

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6262 of 2019
and Crl.MP.Nos.3467 and 3468 of 2019

1. P.Joseph
2. V.Narayanan ... Petitioners

Vs.

1. The State rep by
The Inspector of Police,
District Crime Branch,
Erode District.
Crime No.45 of 2013.

2. V.S.Prabhu ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the criminal case in C.C.No.446 of 2019 pending on the file of the learned Judicial Magistrate No.2, Erode, quash the same so far as the petitioners are concerned, by allowing this Criminal Original Petition.

For Petitioners : Mr. N.Manokaran

For Respondents

For R1 : Mr.Mohammed Riyaz

Additional Public Prosecutor.

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O R D E R

This petition has been filed to quash the proceedings in C.C.No.446 of 2019 pending on the file of the learned Judicial Magistrate No.II, Erode.

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A5 and A6. The allegations as against the petitioners are that the first and second accused allegedly created the document as if, one late K.Marudhapushpam had executed an unregistered Will and the same was attested by the accused 3 and 4. Thereafter the first and second accused executed two sale deed in favour of the petitioners herein on 18.01.2013 and 12.01.2013, in respect of

the property house site No.10 ad measuring 2000 Sq.ft comprised in Survey No.270/1B2, Ganapathi, Coimbatore District and another house side No.11 ad measuring 1975½ Sq.ft. comprised in S.No.270/1B2, Ganapathi, Coimbatore District, respectively. He further submitted that the second respondent/defacto complainant filed suit in O.S.No.173 of 2014 on the file of the learned II Additional District Court, Erode as against all the accused persons for partition and separate possession, in respect of the disputed property. In that suit, the second respondent did not ask any prayer in respect of Will. Thereafter, the present complaint has been foisted only to harass the petitioners.

2.1. He further submitted that the second respondent filed private complaint and the same was directed under Section 156(3) of Cr.P.C. to register the same. Further he submitted that there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceedings. He further submitted that as far as the petitioners are concerned, they are bonafide purchaser of the property for valuable sale consideration and there is no evidence to prove the charges as against the petitioners. In fact the offence under Section 120 B of IPC is never made out, since there was no meeting of mind along with the other accused at any point of time. Further he submitted that there is no material for prosecuting the petitioners under Section 420 of IPC. In respect of the petitioners are concerned, there is absolutely no dishonest intension. Therefore, the offence under Section 420 of IPC is not at all attracted and the entire proceedings are untenable. Further he submitted that as far as the other offences under Sections 464, 467 and 471 of IPC are concerned, there is absolutely no allegations as against the petitioners, since they are subsequent purchasers of the disputed property. In support of his contention, the learned counsel relied upon the judgment reported in (2011) 13 SCC 412 in the case of *Thermax Limited and others Vs. K.M.Johny and others* and prayed for quashment of the entire proceedings.

3. The learned Additional Public Prosecutor submitted that there are totally seven accused in this case, and the petitioners are arraigned as A5 and A6. The petitioners have been charge sheeted for the offences under Sections 120B, 420, 468, 467, 471 and 109 of IPC. He further submitted that to attract the offences under Sections 120B and 420 of IPC, there are materials and ingredients to prove the charges as against the petitioners. Therefore, he prayed for dismissal of the quash petition.

4. Heard Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent.

5. There are totally seven accused, in which the petitioners are arraigned as A5 and A6. The petitioners have been charged for the offences under Sections 120B, 420, 468, 467, 471 and 109 of IPC. The case of the prosecution is that the second respondent's paternal grand mother K.Marudhapushpam died on 27.10.2011. Her daughter-in-law i.e., the first accused and her son i.e., the second accused created fabricated Will as if Late K.Marudhapushpam executed Will in their favour and the same was attested by the third and fourth accused. On the strength of the said Will, the first and second accused executed two sale deeds in favour of A5 and A6 i.e., the petitioners herein.

6. It is seen that the petitioners are none other than the family friends of A1 and A2 and only to create encumbrance over the property, they executed sale deed in their favour. It is also seen from the statement recorded under Section 161(3) of Cr.P.C., there are averments to attract the charges under Sections 120-B and 420 of IPC as against the petitioners.

7. The learned Counsel appearing for the petitioners relied upon the judgment reported in (2011) 13 SCC 412 in the case of Thermax Limited and others Vs. K.M.Johny and others, as follows :-

23. It is clear that in view of inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Section 420 IPC and also of the fact that at the most it is the dispute of civil nature, this Court quashed the orders of the Magistrate and the High Court.

.....
34. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

.....
37. It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be

dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant-Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant-Company amounts to a breach of contract."

In view of the judgment passed by the Hon'ble Supreme Court of India in Crl.A.No.255 of 2019, the judgment cited by the learned counsel appearing for the petitioners is not helpful to the case of the petitioners.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.*, 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.

.....
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."

In the case on hand, there are specific allegations against the petitioners to attract the charges. As held by the Hon'ble Supreme Court of India, the criminal proceedings cannot be quashed on the strength of civil in nature. Though the suit is

pending, it is no way connected with the charges as against the petitioners. The point raised by the learned counsel appearing for the petitioners have to be tested during the trial. Therefore this Court is not inclined to entertain this petition, since this petition devoid of merits.

9. In view of the above discussion, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Judicial Magistrate No.II,
Erode.

2. The Inspector of Police,
District Crime Branch,
Erode District.

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

+1 cc to Mr.N.Manokaran, Advocate Sr.No.22319

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CSL/23.04.2019

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