

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.15054 of 2010 and 17885 of 2018

1.V.Prabakaran
2.Mahmood Siddique

... Petitioners/Accused 3 & 4 in Crl.O.P.15054/2010

1.J.Chandra Babu
2.N.Raman
3.S.Sundarraaj

... Petitioners/Accused 1,2,5 in Crl.O.P.17885/2018

Vs.

1.State rep. by
Inspector of Police,
District Crime Branch,
Villupuram District.

... 1st Respondent/Complainant

2.P.Ramachandra Butt

... 2nd Respondent/Defacto Complainant

(R2 impleaded as per order in
Crl.M.P.No.3/10 in Crl.O.P.
No.15054/10 dt.23/08/18)

1.K.Ramachandra Bhat

... 1st Respondent/Defacto Complainant

2.State Rep by
The Inspector of Police,
District Crime Branch,
Villupuram District.

... 2nd Respondent/Complainant in Crl.O.P.17885/2018

Common Prayer:

Petitions filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.329 of 2009 on the file of the District Munsiff cum Judicial Magistrate Court, Vanur, Villupuram District and quash the same.

For Petitioners : Mr.Thomas T.Jacob
in CrI.O.P.15054 of 2010
Mr.A.Muniraj
in CrI.O.P.17885 of 2018

For Respondents: Ms.Saradha Devi
Government Advocate (CrI.Side)
for R1 in CrI.O.P.15054 of 2010 &
for R2 in CrI.O.P.17885 of 2018

Mr.N.Kumararajan
for R2 in CrI.O.P.15054 of 2010 &
for R1 in CrI.O.P.17885 of 2018

C O M M O N O R D E R

These criminal original petitions have been filed seeking to call for the records in C.C.No.329 of 2009 on the file of the District Munsiff cum Judicial Magistrate Court, Vanur, Villupuram District and to quash the same.

2.The petitioners in CrI.O.P.No.15054 of 2010 are the accused 3 and 4; the petitioners in CrI.O.P.No.17885 of 2018 are the accused 1, 2 and 5 and the private respondent in these criminal original petitions is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The accused are alleged to have hatched out a criminal conspiracy for wrongful gain by selling the property of unwary landlords without their consent and knowledge by creating bogus power of attorneys concerned with immovable cultivable lands situated in Survey Nos.164/1, 164/2, 164/3, 164/4, 165/1, 165/2, 165/3, 165/4, 166/1, 166/2, 166/3 and 166/4 with an extent of 29.5 acres at Aurvadai Village, Villupuram Revenue District as if it were executed by landlords for the disposal of property and got the properties transferred and thereafter disposed of the same to the detriment of real owners and the defacto

complainant. Based on the complaint of the defacto complainant, the law enforcing agency registered a case under Sections 465, 467, 468 and 471 IPC read with 468 IPC and read with 120 (b) of IPC and filed charge sheet before the learned District Munsif cum Judicial Magistrate, Vanur and the same was taken on file in C.C.No.329 of 2009. Hence, these petitions.

4.The learned counsel for the petitioners submitted that during the pendency of these criminal original petitions, the petitioners and the private respondent arrived at a compromise and the petitioners have paid the entire sale consideration to the private respondent. The private respondent/ complainant accepted and received the payment and has consented for compounding the offence.

5.To that extent, the private respondent has filed affidavits dated 23.08.2019 and the relevant portion of the same reads as follows :

"Crl.O.P.No.15054 of 2010:

2.I submit that I have been paid my entire consideration which I had given to buy the properties by the Accused and I have cancelled the Sale Deeds made in favour of me vide Document No.2136 of 2012, Document No.2137 of 2012, Document No.2138 of 2012, Document No.2139 of 2012, Document No.2140 of 2012, Document No.2141 of 2012, Document No.2142 of 2012, Document No.2143 of 2012, Document No.2144 of 2012 and Document No.2145 of 2012 all registered in the office of the Sub-Registrar, Markanam on 16.07.2012.

3.I submit that as I have received the entire sale consideration I am willing to withdraw the case by compounding the case against these Petitioners/ Accused 3 and 4 namely Mr.V.Prabakar and Mr.Mahmood Siddique and seek this Hon'ble Courts indulgence to permit me to withdraw and compound the case against these Petitioners/ Accused 3 and 4 namely Mr.V.Prabakar and Mr.Mahmood Siddique and thus render justice.

Crl.O.P.No.17885 of 2018:

2.I submit that I have been paid my entire consideration of Rs.13,00,000/- (Rupees Thirteen Lakhs) which I had given to buy the properties by the Accused and I have

cancelled the Sale Deeds made in favour of me vide Document No.2136 of 2012, Document No.2137 of 2012, Document No.2138 of 2012, Document No.2139 of 2012, Document No.2140 of 2012, Document No.2141 of 2012, Document No.2142 of 2012, Document No.2143 of 2012, Document No.2144 of 2012 and Document No.2145 of 2012 all registered in the office of the Sub-Registrar, Markanam on 16.07.2012.

3.I submit that as I have received the entire sale consideration I am willing to withdraw the case by compounding the case against these Petitioners/ Accused 1 2 and 5 namely Mr.J.Chandrababu, N.Raman and Mr.S.Sundaraj and seek this Hon'ble Courts indulgence to permit me to withdraw and compound the case against these Petitioners/ Accused 1, 2 and 5 namely M Mr.J.Chandrababu, N.Raman and Mr.S.Sundaraj and thus render justice."

6.The said facts are not disputed by the learned Government Advocate (Criminal Side).

7.The learned counsel for the petitioners further submitted that on earlier occasion, the defacto complainant appeared before this Court and admitted about the settlement reached between the complainant and the accused and about the affidavits, however, no orders were passed by this Court.

8.In the case of Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663], the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

'16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.'

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

'...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.'

9. With the above principles in mind, if this Court see the present case, the complainant has received the entire sale consideration from the petitioners/ accused and in this regard affidavits have been filed by the complainant. Therefore, the complainant's interest lies primarily in recovering the money rather than sending the accused in jail.

10. In view of the ratio laid down by the Honourable Supreme Court of India and also considering the affidavits filed by the complainant, this Court is of the view that the charge sheet in

C.C.No.329 of 2009 on the file of the learned District Munsif cum Judicial Magistrate Court, Vanur, Villupuram District, is liable to be set aside.

11.Accordingly, the charge sheet in C.C.No.329 of 2009 on the file of the learned District Munsif cum Judicial Magistrate Court, Vanur, Villupuram District, is hereby quashed and these criminal original petitions are disposed of. The petitioners/accused are acquitted from all the charges levelled against them.

12.With the above directions, these criminal original petitions are disposed of. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Munsiff cum Judicial Magistrate Court,
Vanur, Villupuram District.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.
- 3.The Inspector of Police,
District Crime Branch,
Villupuram District.

+3cc to Mr.A.Muniraj, Advocate sr.101957
+1cc to Mr.Thomas T.Jacob, Advocate sr.102375

CrI.O.P.Nos. 15054 of 2010
and 17885 of 2018

vba(co)
nr 21/01/2020