

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5758 of 2014

M.Suresh Kumar

...Petitioner

Vs.

1.The State Rep. By
The Inspector of Police,
Central Crime Branch,
Chennai Suburban Police,
St. Thomas Mount.
(Crime No.12 of 2010)

2.R.N.Veerappan

...Respondents

(Impleaded the 2nd respondent as per order
of this Hon'ble Court dated 24.03.2014)

PRAYER: Criminal Original Petition filed under Section 482 of
Cr.P.C., to call for the records relating to the C.C.No.230 of
2013, on the file of the learned Judicial Magistrate - I,
Poonamallee and to quash the same in so far as the petitioner is
concerned.

For Petitioner : Mr.Om Prakash
Senior Counsel
Assisted by
Mr.P.Elayaraj kumar

For Respondents
For R1 : Mr.Mohamed Riyaz,
Additional Public Prosecutor,
High Court, Madras.

For R2 : Mr.V.Ayyadurai Senior Counsel
for Mr.G.R.M.Palaniappan

O R D E R

The present Criminal Original Petition has been filed to
quash the proceedings in C.C.No.230 of 2013 on the file of the

learned Judicial Magistrate - I, Poonamallee, thereby taken cognizance of the offences punishable under Sections 468, 471 r/w 120 B of IPC.

2.The learned senior counsel Mr.Om Prakash, appearing for the petitioner submitted that there are totally 5 accused in which the petitioner is arrayed as 5th accused. The charges as against the petitioner are that the de-facto complainant and their members are in absolute possession and enjoyment of the disputed property. The said property was originally purchased by the forefathers of the first and second accused and they have no right or title over the said property. They falsely fabricated a partition deed dated 16.06.2008 in respect of the disputed property and they executed a General Power of Attorney in favour of the third and fourth accused to deal with the said property. The first to fourth accused had agreed to sell the said property to the petitioner for the sum of Rs.3.25 crores for which the petitioner paid a sum of Rs.40 lakhs as an advance and entered into the sale agreement dated 14.07.2008. It is further alleged that only to grab the entire land the accused persons have created encumbrance over the property and on 21.10.2009 of the accused persons have threatened the de-facto complainant with their consequences.

2.1.He further submitted that the petitioner also executed cancellation of sale agreement on 27.01.2010 and registered as Document No.1170 of 2010, on the file of the Sub Registrar Office, Kunrathur. He further submitted that the petitioner had no knowledge about the fabrication of partition deed and as a bonafide purchaser, he entered into a sale agreement with the power holders namely A3 and A4. He also paid a sum of Rs.40 lakhs as an advance. In all the statements recorded by the first respondent in support of the charge sheet, no charge is attracted as against the petitioner and the charges are not tenable in law.

2.2.He further submitted that the first and second accused have filed a suit in O.S.No.253 of 2008 before the Sub Court, Tiruvallur for an injunction as against the de-facto complainant and also obtained order of injunction. Therefore, it is civil in nature and even as per the case of the prosecution no offence is made out as against the petitioner. Without considering the same, the learned Magistrate have taken a cognizance for the above said offences as against the petitioner also. Therefore, he prayed for quash the entire proceedings.

3.Per contra, the learned senior counsel appearing for the second respondent/plaintiff submitted that the petitioner had full knowledge about the fabrication of partition deed by A1 and A2, only to create encumbrance over the property, connived with

other accused persons created encumbrance over the property by way of entering into the sale agreement. After fabrication of partition deed without any right over the property, they executed power of attorney in favour of A3 and A4. In turn they entered into the sale agreement with the petitioner and created encumbrance over the property. He further submitted that the petitioner is none other than the very close family friend of the first and second accused and as such the petitioner is not a bonafide purchaser and there are materials to connect the petitioner for the charges.

3.1.He further submitted that the power of attorney executed by the first and second accused in favour of the third and fourth accused on 02.07.2008. On the strength of the power of attorney they entered into the sale agreement with the petitioner on 14.07.2008. But the advance payments made by the petitioner on 13.05.2008, 15.05.2008, 17.06.2008, 28.06.2008, 30.06.2008, 17.07.2008, 10.09.2008, 20.10.2008, 12.11.2008 and 12.12.2008 by way of 11 cheques for totalling Rs.40 lakhs. Therefore, even before the execution of power of attorney namely on 16.06.2008 itself the advance amount was paid by the petitioner. In fact even before execution of sale agreement the above said amounts were paid.

3.2.He further submitted that no prudent man will pay the advance amount even before executing the power of attorney to the power holders. Therefore, the petitioner is also one of the person who committed the offence with the other persons and as such the first respondent rightly charged the petitioner under Section 120 B of IPC. Therefore, he prayed for dismissal of the quash petition.

4.The learned Additional Public Prosecutor appearing for the first respondent submitted that the disputed property was purchased by the de-facto complainant in the year 1972 by the registered sale deed in Document No.1222 of 1972 and they are in possession and enjoyment of the said property. While being so the first and second accused created and fabricated the partition deed without any title or right over the said property between them as brothers. Thereafter, they executed power of attorney to the extent of 55 cents in the disputed property in favour of the third and fourth accused and they in turn entered into the sale agreement with the petitioner herein on 14.07.2008. He also pointed out that even before execution of the power of attorney the petitioner herein paid the advance amount to purchase the disputed property and created encumbrance. He further submitted that only because of the pendency of this petitioner. The case in C.C.No.230 of 2013 is

pending, without even commencement of trial. Therefore, he prayed for dismissal of the quash petition.

5.Heard Mr.Om Prakash, learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and Mr.V.Ayyadurai, learned senior counsel appearing for the second respondent.

6.The petitioner is arrayed as fifth accused. He has been charged for the offences under Sections 465, 467, 468, 471 r/w 120 B of IPC. The first and second accused on the strength of partition deed executed in between them dated 16.06.2008 execute the power of attorney in favour of A3 and A4 on 02.07.2008. Thereafter, the A3 and A4 had entered into the sale agreement for the total sale consideration of Rs.3.25 Crores and received a sum of Rs.40 lakhs as an advance from the petitioner / fifth accused. Even according to the petitioner, the payments were made through 11 cheques in the following dates.

S.No.	Date	Cheque / Demand Draft Details	Amount
1.	13.05.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
2.	15.05.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
3.	17.06.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
4.	28.06.2008	Cheque drawn on Karur Vysya Bank	Rs.3,00,000.00
5.	30.06.2008	D.D.No.442674, drawn on Karur Vysya Bank, Chennai - 87.	Rs.5,0,000.00
6.	30.06.2008	D.D.No.442675, drawn on Karur Vysya Bank, Chennai - 87.	Rs.5,00,000.00
7.	17.07.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
8.	10.09.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
9.	20.10.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
10.	12.11.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00
11.	12.12.2008	Cheque drawn on Karur Vysya Bank	Rs.50,000.00

6.1. Admittedly, the payments were made even before the date of partition namely 16.06.2008 between A1 and A2. As pointed out by the learned senior counsel appearing for the second respondent, no prudent man will pay an advance amount even before execution of partition deed and the power of attorney to the power holder.

6.2. The case of the petitioner is that he entered into the sale agreement to purchase the disputed property in the total sale consideration of Rs.3.25 Crores for which he paid a sum of Rs.40 lakhs as an advance to the A3 and A4 being the power holders. It is seen that the partition deed itself executed in between the first and second accused on 16.06.2008. Thereafter, they executed power of attorney in favour of A3 and A4 on 02.07.2008. Therefore, it shows that the petitioner has also committed offence in connivance with other accused to grab the property from the de-facto complainant. All the accused conspired together and fabricated partition deed as if the property derived from their ancestors and immediately they executed power of attorney on the strength of partition deed in favour of A3 and A4. They also further encumbered the disputed property by way of creating agreement of sale in favour of the petitioner / fifth accused herein. Further, there are clinching evidence to attract the offences as against the petitioner. In this regard, the learned senior counsel appearing for the second respondent relied upon the Judgment reported in i) (2015)9 Supreme Court Cases 647 Ganga Dhar Kalita -vs- State of Assam and others as extracted hereunder:

"10. No doubt, where the criminal complaints are filed in respect of property disputes civil in nature only to harass the accused, and to pressurise him in the civil litigation pending, and there is prima facie abuse of process of law, it is well within the jurisdiction of the High Court to exercise its powers under Section 482 of the Code to quash the criminal proceedings. However, the powers under the Section are required to be exercised sparingly. In Kamaladevi Agarwal v. State of W.B., this Court observed as under:

'7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even

if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.'

11. Having considered the law laid down by this Court, as above, and further considering the facts and circumstances of the case and seriousness of the allegations made against the accused, particularly that one of the persons said to have executed the power of attorney was minor, and another was away from India, in our opinion, even if the civil suit was instituted by the complainant, the High Court committed no error of law in declining to interfere with the criminal proceedings initiated against the appellant in the present case."

ii) (2017)2 Supreme Court Cases 371 *Jairam -vs- State of Maharashtra* and another as extracted hereunder:

"7. We have gone through the record and considered rival submissions. The High Court found three infirmities, namely, that Onkargiri, predecessor of the plaintiffs in Regular Civil Suit No.81 of 1993 did not have any title; that no sale deed was executed by the plaintiffs in favour of said three persons; and that the document of lease stated to be in favour of the appellant did not mention any rent at all. In the face of these observations it cannot be said that the dispute in question was purely of civil nature. If on the basis of false and fraudulent documents a claim is made which leads to award of compensation in land acquisition matter, the interest of the State is certainly compromised or adversely affected. The matter cannot then be termed as a civil dispute simpliciter. The crime was therefore rightly registered."

In the above cases, the Hon'ble Supreme Court of India held that though the civil case is pending between the parties it cannot be said that the dispute in question was purely of civil nature. The matter cannot be termed as civil dispute simply when there are specific allegations to attract the criminal offences.

7.In the case on hand, the first and second accused filed a suit for injunction as against the de-facto complainant without any title or right over the disputed property. After initiation of proceedings, the petitioner / fifth accused cancelled the sale agreement to escape from the clutches of law. Though the petitioner cancelled the sale agreement the criminality would not end. The pendency of the civil suit has no bearing over the criminal proceedings.

8.As such this Court finds no merits in this quash petition and it is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Considering the C.C of the year is 2013, the trial Court namely the Judicial Magistrate No.I, Poonamallee is directed to complete the trial within a period of three months from the date of receipt of a copy of this order in C.C.No.230 of 2013.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna

To

1.The Judicial Magistrate No.I,
Poonamallee.

2.The Inspector of Police,
Central Crime Branch,
Chennai Suburban Police,
St. Thomas Mount.

3.The Public Prosecutor,
High Court, Madras.

+2cc to M/S.Ramalingam & Associates, Advocate Sr.31438
+1cc to Mr.V.Ayyadurai, Advocate Sr.30958
+1cc to Mr.V.Ayyadurai, Advocate Sr.31425

Cr1.O.P.No.5758 of 2014

pm[co]
srg 10/5/2019