IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2019
Pronounced on : .07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.4287 & 8325 of 2013
and
M.P.Nos.1 & 1 of 2013

Crl.O.P.No.4287 of 2013

Sameer D.Mehta ... Petitioner/Accused No.3

Vs.

1.The Inspector of Police, Team-II,
Central Crime Branch,
Egmore,
Chennai - 600 008. ... 1st Respondent/
Complainant

2.K.Chandrasekaran ... 2nd Respondent/
Defacto Complainant

Crl.O.P.No.8325 of 2013

B.Krishnakumar ... Petitioner/Accused No.4

Vs.

1.The Inspector of Police, Team-II,
Central Crime Branch,
Egmore,
Chennai - 600 008. ... 1st Respondent/
Complainant

2.K.Chandrasekaran ... 2nd Respondent/
Defacto Complainant

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.166 of 2012 on the file of the first respondent and quash the same.

For Petitioners : Mr.G.Ravikumar
[in both the Crl.O.P.Nos.]

For R1 : Mrs.S.Thankira

[in both the Crl.O.P.Nos.]
Government Advocate [Crl.Side]

For R2 : Mr.A.B.Ashok
[in both the Crl.O.P.Nos.]Legal Aid Counsel for R2

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C O M M O N   O R D E R

Crl.O.P.No.4287 of 2013 is filed by A3 and Crl.O.P.No.8325 of 2013 is filed by A4 in Crime No.166 of 2012, which has been registered and investigated by the first respondent for the offence under Sections 420, 465, 468 and 471 IPC on a complaint given by the second respondent/defacto complainant.

2.The second respondent had entered appearance through his counsel namely J.Selvaraja and C.Latharani. After sometime the counsel for the second respondent reported no instruction and the case was adjourned periodically without any progress. Hence, this Court by an order dated 14.06.2019 appointed one Mr.A.B.Ashok as Legal Aid Counsel and he represents R2. The first respondent is represented by the Government Advocate (Crl. Side).

3.Since, both the Criminal Original Petitions are arising out of Crime No.166 of 2012 and the petitioners in both the Criminal Original Petitions are A3 and A4 in the above said Crime No.166 of 2012 and the issue involved are identical and same. Hence, this Court decided to dispose of both the Criminal Original Petitions by way of a common order.

4.The gist of the case is that the second respondent had lodged a complaint to the Commissioner of Police. The second respondent is the power agent of one K.R.Ramachandran, owner of the vacant plot Nos.180 and 182 comprised in Survey Nos.9, 10, 10/1, 10/2, 11 and 12 at Pallikaranai Village. The said K.R.Ramachandran was residing at Madurai and hence, the second respondent was appointed as a power agent to look after the above said property. According to the complaint, the said K.R.Ramachandran had purchased a property on 02.05.1967 from one K.B.Gobinathan and the same has been registered at Sub Registrar Office, Saidapet as Document No.1997/1967. Encumbrance Certificate shows that there is no encumbrance in the property from the year 1964. The second respondent was appointed as a power agent to look after the above said property and the Power of

Attorney has been registered with the Sub Registrar Office, Saidapet on 31.07.2012 vide Document No.1125/2012. On 12.08.2012, when the second respondent had visited the property, he found a name board placed as “Majestic Builder”. The said name board contained address and mobile phone detail. Consequently, the second respondent had contacted the Majestic Builder and enquired about the same and came to know that one Sebastin S/o.Anandanathan claiming as owner of the property, had given power of attorney to Majestic Builder to deal with the land. On further verification, the second respondent found that the said Sebastin had got the property by way of a settlement from his father in the year 2010 and on 08.08.2011, the said Sebastin had given power to the third and fourth accused namely Sameer D. Mehta, who is the proprietor of M/s. Majestic Builder and B.Krishna Kumar. Thus the petitioners herein along with two other accused namely Anandhanathan and Sebastin had created forged documents for the above said property. Hence, complaint was lodged on 24.08.2012 and the case came to be registered on 03.12.2012.

5.The contention of the petitioner in Crl.O.P.No.4287 of 2013 is that there is no allegation as against him in the complaint. The petitioner had obtained the power of attorney from Sebastin (A2), for plot No.180, Rs.82 lakh was paid as consideration through Cheque/Demand Draft, which were drawn on Oriental Bank of Commerce, Anna Nagar Branch, Chennai and the part of amount was paid through cash. Totally, Rs.82 Lakh was paid to Sebastin (A2). Hence, the petitioner in Crl.O.P.No.4287 of 2013 is a bona fide purchaser of the plot No.180. After taking legal opinion the petitioner had applied for planning permission to the Chennai Corporation. The Chennai Corporation after verification of documents had granted permission on 23.05.2012. According to the petitioner, Sebastin (A2) derived title and ownership from his father Anandanathan (A1) by way of Settlement Deed dated 18.11.2010. The Patta No.3002 dated 26.07.2010 issued by the Deputy Tahsildar, Sholinganallur confirms that the property stands in the name of Anandanathan (A1). Likewise the Patta No.14063 dated 12.09.2011 issued in favour of Sebastin (A2) also confirms that after the settlement, the patta was changed into the name of Sebastin (A2). Thereafter on receipt of Rs.82 lakh, the said Sebastin (A2) had executed a Power of Attorney in favour of the petitioner. The petitioner also verified the Encumbrance Certificate produced by Sebastin (A2) from 01.01.1964 to 08.01.2012. There was no encumbrance and after obtaining the legal opinion the land was purchased. The petitioner is the bonafide purchaser of the property. The said Sebastin (A2) had executed a Power of Attorney on 08.08.2012 in favour of the petitioner being the flat promoter to obtain permission and to construct the flat in the said land.

6.He further submitted that the said principal Ramachandran had purchased the land from one K.B.Gopinathan on 02.05.1967 by way of registered Sale Deed in Document No.1997 of 1967 on the file of the Sub-Registrar Office, Saidapet. On verification with the Sub-Registrar Office, the Sale Deed in Document No.1997 of 1967 related to some other property, which was situated at Velachery. The said property was purchased by one Dhanabakiya Ammal, Wife of Rangasamy Achari of Purasawalkam. Further submitted that the registered Document No.1997 of 1967 was tampered by the second respondent. The District Registrar, South Madras had initiated action and directed the Joint Sub-Registrar-2, Saidapet for appropriate action in connection with the tampering of Document No.1997 of 1967 and directed him to file a police complaint under letter No.414/A1/2013 dated 06.02.2013. Hence, the second respondent to cover up his mis-dedds and to extract money from the petitioner had given a false complaint. The petitioner is an innocent person and he was falsely implicated in this case.

7.The contention of the petitioner in Crl.O.P.No.8325 of 2013 is that the petitioner is A4 in Crime No.166 of 2012 and there is no allegation as against him in the complaint. The petitioner had obtained the power of attorney from Sebastin (A2) and for plot No.182 Rs.85 lakh was paid as consideration through Cheque/Demand Draft, which were drawn on State Bank of India, Anna Nagar Branch, Chennai and the part of amount was paid through cash. Totally, Rs.85 Lakh was paid to Sebastin (A2). Hence, the petitioner in Crl.O.P.No.8325 of 2013 is a bona fide purchaser of the plot No.182. The said Sebastin (A2) after receipt of the money had executed a Power of Attorney in favour of the petitioner for construction of flats. The second respondent/defacto complainant in order to extract money had filed a false complaint against the petitioner.

8.The learned counsel for the second respondent submitted that the principal Ramachandran is the law-ful owner of the property, who had purchased the property in the year 1967 from one K.B.Gopinathan by way of Document No.1997 of 1967. Since the principal was residing at Madurai and due to his ailment and old age had nominated the second respondent as his Power of Attornery to look after the property. The petitioners right over the property is through a Sale Deed, which is said to have been executed by one K.B.Gopinathan to Anandanathan (A1) through Document No.2216/1968 dated 27.06.1968 and the said Anandanathan had executed a Settlement Deed for the plots vide document No.8638/2010 dated 18.11.2010 to his son Sebastin (A2) and thereafter, A2 created documents to the property by executing Power of Attorney to G.Anandaraj and G.Anandaraj thereafter mortaged the property in Plot No.182 to Sree Ram City Union Finance and plot No.180 to Muthu and thereafter Plot No.182 to A4, Krishna Kumar and Plot No.180 to A3 Sameer D. Mehta. The entire transaction is a sham transaction. The property of the second respondent is attempted to be usurped by creating forged documents.

9.The learned Government Advocate (Crl. Side) filed a common counter and made her submission. From the common counter affidavit, it is seen that the first respondent Police had registered a case in Crime No.166 of 2012 for the offence under Sections 420, 465 and 471 IPC on 03.12.2012 and thereafter the first respondent had recorded the statements of Chandrasekar - Defacto Complainant; Tmt.Anandhi - Sub-Registrar Office, South Chennai; Tmt.Usharani - Joint Registrar, Saidapet-II; Ragupathy - Joint Registrar, Saidapet-I. All the witnesses corroborated the version of the defacto complainant. On 06.12.2012 A1 and A2 were arrested in this case and produced before the Judicial Magistrate, Alandur and remanded to judicial custody. The petitioners in these Criminal Original Petitions obtained Anticipatory Bail before this Court on 21.02.2012 in Crl.O.P.No.30625 of 2012 and Crl.O.P.No.30555 of 2012. During the course of investigation, the first respondent collected the documents relating to the property and so far the investigation points that A1 had created a false sale deed in Document No.2216 of 1968, but the said document was not available in the concerned Registrar office and he had also settled the same to his son namely Sebastin (A2), who in turn had executed the Power of Attorney to A3 and A4. A3 and A4 after knowing that A1 does not have any rights over the disputed property, the petitioners A3 and A4 obtained a Power of Attorney from Sebastin (A2). After obtaining Anticipatory Bail, they had appeared before the respondent and produced the proof of payments of Rs.85 lakh by Krishna Kumar and Rs.82 lakh by Sameer D. Mehta to Sebastin (A2) and also produced the relevant bank documents and the same is extracted as follows:

Details of payment paid by A3

Si. No.	Date	Paid by Cheque NO.	On	Rupees
1	23.07.2011	872761	Oriental Bank of Commerce, Anna Nagar Branch	10,00,000/-
2	08.08.2011	531951	Oriental Bank of Commerce, Anna Nagar Branch	1,00,000/-
3	08.08.2011	531953	Oriental Bank of Commerce, Anna Nagar Branch	35,00,000/-
4	08.08.2011	531954	Oriental Bank of Commerce, Anna Nagar Branch	15,00,000/-
5	08.08.2011	Cash		21,00,000/-
TOTAL				82,00,000/-

Details of payment paid by A4

Si. No.	Date	Paid by Cheque NO.	On	Rupees
1	30.12.2011	464066	State Bank of India paid in favour of Mr.Mamallan to release the mortgage executed by the vendor A.Sebastin (A2)	10,00,000/-
2	25.02.2012	Cash	Vendor A.Sebastin (A2)	2,00,000/-
3	01.03.2012	Cash	Vendor A.Sebastin (A2)	2,00,000/-
4	05.03.2012	DD No.008016	State Bank of India in favour of Sree Ram City Union Finance to release the original deed deposited by vendor A. Sebastin (A2)	19,00,000/-
5	08.03.2012	Cash	Vendor A.Sebastin (A2)	12,00,000/-

Si. No.	Date	Paid by Cheque NO.	On	Rupees
6	04.05.2012	810806	State Bank of India in favour of vendor A.Sebastin (A2)	1,00,000/-
7	01.06.2012	067376	State Bank of India in favour of vendor A.Sebastin (A2)	1,00,000/-
8	20.06.2012	102118	State Bank of India in favour of vendor A.Sebastin (A2)	23,45,000/-
9	25.06.2012	102152	State Bank of India in favour of vendor A.Sebastin (A2)	1,55,000/-
10		Cash	Vendor A.Sebastin (A2)	1,55,000/-
TOTAL				85,00,000/-

10.The petitioner has filed a suit in O.S.No.34 of 2013 before the District Munsif Court Alandur, wherein the second respondent/defacto complainant is the defendant. The Settlement memo and memo of compromise filed before the Lok Adalat have been produced. The suit in O.S.No.34 of 2013 had been disposed of based on the joint compromise memorandum is filed by them. The same is extracted as follows:

> "MEMO OF COMPROMISE FILED BY BOTH THE PARTIES
>
> The counsel for plaintiff and defendant beg to submit as follows;
>
> As the defendant above named agreed and undertake that, he will not anyway interfere with the title, interest and possession of the plaintiff in respect of the suit property, the parties herein agree to withdraw the above suit as 'Settled through Lok adalat.
>
> The defendant herein confirms that he will cancel the registered sale agreement in the office of the sub registrar office of Saidapet by way of document No.9568/2012 dated 27th December 2012 entered by him with the third parties namely (A) J.Selvarj son of G.Jaganathan and (B) Shri A. Pandian Son of Shri Adhi and clear the encumbrance created by him.

> The defendant herein confirms that, he will not have any further claims against this plaintiff or his agent at any future point of time in respect of suit property.
>
> This Hon'ble Court may kindly record the above memo of compromise as part and parcel of the decree in the above suit and thus render justice."

As per the Joint Compromise Memo the second respondent undertook that there won't be any further claim against the petitioners with regard to the said property.

11.Considering the submission and on perusal of the materials, this Court is of the view that there are materials to show that the petitioners are innocent purchasers and they intend to purchase the property on the strength of the power of attorney said to have been given by Sebastin (A2). After having obtained the power of attorney they started developing the property and obtained permission from the authorities and the Civil Suit between the petitioners and the defacto complainant have ended in compromise. Subsequent conduct shows that the petitioners are holding the property and the defacto complainant had given up the claim over the property. Further the transactions are between the individuals and the documents are in the nature of private documents. The petitioners and the defacto complainant have given quietest to the civil proceedings and settled the disputes amicably. Further continuance of the above case would be of no consequence.

12.In the light of the above, this Court is of the view that the prosecution as against the petitioners would be an abuse of process of law. In view of the same, the prosecution as against A3 and A4 would serve no purpose.

13.In view of the above, these Criminal Original Petitions filed by A3 and A4 are allowed and the prosecution in Crime No.166 of 2012 as against the petitioners are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police, Team-II,
Central Crime Branch,
Egmore,
Chennai - 600 008.

2.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.G.Ravikumar , Advocate SR.No. 59322,59321
+2ccs to Mr. A.B.Ashok , Advocate SR.No. 59131,59132

Crl.O.P.Nos.4287 & 8325 of 2013
and
M.P.Nos.1 & 1 of 2013

A.SK(19/07/2019)