

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.26319 of 2014

S.Alamelu

... Petitioner

Vs.

1.State by: Rep By,
The Inspector of Police,
District Crime Branch, Tiruppur,
Tiruppur District.
(Crime No.51 of 2014)

2.N.Kumarasamy ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.51 of 2014 on the file of the Inspector, District Crime Branch, Tiruppur, Tiruppur District filed by the 1st respondent and quash the same.

For Petitioner : M/s.M.Easan

For R1 : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash F.I.R in Crime No.51 of 2014 pending on the file of the respondent Police.

2.According to the prosecution there are totally 18 accused in this case, in which the petitioner is arrayed as 3rd accused. The case of the prosecution is that the 2nd respondent executed a power of attorney in favour of the 1st accused on 03.05.1991, vide document No.81/91 to deal with his property in Survey No.634/3 to an extent of 2.90 acres and whenever the plots were sold, the 1st accused regularly paid proper consideration to the 2nd respondent. Thereafter, the 2nd respondent found that the petitioner along with other accused without paying proper consideration, were measuring the property, with the power of attorney by affixing his

signature. Thereby, the 2nd respondent requested the 1st accused not to deal with the property. Even by forging the signature of the 2nd respondent and his mother, the 1st and 2nd accused alienated the property in favour of 4th and 5th accused. Though initially the 2nd respondent filed a complaint before the 1st respondent/Law Enforcing Agency, thereafter, he lodged the complaint before the learned Judicial Magistrate cum Special Court for Land Grabbing Cases, Tirupur. After registration of the complaint, the learned Judicial Magistrate cum Special Court for Land Grabbing Cases, Tirupur, issued a direction under Section 156(3) of Cr.P.C to the Law Enforcing Agency for further investigation. Thereafter based on the order received from the learned Magistrate, the Law Enforcing Agency registered an F.I.R in Crime No.51 of 2014, against which the present petition has been filed.

3.The learned counsel appearing for the petitioner would submit that a civil transaction has entered into between the 2nd respondent and the accused, vide registered document No.81/91 dated 03.05.1991. As per the Power of Attorney executed by the 2nd respondent, the petitioner is entitled to deal with the property and no subsistence. Hence, the petitioner did not commit any cheating or conspiracy and further there is no material available on record to proceed against the petitioner. In the absence of the same, the investigation against the petitioner is illegal and the same is liable to be quashed.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that initially the Law Enforcing Agency refused to register the complaint, however the learned Judicial Magistrate cum Special Court for Land Grabbing Cases, Tirupur, issued a direction under Section 156(3) of Cr.P.C to register the complaint and investigated the case and thereby, the Law Enforcing Agency, registered an FIR and investigating the allegations and in the course of investigated he has to take into consideration of the relevant material against the accused persons.

5.On considering the facts and circumstances of the case, this Court finds that though it is a civil dispute between the 2nd respondent and the accused, the 1st and 2nd accused alienated the property in favour of 4th and 5th accused by forging the signatures of the 2nd respondent and his mother. In such circumstances, this Court cannot be gone into the investigation at this stage. All these materials will have to be taken into account only by the 1st respondent in the course of investigation. The very same issues have been held in the case of "State of Haryana and others Versus V.Bajan Lal and others reported in MANU/SC/0115/1992".

6.This Court relied upon the decision of the Hon'ble Supreme Court in the case of "Alpic Finance Limited Versus P.Sadasaivan and another reported in (2001) 3 Supreme Court Cases 513" and the relevant paragraphs are extracted here under:-

7.In a few cases, the question arose whether a criminal prosecution could be permitted when the dispute between the parties is of predominantly civil nature and the appropriate remedy would be civil suit. In one case reported in Madhavrao Jiwajirao Scindia and Others vs. Sambhajirao Chandrojirao Angre, this Court held that if the allegations in the complaint are both of a civil wrong and a criminal offence, there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. That was a case relating to a trust. There were three trustees including the settlor. A large house constituted part of the trust property. The respondent and the complainant were acting as Secretary and Manager of the Trust and the house owned by the trust was in the possession of a tenant. The tenant vacated the building and the allegation in the complaint was that two officers of the trust, in conspiracy with one of the trustees and his wife, created documents showing tenancy in respect of that house in favour of the wife of the trustee. Another trustee filed a criminal complaint alleging that there was commission of the offence under Section 406 read with Sections 34 and 120B of the Indian Penal Code. The accused persons challenged the proceedings before the High Court under Section 482 of the Code of Criminal Procedure and the High Court quashed the proceedings in respect of two of the accused persons. It was under those circumstances that this court observed:- (SCC Headnote)

"Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents, including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural

relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued."

8. In another case recently decided by this Court in Trisuns Chemical Industry vs. Rajesh Agarwal, the complainant company had alleged that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The Complainant Company had to pay the price in advance as demanded by the accused company. Complainant paid the amount through cheques. However, the accused supplied the commodity, which was of most inferior and sub-standard quality and the complainant suffered a loss of Rs. 17 lakhs. The Complainant alleged that he was induced to pay the price on the representation that the best quality commodity would be supplied. A criminal complaint was filed alleging commission of the offence punishable under Section 420A. The Magistrate forwarded the complaint for investigation under Section 156(3) Cr.PC. The accused directors moved the High Court for quashing the complaint alleging that the dispute was purely of a civil nature and hence no prosecution should have been permitted. The High Court accepted this plea and the complaint was quashed. But this court held in para 8 and 9 of the judgment as follows: (SCC p. 690)

"[M]erely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and

to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases....."

7.In view of the above decisions and discussions, quashing the FIR at the initial stage is not permissible. Further, the investigating agency has to investigate all the allegations raised in the complaint in which this Court cannot interfere.

8.Hence, this Court is not inclined to quash the investigation in Crime No.51 of 2014 on the file of the 1st respondent at this stage. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

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

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.K.Myilsamy, Advocate SR.101100

+1cc to Mr.Easan, Advocate SR.101263

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CRL.O.P.No.26319 of 2014

SSI (CO)
CB(10/02/2020)

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