Inspector of Police
Prevention of Land Grabbing Special Branch
Kancheepuram District.
Kancheepuram

2. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.Mr.K.Manimaran, Advocate, S.R.No.18316

CRL.OP.No.11424 of 2015
and
MP.Nos.1 to 3 of 2015

LN(CO)

RRS(02/04/2019)

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