

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.23605 of 2010

1.T.T.K.Duraisingam
2.R.Vidhya

... Petitioners

Versus

1.Inspector of Police,
Chennai Central Crime Branch,
Egmore,
Chennai 600 041.

2.Sonny George Respondents

**R2 impleaded as per the order of this Court
dated 08.09.2017 made in Crl.MP.No.11349 of 2017
in Crl.OP.No.23605 of 2010

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records in
CC.7549/2010 on the file of the XI METROPOLITAN MAGISTRATE
SAIDAPET CHENNAI. CHENNAI and to quash the same.

For Petitioners	:	Mr.G.Ranganathan
For R1	:	Mr.E.Iyyapparaj, Additional Government Pleader
For R2	:	M/s. Senthil Kumar for M/s.Star Associates

ORDER

1.This Criminal Original Petition has been filed by the
petitioners to quash the proceedings in CC.No.7549/2010 on the
file of the learned XI Metropolitan Magistrate, Saidapet,
Chennai.

2.It is the case of the prosecution that the defacto complainant
is the owner of the landed property admeasuring to an extent of
6 grounds in Survey No.259, Kottiwakkam village, Tambaram
Taluk, Kanchepuram District, by purchasing the same during the
year 1995, from one Mr.Kannayiram of M/s.Silk Asia Exports Pvt

Ltd., and the said Kannayiram had purchased the property in question from one Mr.Susai, way back on 13.07.1981 bearing Doc.No.2678/1981 registered on the file of the Joint Registrar-II, Saidapet, and the said Susai had earlier purchased the same from one Mr.Arunachalam and his legal heirs. It is the further case of the defacto complainant that accused 1 to 9 with an intention to cheat the defacto complainant had hatched conspiracy and on 13.01.2004, by creating forged and fake documents, had executed a General Power of Attorney bearing Doc.No.37 and 28/2004 on the file of the Sub Registrar, Neelangarai, in the name of the 1st petitioner herein, and also executed a Sale Deed in favour of the 2nd petitioner/A-11 bearing Doc.No.5264/2005 and the petitioners, knowing well that the property in question belonged to the defacto complainant, had purchased the same and hence, they are charged for the offences under Sections 420, 467, 468 read with 120[b], 471 read with 465 of IPC.

3.The complainant has sent a complaint to the Commissioner of Police, CCB, Land Grabbing Section, Egmore, Chennai, stating among other things that the petitioner herein/A-10 had created a forged document in respect of 1.56 Acres of land out of 27 grounds for Rs.25 lakhs and the market value of one ground at the relevant point of time was Rs.25 lakh and whereas, the 1st petitioner herein had purchased the entire 27 grounds just for Rs.25 lakhs, which itself is evident for a fraudulent transaction and the 1st petitioner had given the Paimash number in the Encumbrance Certificate and however, the paimash number is not in use since 1950 and that the 1st petitioner had produced fake documents to prove his ownership. It is his further grievance, that on 13.03.2010, the 1st petitioner herein had engaged a bulldozer, broken the pillar and gate of the compound wall. It is further alleged that the 1st petitioner is a habitual offender dealing with transactions of similar nature. Thereafter, the defacto complainant made a complaint before the respondent police, the respondent police after conducting the investigation filed the charge sheet before the Magistrate concerned and challenging the same the present criminal original petition is filed.

4.The learned counsel for the petitioner would submit that the 1st petitioner is the original purchaser, who had purchased the undivided share from the original owners, viz., A1 to A9, to an extent of 1.56 acres of land for a valuable consideration of Rs.25 lakhs, after scrutinizing and verifying the documents, Encumbrance Certificate and the Legal Heir Certificate and by virtue of the same, the petitioners are in possession and enjoyment of the property. He would further submit that A1 to

A9 had executed registered Power of Attorney in favour of the 2nd petitioner herein, who is the daughter of the 1st petitioner vide Doc.Nos.27 and 28 of 2004 on the file of the Sub Registrar, Neelangarai and in the said capacity, the 2nd petitioner had executed the Sale Deed in favour of the 1st petitioner vide Doc.No.5264/2004. In these circumstances, the complainant attempted to trespass into the property and hence, the 1st petitioner had filed a suit in OS.No.341/2005 on the file of the learned District Munsif Court, Alandur and had obtained an order of ad-interim injunction and the said injunction was subsequently made absolute and the said suit is pending as on date and in the interregnum, the complainant by creating false documents, had lodged a false complaint before the respondent police, on 19.03.2010, as if the petitioners, knowing pretty well that the property in question is not that of A1 to A9, had purchased the same. It is further submitted that though the dispute between the petitioners and the complainant is civil in nature, the respondent police, by registering the present case, had given a criminal colour to the same. Hence, the learned counsel prays for quashment of the Charge sheet in CC.No.7549/2010.

5. Per contra, the learned Additional Public Prosecutor appearing for the 1st respondent/State would submit that the respondent police, after thorough and proper investigation and on perusal of the documents and its genuinity, had registered the case and filed the charge sheet before the Court concerned and hence, submitted that the same does not warrant interference.
6. This Court has carefully considered the rival submissions and also perused the materials placed before it.
7. It is seen that the 1st petitioner/A-10 had subsequently canceled the Sale Deed in respect of 1.56 acres of land in S.No.259 of Kottivakkam Village, Tambaram Taluk, Kancheepuram District, in order to restore the property to its original owner, viz., the defacto complainant and as on date there is no grievance by the defacto complainant as against the petitioners.
8. Considering the facts and circumstance of the case and on the perusal of the record it is evidence that even the petitioner himself had admitted that he is not claiming any right over the property and had cancelled the Sale Deed subsequently. However, the case has been registered by the Law Enforcement Agency at the instance of defacto complainant and subsequently, filed a charge sheet.

9. Section 482 of Cr.P.C., can be exercised only on the following grounds as per the dictum of the Hon'ble Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others [AIR 1992 SC 604], wherein the Hon'ble Apex Court has held 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 uncontraverted 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 proceedings 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 proceedings 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.''

10. In view of the above dictum laid down by the Hon'ble Supreme Court of India, this Court, is not inclined to quash the Charge Sheet filed in CC.No.7549/2010 on the file of the learned XI Metropolitan magistrate, Saidapet, Chennai.

11. Accordingly, this petition stands dismissed. It appears that the case is pending for nearly 9 years and hence, the Trial court is directed to complete the trial within a period of six months from the date of receipt of copy of this order.

Sd/-

सत्यमेव जयते
Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

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To

1.The XI Metropolitan Magistrate
Saidapet, Chennai.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai.

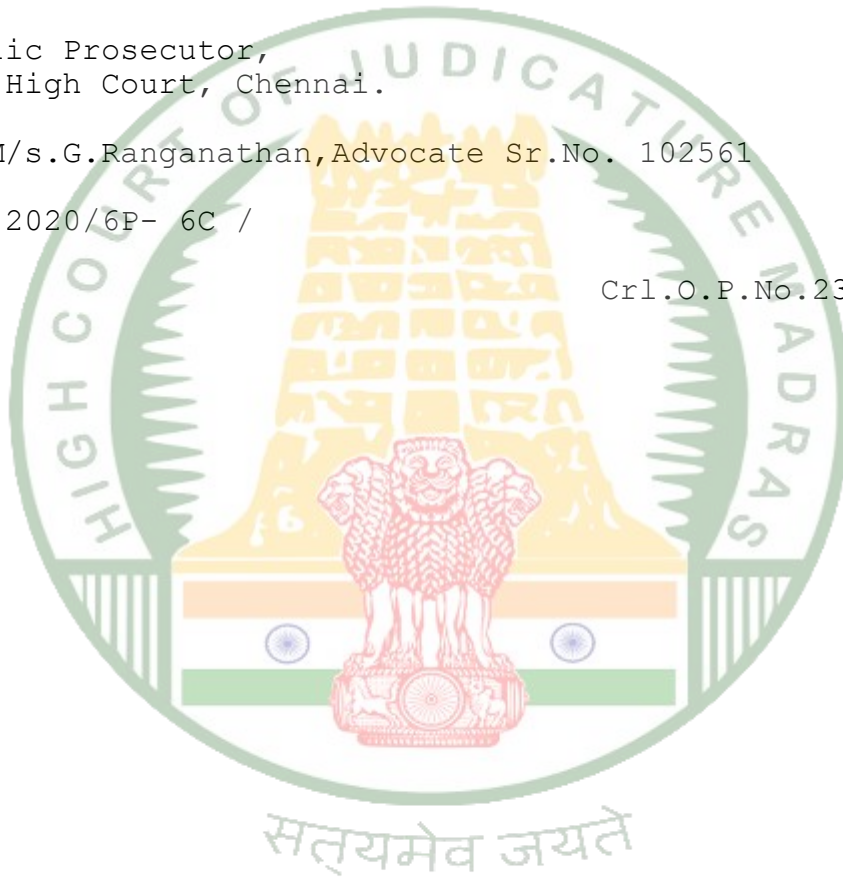
3.The Inspector of Police,
Chennai Central Crime Branch,
Egmore, Chennai 600 041.

4.The Public Prosecutor,
Madras High Court, Chennai.

+1 cc to M/s.G.Ranganathan,Advocate Sr.No. 102561

AKM/30.01.2020/6P- 6C /

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