

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.02.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.4729 of 2014
and M.P.No.1 of 2014

1. Subbu Gounder
2. K.Rajamanickam
3. A.P.Sekar

...Petitioners/Accused

Vs.

1. State by

The Inspector of Police,
Attur Police Station,
Attur, Salem District.
Cr.No.100/2014.

... R1/Complainant

2. A.Palanivel,
S/o Athiyappa Gounder,
Paraikkadu, Valayamadevi,
Attur, Salem District.

... R2/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records concerned in Cr.No.100 of 2014 on the file of the Inspector of Police, Attur Station, Attur, Salem District and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.C.Prakasam

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor, for R1
No Appearance, for R2

ORDER

This petition has been filed to quash the Crime No.100 of 2014 on the file of the first respondent.

2. The learned counsel for the petitioners submitted that the respondent / complainant's father one Athiyappa Gounder owned a land situated in S.No.151/2, Valayamadevi Village, Attur Taluk, Salem District to an extent of 2.35 acres. The complainant's father borrowed loan from the first petitioner and he failed to discharge the same, therefore, the first petitioner filed a suit in O.S.No.370 of 1987 and the property of Athiyappa Gounder was attached. Even then, Athiyappa Gounder did not come forward to settle the amount. Therefore, the first petitioner filed an Execution Petition and the E.P. Court conducted public

auction and the second petitioner herein participated in the auction and emerged as the successful bidder and sale deed was executed in his favour. Subsequently, the second petitioner sold the property in favour of the third petitioner. Thereafter, one of the legal heir of Athiyappa Gounder challenged the sale before this Court in CRP (NPD).Nos.1362 and 1363 of 2007 and the same was also dismissed and the property was also delivered to the second respondent on 25.11.2009. But thereafter, the present allegation is made, which is completely contradictory to the Civil Proceedings and only to grab the property, the present complaint has been lodged. Therefore, he sought to quash the FIR.

3. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that there are averments in the FIR, which has to be investigated further. Therefore, he sought for dismissal of the quash petition.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent.

5. On the complaint lodged by the second respondent, the first respondent registered the case in Crime No.100 of 2014 for the offence under Sections 465, 468, 471 and 420 IPC and the petitioners were arrayed as accused 1 to 3. The crux of the allegations is that the father of the defacto complainant owned a property measuring 2.35 acres in Survey No.151/2 situated in Valayamadevi Village, Attur Taluk, Salem District. While that being so, the second respondent's father borrowed loan from the first petitioner and thereafter, cheated his father and procured the said property by creating false documents.

6. It is seen that the father of the defacto complainant borrowed loan from the first petitioner and he did not repay the same. Hence, the first petitioner filed a suit in O.S.No.370 of 1987 before the Additional Sub Court, Salem for recovery of money. In the said suit, he filed a petition to attach the property belonging to Athiyappa Gounder. Thereafter, the first petitioner filed an Execution Petition in R.E.P.No.21 of 1997 before the Sub Court, Attur and the said property was bringing for sale. The second respondent participated in the public auction and since he was the successful bidder, the property was sold to him by the Court. Subsequently, another legal heir of Athiyappa Gounder challenged the sale before this Court in CRP.Nos.1362 and 1363 of 2007 and this Court by an order dated 17.07.2007 dismissed the CRP and observed as follows:

"4. The only contention that was raised before the Court below is that the property in survey No.151/2 having an extent of 0.95.0 hectares originally belonged to one Ramasamy Gounder, who died intestate leaving behind him, the wife, the first petitioner in R.E.A.No.53 of 2006 and also other respondents

including Athiyappa Gounder / judgment debtor. The judgment debtor was entitled to only 1/8th share. Hence, the property should not have been attached. All irregularities have been committed in proclamation of sale and in fixing of price. Hence, the proclamation of sale was to be set aside and the sale should not be confirmed. The said applications were resisted by the respondent / decree holder and also by the auction purchaser. The Lower Court, after looking into the materials, took the view that the claimant has no interest in the property and dismissed the applications. Under those circumstances, the present civil revision petitions have been brought forth by the petitioner.

5. Learned Counsel for the petitioner reiterated the contentions raised before the Court as narrated above.

6. The Lower Court has clearly pointed out that the property, which was brought for sale, belonged to Athiyappa Gounder. The said property was originally belonged to one Ramasamy Gounder, who died intestate, leaving behind him, his wife and other children, including the judgment debtor, Athiyappa Gounder. The same was established and also marshalled properly. Once an attachment was made in the Execution Petition and application made in Execution Application to raise the attachment, was also dismissed, the attachment made in E.P. cannot be cancelled. The contention made therein was also not agitated. Following the same, the property was also sold. Now the contention raised in respect of the claim could not be proved. The revision petitioner is not having any existing right in the property, which is the subject matter of the suit.

7. To set aside the sale, some irregularities are noticed. The Lower Court pointed out that following the attachment, there was a proper sale proclamation, after fixing the upset price and after following all procedural formalities, the property was sold. In such circumstances, the Court is unable to notice any infirmity or illegality in the order passed by the Lower Court or in the sale of the property. The civil revision petitions required an order of dismissal and the same are dismissed accordingly. Consequently, the connected C.M.P. is closed. No costs."

7. It is seen from the above, the property purchased by the second petitioner is only through Court auction on a valid sale consideration. Thereafter, he sold the property to the third petitioner herein. Therefore, there is no allegation made out against the petitioners as alleged by the defacto complainant.

The FIR is nothing but a clear abuse of process of law. Without considering the above facts, the first respondent registered the case. Hence, this Court is inclined to quash the FIR. Accordingly, the FIR is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Inspector of Police,
Attur Police Station,
Attur, Salem District.

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.Prakasam, Advocate sr.no.14195

Cr1.O.P.No.4729 of 2014

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nr 26/03/2019



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