

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2018

Delivered on: 07.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.21399 of 2014
and
M.P.No.1 of 2014

A.Palanisamy ... Petitioner/Accused

/Vs/

1.The State,
Rep by The Sub Inspector of Police
Anti Land Grabbing Special Cell
City Crime Branch, Coimbatore.

2.P.Prabakaran Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records and quash the First Information Report in Crime No.28/2014 dated 24.04.2014 pending on the file of the first respondent.

For Petitioners : Mr.A.Kalaiivanan

For Respondents : Mr.T.Shanmugarajeswaran,
Government Advocate (Crl.Side)
For R1

: Mr.S.Vinoth Kumar for R2

ORDER

This petition has been filed by the accused to quash the First Information Report in Cr.No.28 of 2014 on the file of the first respondent.

2. The second respondent herein has lodged a complaint before the first respondent stating that he had purchased the property ad-measuring 54 cents in S.No.83 of Ganapathi Village, Coimbatore, under three registered sale deeds dated 12.01.2012, 21.02.2012 and 24.02.2012 from one K.R.Jeganathan, P.G.Venkatesan and their legal heirs. He further stated that he

is running a factory in the said property under the name and style of M/s.Chakravarthy Technologies Ltd. He further stated that one Balakrishnan claimed that he purchased 2.23 acres of land in S.No.83 of Ganapathi Village, Coimbatore, under a registered document No.2515/2006 including the property which was purchased by the second respondent. He further stated that one Ramasamy Gounder had purchased 2.23 acres in S.No.83 from one Karuppa Gounder in the year 1927 and subsequently, as per the partition deed of the year 1936, the said 2.23 acres were allotted to the share of one Krishnasamy Gounder son of Ramasamy Gounder and in the year 1938, the said Krishnasamy Gounder had sold the said 2.23 acres of land on the southern side to one Muthusamy Gounder and subsequently, the said Muthusamy Gounder had sold the said 2.23 acres to one Venkatasamy Naidu in the year 1948. He further stated that in the year 1961, the said Venkatasamy Naidu had sold the said 2.23 acres to one Savithiri and the said Savithiri had mortgaged the said property in favour of Subramaniam & Co Finance and the said Finance filed the suit in O.S.No.3 of 1968 and brought the said properties for auction. He further stated that in the said Court auction, M/s.Sujani Textiles Private Limited purchased the property and from the said M/s.Sujani Textiles Private Limited, the petitioner herein had purchased the said property in the year 1981. He further stated that after purchasing the same, he sold it to one Balakrishnan in the year 2006 and the said Balakrishnan had sold the said properties to various persons.

3. He further stated that the said Krishnasamy Gounder suppressing the fact that he had already sold 2.23 acres to one Muthusamy Gounder in the year 1938 itself, subsequently sold 65 cents to one Chan Begum, 40 cents to one Lakshmi, 50 cents to one Ramasamy Naidu and 54 cents to owner of M/s.Sri Sai Lakshmi Textiles namely, K.R.Jeganathan and P.G.Venkatesan. He further stated that after knowing the aforesaid facts, the petitioner herein had executed the release deed in favour of the owners of M/s.Sri Sai Lakshmi Textiles in the year 1980, in favour of Lakshmi and Ramasamy Naidu in the year 1981 and in favour of Chan Begum in the year 1987. He further stated that he had purchased the property from the owners of the said M/s.Sri Sai Lakshmi Textiles. He further stated that after executing the said release deeds, the petitioner herein had no right to sell the aforesaid property in favour of Balakrishnan. He further stated that in the suit in O.S.No.631 of 2008 also it has been held that the petitioner herein had no right to deal with the aforesaid properties after executing the aforesaid release deeds.

4. Based on the aforesaid complaint, the first respondent had registered a case in Cr.No.28 of 2014 under Sections 468, 471 and 420 IPC. The petitioner has filed the present petition to quash the said First Information Report. The first respondent has filed a counter opposing the present petition.

5. Heard Mr.A.Kalaivanan, the learned counsel for the petitioner and Mr.J.Shanmugarajeswaran, the learned Government Advocate (Criminal Side) and Mr.S.Vinoth Kumar, the learned counsel for the second respondent.

6. The learned counsel for the petitioner has submitted that the petitioner had purchased the property measuring 2.23 acres comprised in S.No.83 of Ganapathi Village, Coimbatore, under a registered sale deed dated 29.04.1981 from one M/s.Sujani Textiles Private Limited, Coimbatore. He further submitted that the said M/s.Sujani Textiles Private Limited, Coimbatore in turn had purchased the said property on 16.12.1970 by way of Court auction sale conducted in E.P.No.113 of 1969 in pursuant to the decree passed in O.S.No.3 of 1968 on the file of the Subordinate Judge, Coimbatore. He further submitted that subsequently, on 07.02.2006 the petitioner had sold the aforesaid property to one Balakrishnan under a registered sale deed. He further submitted that in the meanwhile, the second respondent, who is in no way connected with the aforesaid property is claiming to be the owner of the property situated at S.No.83, measuring 54 cents and attempting to interfere with the possession of the said Balakrishnan and also filed a suit in O.S.No.2883 of 2013 on the file of the Principal District Munsif, Coimbatore and the same is still pending.

7. He further submitted that in the said suit, the second respondent had filed an Interlocutory Application seeking interim injunction and the same was dismissed on 20.12.2013. He further submitted that one Mahalakshmi wife of Balakrishnan had lodged a complaint against the second respondent and as per the direction of this Court in CrI.O.P.No.3821 of 2014, the Inspector of Police, Saravanampatti Police Station had registered a case against the second respondent and the same is still pending. He further submitted that as a counter blast, after dismissal of the interim injunction application, the second respondent had lodged a false complaint before the first respondent and the first respondent without conducting any enquiry had registered a case in Cr.No.28 of 2014 against the petitioner herein under Sections 468, 471 and 420 IPC. He further submitted that already one M.Robert and R.Arokkia Marian Dines had filed a suit against the purchaser of the property from the petitioner herein namely, V.Balakrishnan in O.S.No.631 of 2008 on the file of the III Additional Subordinate Judge, Coimbatore, for delivery of possession. Though the said suit was decreed by the trial Court, on Appeal, the first Appellate Court has reversed the judgment and decree of the trial Court and dismissed the suit and as against the same, a Second Appeal was filed in S.A.No.1025 of 2015 before this Court and the same was also dismissed on 28.04.2018. He further submitted that in the

said second appeal, this Court has held that the said Balakrishnan has proved that he has purchased the properties from the petitioner and therefore, he prayed to quash the First Information Report against the petitioner herein.

8. Per contra, the learned Government Advocate (Criminal Side), who is appearing for the first respondent, has submitted that the petitioner had executed release deeds between the year 1981 and 1987 in favour of K.R.Jeganathan and P.G.Venkatesan, Lakshmi, Ramasamy Naidu and Chan Begum and after executing the said release deeds, in the year 2006, the petitioner had sold 2.23 acres in favour of one Balakrishnan. He further submitted that the investigation so far conducted reveals that the aforesaid release deeds were executed by the petitioner herein and therefore, he prayed to dismiss the petition. He further submitted that the finger print experts opinion shows that the left thumb impressions found in the aforesaid release deeds tallied with the admitted left thumb impression of the petitioner and therefore, he prayed to dismiss the petition.

9. The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Criminal Side). He further submitted that this Court while examining the legality of any First Information Report complaining commission of cognizable offence by the accused, it cannot appreciate the evidence nor could draw its own inferences from the contents of the First Information Report. Therefore, he prayed to dismiss the petition and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

10. The learned counsel for the second respondent, in support of the aforesaid contentions, relied upon the following decisions:-

- 1) Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others (2018) 3 SCC 104.
- 2) Vijayananda Kumar and Others Vs. State of Rajasthan and Another 2014 (1) MWN (Cr) (SC) 259

11. According to the petitioner, he had purchased 2.23 acres of land in S.No.83 of Ganapathi Village Coimbatore, under a registered sale deed dated 29.04.1981 from one M/s.Sujani Textiles Private Limited. In the said sale deed it is stated that the said M/s.Sujani Textiles Private Limited had purchased the said property in the Court auction sale on 16.12.1970 in E.P.No.113 of 1969 in O.S.No.3 of 1968 on the file of the Subordinate Judge, Coimbatore. In the said sale deed it is further stated that in S.No.83, out of total extent of 4.47 acres, the property situated on the south of Krishnasamy Gounder's land measuring 2.23 acres alone sold to the petitioner

herein. The second respondent also admitted the aforesaid facts in his complaint. However, he has stated that the said Krishnasamy Gounder, suppressing the fact that he had already sold 2.23 acres in the southern portion of S.No.83 to one Muthusamy Gounder in the year 1938 itself vide document No.3883/1938 subsequently, he had sold 65 cents to one Chan Begum vide document No.3031/1979; 40 cents to one Lakshmi vide document No.1412/1980; 50 cents to one Ramasamy Naidu vide Document No.1413/1980 and 54 cents to one M/s.Sri Sai Lakshmi Textiles namely, K.R.Jeganathan and P.G.Venkatesh vide Document No.1414/1980. Admittedly, the second respondent had purchased 54 cents from the owners of M/s.Sri Sai Lakshmi Textiles namely, K.R.Jeganathan and P.G.Venkatesh and their legal heirs under three sale deeds dated 12.01.2012, 21.02.2012 and 24.02.2012.

12. As already pointed out that even in the complaint itself the second respondent has categorically stated that after executing the sale deed vide Document No.3883/1938 in favour of one Muthusamy Gounder, in respect of 2.23 acres, the said Krishnasamy Gounder suppressing the aforesaid facts had sold 54 cents vide Document No.1414/1980 in favour of the owners of Sri Sai Lakshmi Textiles namely, K.R.Jeganathan, P.G.Venkatesh and only from the said K.R.Jeganathan, P.G.Venkatesh and their legal heirs, the second respondent had purchased the property of 24 cents. So, according to the second respondent, the said Krishnasamy Gounder had cheated the vendors of the second respondent namely, K.R.Jeganathan and P.G.Venkatesh and in such a case the said K.R.Jeganathan and P.G.Venkatesh should have taken action against the said Krishnasamy Gounder. But, they have not taken any action against the said Krishnasamy.

13. Further, even as per the complaint filed by the second respondent, the petitioner herein had purchased the property from the lawful owner. His only grievance is that the petitioner herein had executed the release deeds in favour of M/s.Sri Sai Lakshmi Textiles, Chan Begum, Lakshmi and Ramasamy Naidu and after executing the said release deeds he could not have any property to execute a sale deed in favour of one Balakrishnan vide document No.2515/2006 dated 25.06.2016.

14. As already pointed out that even as per the complaint, the vendors of the second respondent were cheated by the said Krishnasamy Gounder, but aforesaid persons have not taken any action against the said Krishnasamy Gounder. In the sale deeds of the second respondent, his vendors have mentioned that they acquired the said property only under a sale deed vide Document No.1414/1980 and there is no reference as to the release deed said to have been executed by the petitioner herein in favour of the vendors of the second respondent.

15. The petitioner has produced xerox copies of the release deeds said to have been executed by him in favour of the said K.R.Jeganathan and P.G.Venkatesh, Ramasamy Naidu, Lakshmi and Krishnasamy Naidu. In the said release deeds it is stated that the petitioner had released his right in favour of those persons in respect of the properties which were purchased by them from the said Krishnasamy Gounder. If any right got by the petitioner in the properties which were purchased by the aforesaid persons from the said Krishnasamy Gounder, the said right alone would get released through the aforesaid release deeds. In the sale deed executed by the said Krishnasamy Gounder in favour of the aforesaid vendors of the second respondent dated 11.04.1980, it is stated that out of total extent of 4.47 acres in S.No.83 in the eastern half measuring 2.23½ acres 54 cents with specific boundaries sold. The same description given in the release deed dated 06.06.1981 also. Whereas in the petitioner's sale deed dated 29.04.1981, it is stated that he purchased 2½ acres in S.No.83 on the south of Krishnasamy Gounder and others' land. The description of the property mentioned in the petitioner's sale deed dated 29.04.1981 would show that the said Krishnasamy had property in the same Survey number i.e., on the northern side. Under the said circumstances, this court is of the view that only the civil court can decide the questions as to whether the said Krishnasamy got any property in Survey No.83 even after execution of sale deed in favour of Muthusamy gounder under Document No.3883/1938 and whether the petitioner got any right to execute the said release deeds in respect of the properties comprised in S.No.83 on the eastern half of 2½ acres when he purchased southern half. Further, as already pointed out that the petitioner herein had not cheated the second respondent herein.

16. It is also to be pointed out that the second respondent herein had already filed a suit in O.S.No.2883 of 2013 on the file of the Principal District Munsif, Coimbatore, against the petitioner herein and his purchaser namely, V.Balakrishnan for the relief of permanent injunction and also filed an application in I.A.No.2680 of 2013 seeking interim injunction. However, the said I.A.No.2680 of 2013 was dismissed by the learned Principal District Munsif, Coimbatore by the order dated 20.12.2013 and only, thereafter, the second respondent had lodged a complaint on 24.04.2014.

17. In Dineshabhai Chandubhai Patel Vs. State of Gujarat and others (2018) 3 SCC 104, the Hon'ble Supreme Court in para Nos.29 to 31 has observed as follows:-

"29*. The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30*. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code."

18. In Vijayander Kumar & Others Vs. State of Rajasthan & another, 2014 (1) MWN (Cr.) 259 (SC), the Hon'ble Supreme Court has observed in para No.11 as follows:-

"11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this court to evaluate the merit of the allegations on the basis of documents annexed with

the Memo of Appeal. Such materials can be produced by the Appellant in their defence in accordance with law for due consideration at appropriate stage."

19. In this case, as already pointed out that as per the complaint, after executing the sale deed vide document No.3883/1938 in favour of one Muthusamy Gounder in respect of 2½ acres, the said Krishnasamy Gounder, suppressing the aforesaid facts, had executed the sale deeds in favour of several persons including the vendors of the petitioner herein. So, the petitioner himself admitted that the said Krishnasamy Gounder had no right to execute the sale deed in respect of 54 cents in favour of the owner's of M/s.Sri Sai Lakshmi Textiles, who are the vendors of the second respondent. Further, as already pointed out that the questions as to whether the said Krishnasamy got any property in S.No.83 even after executing the sale deed in favour of Muthusamy Gounder vide document No.3883/1938 and whether the petitioner got any right to execute the release deeds in respect of the properties situated on the eastern half of 2½ acres in S.No.83 when he purchased southern half have to be decided by the civil court. Therefore, the aforesaid decisions will not help the second respondent.

20. In the above circumstances, this Court is of the view that even the allegations made in the FIR are taken as true at the face value, the offences mentioned in the FIR would not attract. The dispute is purely civil in nature. Already the second respondent approached the civil court and he can work out his remedy in the suit filed by him. Hence, the said FIR has to be quashed.

21. In the result, this petition is allowed. No costs. The First Information Report in Cr.No.28 of 2014 on the file of the first respondent is quashed in so far as the petitioner herein is concerned. Consequently, connected Miscellaneous Petition is also closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

dna

To

1.The Sub Inspector of Police
Anti Land Grabbing Special Cell
City Crime Branch, Coimbatore.

2. The Public Prosecutor
High Court, Madras 104.

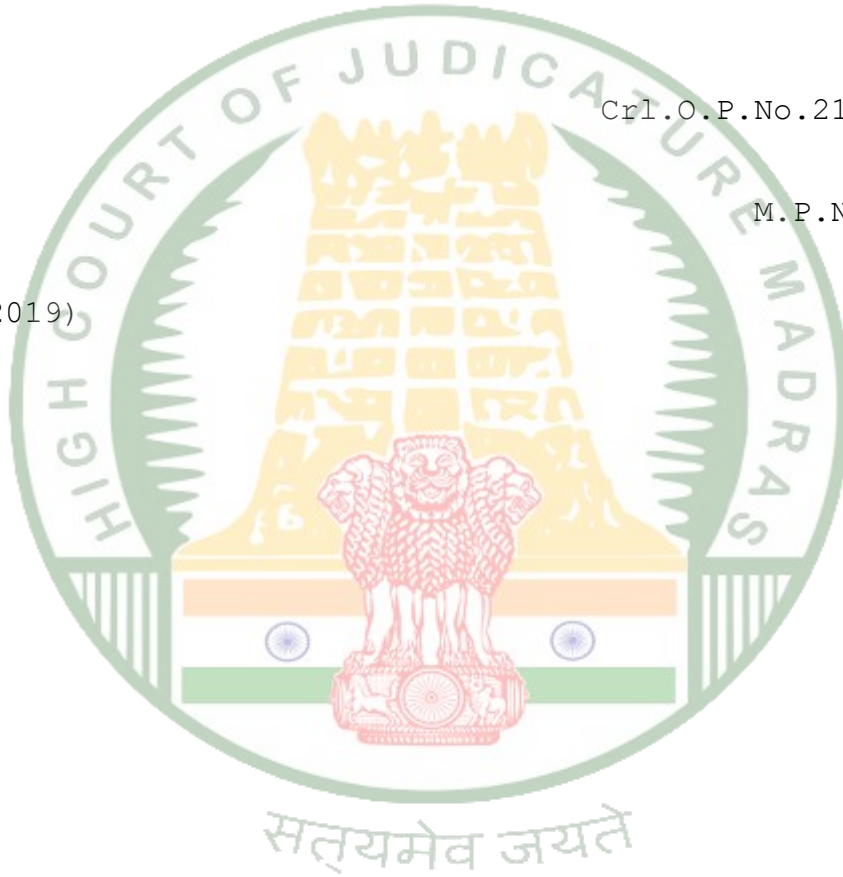
+1 CC to Mr.S.Vinoth Kumar, advocate sr 22984.

+1 CC to Mr.A.Kalaivanan, Advocate sr 21545.

Crl.O.P.No.21399 of 2014
and

M.P.No.1 of 2014

SJ(CO)
SP(30/04/2019)



WEB COPY