

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.07.2019	Delivered on 09.08.2019
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.21269 & 21270 of 2018
and
Crl.M.P.Nos.11553 & 11554 of 2018 & 4802 of 2019

M/s.Golden Glow Constructions Private Limited,
Represented by its Managing Director,
Mr.Dilip Udeshi,
Thriveni Avademy,
Thriveni Complex,
Vadakupattu Village and Post,
Kancheepuram.

..Petitioner in
Crl.O.P.No.21269/2018

M/s.Lyra Developers Private Limited,
Represented by its Managing Director,
Mr.Sanjay Sarathy,
514, Dalamal Towers,
221,FPT Towers,
Nariman Point,
Mumbai

..Petitioner in
Crl.O.P.No.21270/2018

.Vs.

1.The State,
Represented by the Inspector of Police,
District Crime Branch,
Kancheepuram.

(FIR 24 of 2018)

2.G.Saraswathy

..Respondents
in both Crl.OPs

COMMON PRAYER : These Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records of FIR 24 of 2018 dated 09.06.2018, on the file of the 1st respondent Police, and to quash the same.

For Petitioner : Mr.Govind Chandrasekhar
in both Crl.OPs Mr.Sarath Chandran

For 1st Respondent : Mr.M.Mohamed Riyaz, APP

For 2nd Respondent : Mr.R.Sankarasubbu
in both Crl.OPs for Ms.G.Priya

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the FIR in Cr.No.24 of 2018, pending investigation on the file of the 1st respondent Police.

2.The case of the prosecution is that the properties in S.Nos.90/2 & 5/5 at Senthamangalam Village, Kancheepuram District, originally belonged to Kuppusami Naidu and he sold the property in favour of Rajagopal Naidu in the year 1924. Thereafter in the year 1977, his wife settled the property in favour of Govindarajalu Naidu, who is the husband of the de facto complainant and he in turn had settled the property in favour of the de facto complainant in the year 2008. Thereafter, the de facto complainant had settled at Chennai. Sometime later, when the de facto complainant applied for encumbrance certificate, it was found that the accused persons have dealt with the property by forging and fabricating documents. Ultimately, the property has been sold to the petitioners. Therefore, a complaint was given to the respondent Police in this regard and the respondent Police have registered an FIR for an offence under Sections 468, 471, 420 and 34 IPC. The petitioners have been added as A-3.

3.The learned counsel for the petitioner submitted that the flow of title for both the properties, till it was sold to the petitioners is as follows:

FLOW OF TITLE FOR SURVEY NO.90/2, SENTHAMANGALAM VILLAGE, KANCHIPURAM DISTRICT

1.Rajammal, the mother of Govindarajalu Naidu, executes a settlement deed [Doc.No.2497 of 1977] dated 23.12.1977 in favour of Govindarajalu Naidu

gifting 69 cents in Survey No.90/2, Senthamangalam Village, Kancheepuram District.

2.Document No.2483 of 1981, Jai Narayan

Singh, Son of Chandrapani Singh (Vendor),
Kodaikanal Investments Private Limited (Vendee).
Extent - 36 cents out of 1.43 acres.

3.Document No.2484 of 1981 - Rangabashyam
Naidu, Son of Govindaswamy Naidu (Vendor),
Kodaikanal Investments Private Limited (Vendee)
- Extent - 36 cents.

4.Document No.50 of 1982 - Govindarajalu
Naidu, Son of Rajagopal Naidu (Vendor)
Kodaikanal Hotels Private Limited - Extent - 67
cents.

5.Kodaikanal Investments Private Limited
and kodaikanal Hotels Private Limited are a part
of the Madras Motor Finance Guarantee Company.
The Madras High Court, vide an order dated
26.11.2001 passed in C.P.72 of 1997 ordered the
winding up of Sanadhana Dharma Gurukulam and
further directed the Official Liquidator to file
winding up petitions for all group companies in
the MMFGC group. The Administrator appointed
by the High Court had already taken possession
of these properties way back in 1999 itself.
[page 6 of the typeset of papers].

6.Pursuant to the final order passed by the
High Court of Madras in C.P.73 to 77 of 2006 the
properties of Kodaikanal Investments Private
Limited and Kodaikanal Hotels Private Limited
were to vest with the sponsoring companies.

7.The sponsoring companies along with Kotak
Mahindra Bank executed a sale deed in favour of
the petitioner on 31.08.2008 transferring right,
title and interest in 1.43 acres in
Ssenthamangalam Village, Kanchipuram District
standing in the name of the sponsoring companies
to and in favour of the petitioner herein.

FLOW OF TITLE FOR SURVEY No. 5/5, SENTHAMANGALAM VILLAGE,
KANCHIPURAM DISTRICT

1.Doc.No.2156 of 1986 - R.Govindasamy
Naidu, Son of Rangabashyam Naidu (Vendor) and
his 2 sons, to and in favour of M.Basha. Extent
62 cents in Survey No.5/5.

2.Doc.No.2701 of 1987 [05.10.1987] -
M.Basha (Vendor) to Sanadhana Dharma Gurukulam
Limited -

Extent 62 cents in 5/5 along with 60 cents in
5/6 and 15 cents in 63/4A. Totally 1.37 acres.

3.Pursuant to the final order passed by the

High Court of Madras in CP.73 to 77 of 2006 the properties of Kodaikanal Investments Private Limited and Kodaikanal Hotels Private Limited were to vest with the sponsoring companies.

4.The sponsoring companies along with Kotak Mahindra Bank executed a sale deed in favour of the petitioner on 31.08.2006 transferring right, title and interest in Survey No.5/5 in Senthamangalam Village, Kanchipuram District standing in the name of the sponsoring companies to and in favour of the petitioner herein.

4.The learned counsel after explaining the flow of title, submitted that the petitioner became the owner of the property, pursuant to the orders passed by this Court in CP.Nos.73 to 77 of 2006, and these orders are in the nature of a judgment in rem, which binds the whole world. The learned counsel further submitted that the

husband of the 2nd respondent who had sold the property in S.No.90/2 in the year 1982, in favour of Kodaikanal Hotels Private Limited, had executed a settlement deed in favour of the 2nd respondent for the very same property in the year 2006, and therefore it is the 2nd respondent who is attempting to grab the property from the petitioner Company.

5.The learned counsel further submitted that even if the FIR is taken as it is, no offence of forgery or cheating will arise insofar as the petitioners are concerned. The learned counsel submitted that the allegation made against the petitioners to substantiate the offence of forgery is that false documents have been created. The learned counsel submitted that the petitioners are admittedly not the makers of the false document in question. In order to substantiate his submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in Sheila Sebastian .Vs. R.Jawaharaj And Another reported in (2018) 7 SCC 581 and the judgment of this Court in T.Muthuramalingam .Vs. Inspector of Police, Theni District & Another reported in 2018 4 MLJ (Cr1.) 392 and in Muthammal and Others .Vs. S.Thangam reported in 2019 1 LW (Cr1.) 761.

6.The learned counsel for the petitioners submitted that if no offence of forgery has been made out, the offence of cheating will also fall to the ground. Therefore, the learned counsel submitted that in a case which is purely civil in nature, the petitioners have been made as an accused and the criminal proceedings is an abuse of process of law which has to be interfered by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

7. Per contra, the learned counsel appearing for the 2nd respondent submitted that this Court while exercising its jurisdiction under Section 482, seeking to quash the FIR, cannot go into the facts in detail and conduct a mini investigation. The learned counsel submitted that this Court has to take the allegations made in the complaint as it is, and allow the investigation to continue and direct the respondent Police to file a Final Report.

8. The learned counsel further submitted that the judgment passed in the Company Petition is now a subject matter of challenge in OSAs filed by the 2nd respondent, and therefore the said judgment cannot come to the aid of the petitioners. The learned counsel further submitted that the petitioners do not have any title over the property

and the petitioners purchased the property knowing fully well that the vendors of the petitioner Company have forged and fabricated documents and ultimately sold to the petitioners, and therefore the petitioners have also committed the offence in furtherance of the common intention between the accused persons.

9. The learned counsel in order to substantiate his submissions, relied upon the judgments of the Hon'ble Supreme Court in State of Haryana And Others .Vs. Bhajan Lal and Others reported in 1992 Supp (1) SCC 335 and State of Orissa .Vs. Debendra Nath Padhi reported in (2005) 1 SCC 568.

10. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the investigation is still pending and the role played by the petitioners will be known only after the completion of the investigation. The learned counsel submitted that the respondent Police should be permitted to continue with the investigation and even a time limit can be fixed for the completion of the investigation.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. It is an admitted case, even as per the 2nd respondent, that the petitioner in Crl.OP.No.21270 of 2018 has purchased the property in the year 2008, and the petitioner in Crl.O.P.No.21269 of 2018 has purchased the property in the year 2006, pursuant to the orders passed by this Court in C.P.Nos.73 to 77 of 2006, where the properties were directed to vest with the sponsoring companies. This judgment is in the nature of a judgment in rem. Prior to that, the petitioners were not even in the scene. Therefore, the property was purchased by the petitioners only on the strength of the orders passed by this

Court in the Company Petitions. The petitioners are basically subsequent purchasers of the property. The order passed by this Court and the sale deed executed in favour of the petitioners remains intact till today.

13. In order to constitute an offence under Section 464, on the ground of making a false document for the purpose of committing the offence of forgery, it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery. If there is no forgery, then the offence under Sections 467, 468 and 471 will not arise. The Hon'ble Supreme Court has categorically held that, where a person executes a document claiming a property which is not his, such execution will not amount to a false document as defined under Section 464 of IPC.

14. The judgments cited by the learned counsel for the petitioners clearly substantiates the position of law in this regard.

15. This Court is aware about the limitations in exercising its jurisdiction under Section 482 of Cr.P.C., while dealing with a petition to quash the FIR. However, this is a complaint which has been given by the 2nd respondent attempting to give the cloak of a criminal offence to a matter which is essentially and purely civil in nature. The crux of the complaint is that the petitioners do not have any title over the property. This is clearly a civil dispute - pure and simple - between the parties, which has been sought to be converted into a criminal offence. Even if the allegations made in the complaint are taken as it is, no offence of forgery or cheating is attracted against the petitioners. The petitioners, by no stretch, can be brought within the category of land grabbers since they are bonafide purchasers of the property, pursuant to the orders passed by this Court in the Company Petitions. Exposing the petitioners to a criminal prosecution, is an abuse of process of law, which requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

16. In the result, the FIR in Crime No.24 of 2018, pending investigation before the 1st respondent Police, is hereby quashed insofar as the petitioners are concerned. Accordingly, both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KP

To

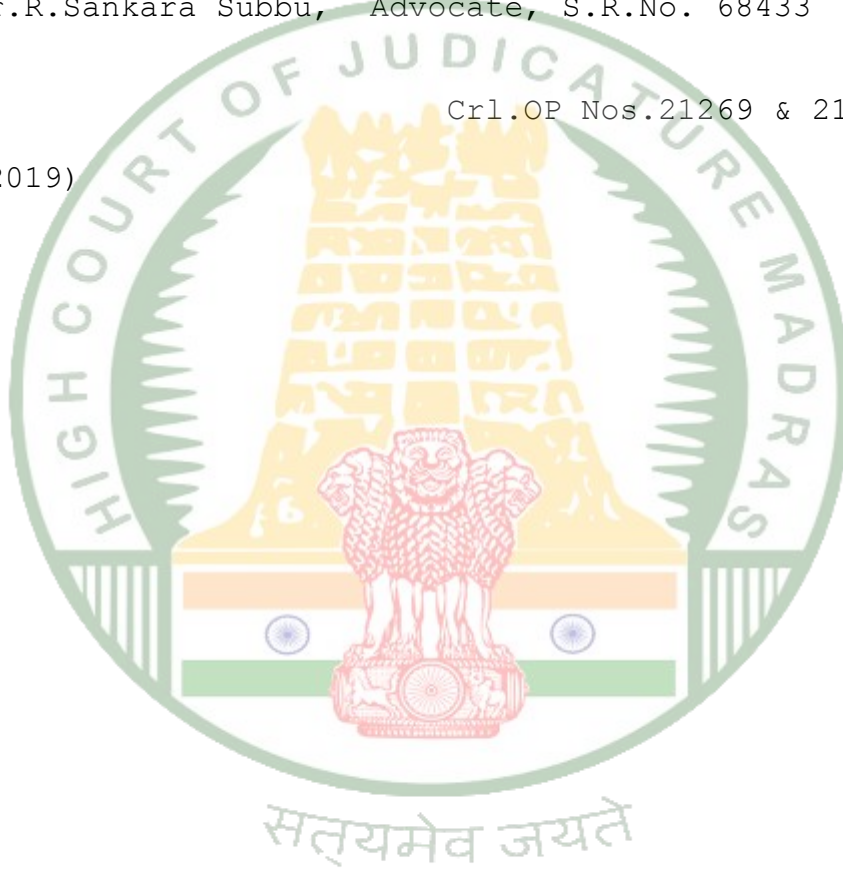
1.The Inspector of Police,
District Crime Branch,
Kancheepuram.

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

+2cc to Mr.R.Sankara Subbu, Advocate, S.R.No. 68433

Cr1.OP Nos.21269 & 21270 of 2018

BP(CO)
GN(17/10/2019)



WEB COPY