

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6767 of 2018 and
Crl.M.P.Nos.3475 of 2018 & 3197 of 2019

K.Selvaraj

... Petitioner

Vs.

1.State rep. by
Inspector of Police,
District Crime Branch,
Coimbatore
2.S.Arusemy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the case in Crime No.28 of 2015 on the file of the 1st respondent police, quash the same by allowing this criminal original petition.

For Petitioner : Mr.S.Vinoth Kumar

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : Mr.P.M.Duraiswamy

ORDER

This petition has been filed to quash the FIR in Crime No.28 of 2015 on the file of the first respondent.

2. Mr.S.Vinoth Kumar, the learned counsel for the petitioner submitted that the petitioner is arrayed as first accused in Crime No.28 of 2015 registered for the offences under Sections 120(b), 210, 468, 471, 420 r/w 511 I.P.C. based on the complaint lodged by the second respondent herein. He further submitted that one, Sennimalai is the absolute owner of the disputed property and the petitioner entered into a sale agreement with the Sennimalai to purchase his property. The petitioner also paid a sum of Rs.1,40,000/- as advance. Thereafter the said Sennimalai also handed over the possession and enjoyment of the disputed property. But he failed to execute sale deed as such the petitioner caused legal notice and also filed a suit in O.S.No.1042 of 2012 on the file of the learned I Additional Subordinate Judge, Coimbatore. The said suit was decreed in his

favour and sale deed was also executed in his favour. The second respondent is none other than the second son of the said Sennimalai Gounder and claims that the disputed property was purchased by him and his other two sons colluded together and created this sale agreement. Therefore, the entire criminal proceedings is abuse of process of law and the entire issue is civil in nature. As such, the first respondent ought not to have registered the case as against the petitioner and prayed to quash the FIR in Crime No.28 of 2015.

3. Per Contra, Mr.P.M.Duraiswamy, the learned counsel for the second respondent submitted that there are seven accused in this case in which the petitioner is arrayed as first accused. Further he contended that he lodged the complaint alleging that the petitioner and others conspired together and colluded with each other filed a suit for specific performance and on the basis of the fabricated sale agreement and also executed sale deed in his favour. He further contended that even before the suit, the said property was purchased by the second respondent. Thereafter, the entire revenue records have been mutated in favour of the second respondent. The electricity connection also transferred into the name of the second respondent and he is in possession and enjoyment of the disputed property. In fact, the second respondent also filed a suit in O.S.No.364 of 2010 as against the petitioner and others. Thereafter only with the intention to grab the entire property, the petitioner herein colluded with other accused persons and fabricated one sale agreement and filed the suit in O.S.No.1042 of 2014 without even impleading the second respondent as a party and obtained ex-parte decree. Therefore, there are specific averments and allegations to attract the offences as against the petitioner and others and as such the FIR cannot be quashed on its threshold and prayed for dismissal of this quash petition.

4. Mr.M.Mohamed Riyaz, Additional Public Prosecutor would submit that the crime has been registered in Crime No.28 of 2015 for the offences under Sections 120(b), 210, 468, 471, 420 r/w 511 I.P.C.. Totally there are seven accused in which the petitioner is arrayed as first accused. The petitioner is the person who fabricated the sale agreement in his favour and filed suit in O.S.No.1042 of 2014 and obtained decree. Thereafter, the sale deed was also executed in his favour with the collusion of other accused persons. Therefore they committed serious offence and the first respondent rightly registered the case in Crime No.28 of 2015 for the offences under Sections 120(b), 210, 468, 471, 420 r/w 511 I.P.C.. as against the petitioner and others. Therefore, he prayed for dismissal of this quash petition.

5. Heard, Mr.S.Vinoth Kumar, the learned counsel for the petitioner, Mr.P.M.Duraiswamy, the learned counsel for the second respondent and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

6. On perusal of records, it shows that the petitioner is the first accused in Crime No.28 of 2015 and there are totally seven accused. The second respondent lodged the complaint on the allegation that the petitioner along with the other accused persons have fabricated the sale agreement and on the strength of the sale agreement, he filed a suit and obtained a decree in O.S.No.1042 of 2014 on the file of the learned I Additional Sub Court, Coimbatore. Thereafter, the sale deed was also executed in his favour whereas the second respondent even before the sale agreement purchased the disputed property and all the revenue records are mutated in his favour only to create encumbrances over the property. The first petitioner along with the other accused persons have committed serious offence. Therefore, this Court is not inclined to entertain this petition.

7. Further it is seen from the First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. Further, in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.* in CrI.A.No.255 of 2019 dated 12.02.2019, the Hon'ble Supreme Court of India has held as follows:

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the

materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. In view of the above discussions and as held by the Hon'ble Supreme Court of India, this Criminal Original Petition

is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.Inspector of Police,
District Crime Branch,
Coimbatore.

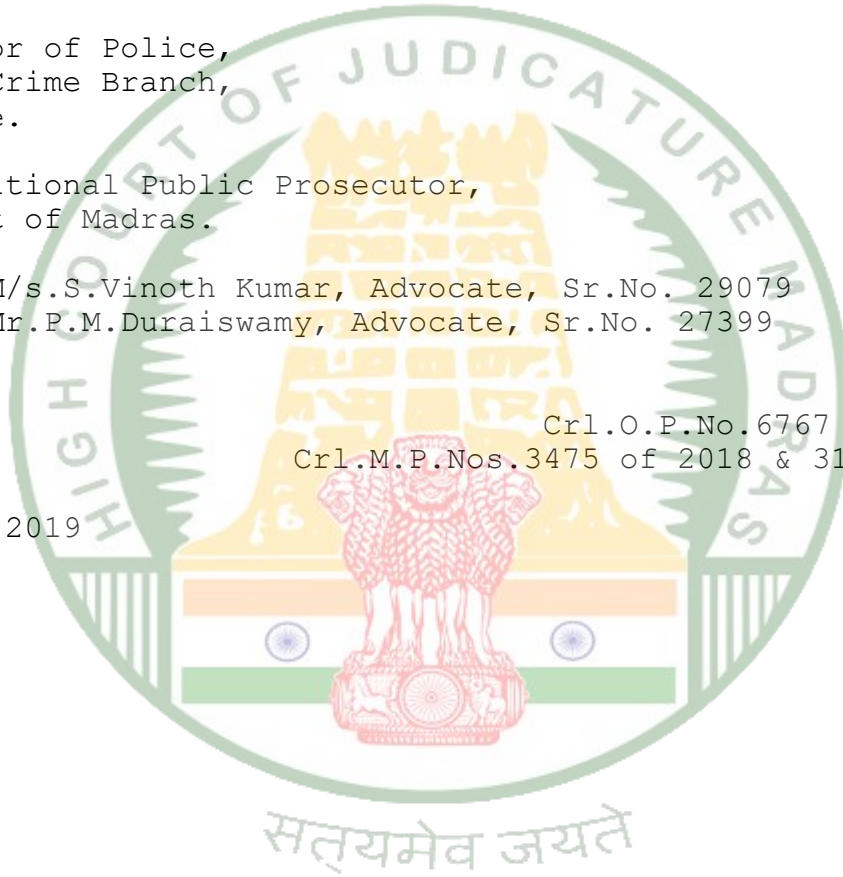
2.The Additional Public Prosecutor,
High Court of Madras.

+1 cc to M/s.S.Vinoth Kumar, Advocate, Sr.No. 29079

+1 cc to Mr.P.M.Duraiswamy, Advocate, Sr.No. 27399

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PPA(CO)
CSL/03.05.2019



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