IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5754 of 2016
& Crl.O.P.No. 3138 of 2017
and Crl.MP.Nos.2263 & 2264 of 2017

Crl.O.P.No.5754 of 2016 :-

T.Sathiah ... Petitioner/ Defacto Complainant

Vs.

1. K.A.Thirumurugan (died)
2. P.Asirvatham
3. The Inspector of Police,
   Central Crime Branch,
   EDF II, Team 9A,
   Vepery, Chennai - 7. ... Respondents/Accused, Complainant

PRAYER:
Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the learned Chief Metropolitan Magistrate, Egmore, Chennai, to dispose of C.C.No.10116 of 2014 on his file within a reasonable time schedule that may be fixed by this Court.

For Petitioner : Mr.S.Krishnaswamy

For Respondents
For R2 : Mr.P.Kumaresan

For R3 : Mr.Mohammed Riyaz
Additional Public Prosecutor.



Crl.O.P.No.3138 of 2017 :-

P.Asirvatham ... Petitioner/Accused-2

Vs.

1. The State rep. by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.
(Crime No.747 of 1997)

2. T.Saththiah ... Respondents/
Complainant, Defacto Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in charge sheet in C.C.No.10116 of 2014 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, in Crime No.747 of 1997 on the file of the first respondent and quash the same.

For Petitioner : Mr.P.Kumaresan

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.S.Krishnaswamy

C O M M O N O R D E R

The petition in Crl.O.P.No.3138 of 2017 has been filed to quash the proceedings in C.C.No.10116 of 2014 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offence punishable under Section 420 r/w 34 of IPC.

2. The learned counsel appearing for the petitioner in Crl.O.P.No.3138 of 2017, submitted that the case of the prosecution is that on 03.03.1995, the first accused had falsely represented to the second respondent/defacto complainant that he has having valid Power of Attorney to sell the disputed property which belongs to the petitioner/A2 herein. On that representation, the second respondent entered into sale agreement with the first accused on 03.03.1995 and paid a sum of Rs.17 lakhs as an advance. Thereafter, he came to understand that on 21.02.1994, the second accused cancelled the Power of Attorney dated 13.07.1992 and also executed another Power of Attorney dated 22.04.1994. The sale agreement executed by the first accused on the strength of Power of Attorney dated 13.07.1992 and the same was subsequently, cancelled by the petitioner/A2 on 21.02.1994. Thereby, both the accused cheated

the defacto complainant to the tune of Rs. 17 lakhs. Hence, the charge for the offence under Section 420 r/w 34 of IPC.

2.1. The learned counsel appearing for the petitioner submitted that the petitioner purchased the property in the year 1971 and thereafter on 23.01.1975, the Tamil Nadu Housing Board acquired the land belonging to the petitioner. At that juncture, the first accused approached the petitioner/A2, who is very well acquainted about the procedure to re-convey the land. Therefore, the petitioner/A2 executed Power of Attorney in favour of the first accused on 13.07.1992 and the same was registered in Document No.781 of 1992. Thereafter, the petitioner/A2 came to understand that the first accused did not take any steps to re-convey the land, which belongs to the petitioner/A2. Therefore, he cancelled the Power of Attorney on 21.02.1994 by the cancellation deed document No.172 of 1994.

2.2. The learned counsel appearing for the petitioner further submitted that the first accused again approached the petitioner/A2, since he was not able to proceed to re-convey the said land, he requested to give furnish power to re-convey the said land. Therefore, again on 22.04.1994, the petitioner herein executed Power of Attorney in favour of the first accused and the same was registered in document No.415 of 1994. Unfortunately, the first accused misused the said Power of Attorney and executed the sale agreement with the second respondent/defacto complainant as if the petitioner/A2 agreed to sell the property and also received a sum of Rs.17 lakhs as advance. He further submitted that in fact, the petitioner again cancelled the said Power of Attorney on 27.08.1997 and the same was registered as document No.837 of 1997. Therefore, the petitioner/A2 has absolutely no knowledge about the agreement for sale between the first accused and the second respondent and he did not receive any sale proceed as alleged by the prosecution.

2.3. He further submitted that the second respondent also filed a civil suit in O.S.No.318 of 2001 and 967 of 2001 as against the petitioner before this Court and the same was subsequently transferred to City Civil Court, Chennai and renumbered as O.S.Nos.12134 and 12140 of 2001, for specific performance and the same are pending. He further submitted that it is seen from the plaint in O.S.No.12134 of 2001, the second respondent clearly averred that the first accused entered into the sale agreement and entire amount received by the first accused. There is absolutely no whisper about the involvement of the petitioner/A2 in the alleged sale agreement. He further submitted that the entire advance amount had been received by the first accused and in fact the petitioner/A2 has undertaken to repay the said amount by offering an alternative property to the second respondent. It clearly shows that the petitioner is no way connected with the alleged sale agreement executed by the first accused in favour of the second respondent herein. Therefore, the entire allegations only as against the first accused and the petitioner/A2 no way connected with the alleged occurrence. Therefore, he prayed for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the second respondent in Crl.O.P.No.3138 of 2017 submitted that the petitioner is the owner of the property and he executed Power of Attorney in favour of the first accused. He further submitted that the said Power of Attorney had specific clause to sell, negotiate for sale or transfer or join in the sale or transfer the schedule property in one lot or in various divided or undivided shares and to receive, admit and acknowledge the receipt of the sale consideration. Therefore, it clearly shows that the petitioner/A2 had full knowledge about the sale agreement executed by the first accused. He also had full knowledge about the acquisition of the entire property by the housing Board. Therefore, both the accused persons conspired together and only to cheat the second respondent/defacto complainant induced him to purchase the property and received a sum of Rs.17 lakhs as advance. Now A1 died and the petitioner is alone there and he is liable to be punished for the offence under Section 420 r/w 34 of IPC.

3.1. He further submitted that the second respondent filed suit for specific performance in O.S.12139 of 2001 and thus it is no way connected with the criminal proceedings. He also relied upon the judgment reported in 2019(3) Scale 277 in the case of Sau.Kamal Shivaji Pokarnekar Vs. State of Maharastra & ors and the judgment reported in 2019 AIR SC 693 in the case of Dilbag Rai Vs. State of Haryana & ors. Hence, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent/police submitted that there are totally two accused, in which the petitioner is arraigned as A2. They are charged for the offence under Section 420 r/w 34 of IPC and the same has been taken cognizance in C.C.No.10116 of 2014, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. He further submitted that the first accused died and the petitioner alone is there to prosecute. There are specific averments and allegations to make out the charge under Section 420 of IPC as against the petitioner.

4.1. He further submitted that the Power of Attorney executed by the petitioner dated 13.07.1992, was cancelled by the cancellation of Power of Attorney and the same was registered in Doc. No.172 of 1994 on 21.02.1994. Again the petitioner executed the Power of Attorney dated 22.04.1994 and on the strength of the said Power of Attorney the first accused executed sale agreement with the second respondent knowing the fact that the subjected property already acquired by the Tamil Nadu Housing Board. Even then he executed Power of Attorney to sell the said property to other parties. It clearly shows that the intention of the petitioner is only to cheat the second respondent and hence he executed the Power of Attorney and received the sale advance amount from the first accused. He further submitted that due to the pendency of this petition, the trial proceedings has been stalled for the past five years and hence, he prayed for dismissal of the quash petition and further directed the trial Court to dispose the case within the stipulated period.

5. Heard Mr.P.Kumaresan, learned counsel appearing for the petitioner in Crl.O.P.No.3138 of 2017 and for the second respondent in Crl.O.P.No.5754 of 2016, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent in Crl.O.P.No.3138 of 2017 and for the third respondent in Crl.O.P.No.5754 of 2016 and Mr.S.Krishnaswamy, learned counsel appearing for the second respondent in Crl.O.P.No.3138 of 2017 and for the petitioner in Crl.O.P.No.5754 of 2016.

6. There are two accused in C.C.No.10116 of 2014, thereby taken cognizance for the offence under Section 420 r/w 34 of IPC, in which the petitioner in Crl.O.P.No.3138 of 2017 is arraigned as A2. A1 already died and the charge was abated against the first accused. Admittedly, the petitioner is the owner of the subject property and the said property was already acquired by the Tamil Nadu Housing Board. Even thereafter, the petitioner executed Power of Attorney in favour of the first accused on 13.07.1992 and the same was registered as document No.781 of 1992. Since, there was a dispute between the petitioner/A2 and the first accused, the petitioner cancelled the Power of Attorney on 21.02.1994. It is also seen that on 22.04.1994, again the petitioner executed another Power of Atterney in favour of the first accused and the same was registered as document No.415 of 1994. On the strength of the said Power of Attorney, the first accused entered into sale agreement with the second respondent/defacto complainant on 03.03.1995, to purchase the said property and paid a sum of Rs.17 lakhs as advance. The relevant portion of the Power of Attorney dated 22.04.1994 reads as follows :-

> "10. To negotiate for sale of the land as a whole or in parts or undivided shares.

11. To fix the sale consideration as well as the Purchaser/s

12. To enter into agreement/s of sale with the prospective buyers, to receive advance and issue receipt thereof and to maintain proper accounts

.............................

18. To negotiate for sale or transfer or join in the sale or transfer the schedule property in one lot or in various divided or undivided shares.

19. To receive, admit and acknowledge the receipt of sale consideration therefor.

20. To execute sale agreements, sale deed or deeds in respect of the Schedule mentioned property to be sold, transferred, conveyed or mortgaged either in one lot or in various undivided shares under one or more sale deeds, mortgage deed or other deeds from time to time as the case may be either independently or along with other properties."

Therefore the Power of Attorney executed by the petitioner in favour of the first accused to sell the property also. Though the petitioner had full knowledge about the acquisition of the said property by the Tamil Nadu Housing Board, he ought not to have executed Power of Attorney to sell the subject property.

7. Further it shows that there is a common intention to induce the second respondent/defacto complainant to pay money as an advance for the property, which was already acquired by the Tamil Nadu Housing Board and cheated the second respondent/defacto complainant. It is also seen from the statement recorded under Section 161(3) of Cr.P.C., there is specific allegations to constitute the offence under Section 420 of IPC as against the petitioner. It is also evident from the undertaken given by the first accused that he undertakes to repay the amount advanced by the second respondent. The mere filing of civil suit by the second respondent would not prevent him to initiate prosecution for the criminal offence committed by the petitioner. Though there is no specific avernments as against the petitioner in the plaint in O.S.No.12134 of 2001, it cannot be a ground for quashing the entire proceedings as against the petitioner herein and though the alleged agreement

entered by the first accused alone and the advance amount received by the first accused. Therefore, this Court finds no merits in this quash petition and it is liable to be dismissed.

8. The learned counsel appearing for the second respondent relied upon the judgment reported in 2019 AIR SC 693 in the case of Dilbag Rai Vs. State of Haryana & ors., as follows :-

> "10. The High Court by its impugned order dated 11.2.2016, quashed the proceedings arising out of the F.I.R. on the ground that on a plain reading of the FIR, the complainant had failed to make out any criminal intent on the part of the accused.
>
> 11. Assailing the judgment of the High Court, it has been submitted on behalf of the appellant that the High Court had manifestly erred in exercising its jurisdiction under Section 482 CrPc at this stage particularly when after due investigation, the chargesheet has been filed and charges have been framed. Moreover, it has also been submitted that a criminal intent emerges from the fact that though the property did not stand in the name of the accused it was sought to be sold and in pursuance of the transaction, the appellant was made to part with valuable consideration.
>
> 12. On 29.6.2016, notice was issued in these proceedings. The office report indicates that service of notice is complete on respondent No. 2. Despite service, none has appeared for respondent No. 2.
>
> 13. The High Court was persuaded to quash the criminal proceedings purely on the basis that the F.I.R. indicated that the vendor had refused to execute the sale deed. On this basis, the High Court held that there is no element of cheating and on reading of the F.I.R., the complainant had failed to make out any criminal intent on the part of the accused.
>
> 14. In arriving at this conclusion, the High Court, as would appear from the narration of facts earlier, has lost sight of crucial aspects which have emerged during the course of the investigation. The

> case of the complainant, it must be noted, is that though the accused did not have title to the property, she had dealt with the property and it was on that basis that the complainant was induced to part with valuable consideration."

The Hon'ble Supreme Court of India held that when the prima facie offence made out as against the accused persons, the criminal proceedings cannot be quashed on the ground that the allegation made appears to be civil in nature.

9. In the case on hand, there is specific allegation prima facie made out to attract the charge for the offence under Section 420 of IPC as against the petitioner. More over when the ingredients of the offence as against the accused made out, the proceedings shall not be interdicted and all the grounds raised by the petitioner have to be considered only before the trial Court during trial. In view of the above this Court is not inclined to quash the proceedings in C.C.No.10116 of 2014, pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

10. Accordingly, the Criminal Original Petition in Crl.O.P.No.3138 of 2017 stands dismissed. Consequently, connected miscellaneous petitions are closed.

11. In view of the order passed in Crl.O.P.No.3138 of 2017, the learned Chief Metropolitan Magistrate, Egmore, Chennai, is directed to complete the trial proceedings in C.C.No.10116 of 2014, within a period of three months from the date of the receipt of the copy of this Order. Accordingly, the Criminal Original Petition in Crl.O.P.No.5754 of 2016 stands disposed of.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

rts



To

1. The Chief Metropolitan Magistrate Court,
   Egmore, Chennai,

2. The Inspector of Police, Central Crime Branch,
   EDF II, Team 9A, Vepery, Chennai - 7.

3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.P.Kumaresan, Advocate, S.R.No.39312
+2cc to Mr.S.Krishnaswamy, Advocate, S.R.No.38740

CRL.O.P.No.5754 of 2016
& Crl.O.P.No. 3138 of 2017
and Crl.MP.Nos.2263 & 2264 of 2017

NMI(CO)
CS/17/06/2019