

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the First day of October Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL ORIGINAL PETITION No.24395 of 2019

AND CRL.MP.NO.13961 OF 2019

RAJENDRAN

[PETITIONER / ACCUSED]

Vs

1 STATE REP BY
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DHARMAPURI,
DHARMAPURI DISTRICT.
CR.NO.1/2018.

[RESPONDENT]

2 K.S.JAGANNATHAN [RESPONDENT / DEFACTO-COMPLAINANT]
[**]R2 permitted to intervene as per the orders of this Court made in
Crl.MP.No.13961/2019 dated 27.09.2019.

[Ordered as per order of this Court dated 01.10.2019 in
Crl.MP.No.13961/2019 in Crl.OP.No.24395/2019]

For Petitioner : M/S.S.P.MEENAKSHI SUNDHARAM Advocate

For Respondent : MR. R.PRATHAP KUMAR, ADDITIONAL PUBLIC PROSECUTOR

For Intervener : MR. A.ILAYA PERUMAL, Advocate

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

M.SATHYANARAYANAN, J.,

(1)The petitioner in the present Criminal Original Petition, is arrayed as the second accused in Crime No.1 of 2018 registered by the respondent police for the alleged commission of the offences under Section 120[B], 465, 468, 471 and 420 of IPC. He was arrested and remanded to judicial custody on 06.08.2019. He has come forward with the present petition seeking bail.

(2)The petitioner in Crl.MP.No.13961 of 2019 is the defacto complainant and on the basis of his complaint only, a case in Crime No.1 of 2018 was registered by the respondent police.

(3) It is the case of the defacto complainant that the land admeasuring to an extent of 25 Acres in Survey No.867/2 at Adhiyamankottai Village, Dharmapuri Taluk and District, originally belonged to his father-in-law and his two brothers and in the year 1999, the father-in-law of the defacto complainant became the true owner of the said properties and after his demise, the mother-in-law of the defacto complainant has succeeded to the said estate and she in turn, sold the property in favour of the defacto complainant through a registered Sale Deed dated 08.07.2009 and the defacto complainant claims to be in possession right from the date of purchase. It is further stated by the defacto complainant that one Nagaraj [A-1] has hatched a conspiracy to usurp the property of the defacto complainant and accordingly, he created a forged patta bearing Patta No.2362 in respect of 8 Acre and 16 Cents, in connivance with some of the Revenue Officials and started claiming ownership. The defacto complainant, on becoming aware of the same, took steps to cancel the said patta and it was also cancelled by the competent Revenue Authority. The defacto complainant, in order to substantiate his rights, has also filed OS.No.71 of 2010, on the file of the learned Additional District Judge, Dharmapuri against Nagaraj and others and the said suit was also decreed in his favour, after contest.

(4) It is further averred by the defacto complainant that the said Nagaraj [A-1], in collusion and with the help of one Mr.P.V.Ravi, Advocate, Dharmapuri, created some documents along with the petitioner/A-2 [Rajendran] and created loan documents as if Nagaraj [A-1] has borrowed money from the petitioner/A-2 [Rajendran] and created documents which is said to have contained an Arbitration Clause. The said Nagaraj [A-1] ; P.V.Ravi [A--], Advocate, Dharmapuri and the petitioner/A-2 [Rajendran] colluded together and had initiated the so-called Arbitral Proceedings wherein, Mr.K.Rajaram, Advocate, Coimbatore, has presided the Arbitral Proceedings which is said to have taken place in a Hotel at No.3, Kenneth Lane, Egmore, Chennai-8 and pendency of the Arbitral Proceedings, an interim order was passed on 09.08.2014 and a challenge was made by filing OP.No.688 of 2014 before this Court by engaging the services of one Mr.T.Arul, Advocate.

(5) The defacto complainant would further aver that the respondent in the Arbitral Proceedings, viz., Nagaraj [A-1] is said to have remained exparte and an Exparte Final Award was passed on 31.10.2014 in respect of the above said property, despite the fact that Nagaraj, the petitioner herein / A-2 as well as P.V.Ravi, Advocate, were very well aware of the fact that Nagaraj was not at all the owner of the said property.

(6) The above said persons, by adopting one more ingenious process, engaged the services of one Mr.P.K.Muthusamy, Advocate and the petitioner/A-2 [Rajendran] who is said to have obtained the Arbitral Award in his favour, had filed an Execution Petition in EP.No.36 of 2016 on the file of the Court of the Principal District and Sessions Judge, Dharmapuri and once again, obtained an Exparte Order and managed to get the Sale Deed executed in his favour through the process of Court.

(7)The defacto complainant would further aver that his earlier attempts to get the case registered on the basis of the said allegation, proved futile and thereafter, the filed Crl.OP.No.7724 of 2018 on the file of this Court praying for appropriate direction to register the case and in pursuant to the orders passed by this Court only, the case in Crime No.1 of 2018 was registered by the respondent police. Nagaraj [A-1] was initially arrested and later on, was enlarged on statutory bail.

(8)In sum and substance, it is the case of the defacto complainant that Nagaraj [A-1], the petitioner herein/A-2 [Rajendran] and P.V.Ravi, Advocate, P.K.Muthusamy, Advocate, Coimbatore, who have also involved in the earlier fake Arbitral Award, which also led to his suspension by the Bar Council of Tamil Nadu and Puducherry, had created a fake Award and by abusing the legal process, managed to get the Sale Deed executed in favour of the petitioner herein/A-2 and the acts of above said persons, especially, the Advocates, by adopting illegal and dubious method, is per se amounts to unethical practice, with a deliberate intend, seek to deprive the defacto complainant of his lawful entitlement to the said property.

(9)Mr.S.P.Meenakshi Sundaram, learned counsel appearing for the petitioner/A-2 [Rajendran] would submit that the petitioner/A-2 is nothing to do with the allegations levelled by the defacto complainant and would further add that through legal process only, he got the Arbitral Award and got it executed through the process of the Court and as on date, the registered Sale Deed stand in his favour. It is further pointed out by the learned counsel for the petitioner/A-2 that the petitioner/A-2 was arrested on 06.08.2019 and he is under incarceration for 53 days and since the material part of the investigation is over, he prays for enlargement of the petitioner/A-2 and also undertakes that in the event of his enlargement on bail, the petitioner/A-2 will not misuse the liberty and will fully cooperate with the Investigating Agency.

(10) Per contra, Mr.A.Ilaya Perumal, learned counsel appearing for the intervenor / defacto complainant has invited the attention of this Court to the contents of the petition for intervening as well as to the voluminous typed set of documents and would submit that all the above cited persons, with connivance of each other and also in pursuant to the conspiracy, managed to get a fake Arbitral Award by utilising the services of the so-called Arbitrator, viz., Mr.K.Rajaram, Advocate and managed to execute the Arbitral Award by abusing the process of this Court in the form of the Sale Deed in favour of the petitioner herein/A-2 and therefore, the defacto complainant is forced to involve in unnecessary litigation for nearly 14 years and odd and further pointed out that, one of the prime accused, viz., Nagaraj [A-1] who was enlarged on default bail, is adopting the process of tampering the witnesses and hampering the investigation and if the present petitioner/A-2 is enalrged on bail, he would definitely aid, assist and abate Nagraj [A-1] and prays for dismissal of this petition.

(11) The learned counsel for the intervenor/defacto complainant also pointed out that on an earlier occasion, the petitioner/A-2 had filed a petition in CrI.OP.No.12859 of 2018 seeking for anticipatory bail suppressing the dismissal of his earlier petition filed for the same relief in CrI.OP.No.13901 of 2018 and taking note of the same only, this Court has dismissed the latter petition and in the light of the said conduct also, the petitioner is not entitled to get any indulgence from this Court.

(12) Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondent / State would submit that the investigation is proceeding in the right line and one of the prime accused, viz., Mr.A.R.Chandran, who is running Arbitration Centres all over Tamil Nadu and Karnataka, also played his key role and he is yet to be secured. He would further point out that the petitioner/A-2 knowing pretty well that the said Nagaraj [A-1] is not at all the owner of the said property in question, said to have created the so-called Agreement dated 03.12.2010 with Arbitration Clause by abusing the process of the Court, managed to get a fake Arbitration Award and also executed and got a registered Sale Deed in favour of the petitioner herein/A-2 in respect of the said property which belongs to the defacto complainant and though it is open to the petitioner/A-2 to cancel the said Sale Deed, he has not taken any steps to do so. It is further urged by the learned Additional Public Prosecutor that if the petitioner herein/A-2 is enlarged on bail, he would definitely alter the course of investigation and that since very many Advocates are involved, there was a toddy progress in the investigation and only after this Court seized up the matter and started monitoring the investigation by directing the Additional Director General of Police, Law and Order to file periodical Status Reports, something is moving forward and prays for dismissal of this Criminal Original Petition.

(13) This Court has carefully considered the arguments advanced by the learned counsel for the petitioner/A-2 ; learned counsel for the intervenor/defacto complainant as well as the learned Additional Public Prosecutor and also perused the materials placed before it.

(14) A perusal of the Arbitral Final Award dated 29.03.2016 would disclose that the Presiding Arbitrator was one Mr.K.Rajaram, Advocate, Coimbatore, and the Final Award refers to the document / Agreement dated 03.12.2010.

(15) The petitioner herein/A-2 [Rajendran] did not file the copy of the said document/Agreement and during his custody, the respondent police has got the original registered Sale Deed executed by the Court of the Principal District Judge, Dharmapuri, in his favour, pursuant to the admissible portion of the confession statement. The respondent police is yet to seize the other documents in connection with the said Arbitral Award.

(16)The Arbitrator, viz., Mr.K.Rajaram, Advocate, Coimbatore, was also arrested on 10.08.2019 and he is under incarceration and on an earlier occasion, he was also involved in one more fake Arbitral Award, which also led to his suspension of practice by the Bar Council of Tamil Nadu and Puducherry. The party to the so-called Arbitral Award, viz., Nagaraj [A-1], was enlarged on default bail in this crime number and with regard to his acts in connivance with the Revenue Officials as to the creation of forged patta, he was prosecuted and convicted and on appeal, he was acquitted of some of the charges and got convicted in respect of the offences for which, he preferred a Criminal Revision Case before this Court and the defacto complainant also filed an Appeal against acquittal. The learned Single Judge of this Court, had dismissed the Revision Case filed by Nagaraj and allowed the appeal filed by the complainant against the acquittal of Nagaraj [A-1] and restored his conviction and sentence awarded by the Trial Court and in the light of the same, Nagaraj is yet to be arrested.

(17)It is further brought to the knowledge of this Court that pending disposal of the Criminal Revision Case, Nagaraj [A-1] had obtained an order of suspension of his substantive sentences of imprisonment with a condition that he should report before the Trial Court on the first working day of every English Calendar Month, until further orders and he also failed to comply with the said condition.

(18)As rightly pointed out by the learned Additional Public Prosecutor as well as the learned counsel for the intervenor/defacto complainant, in the event of the petitioner/A-2 enlarged on bail, there is every possibility that he may collude with Nagaraj [A-1] and tamper the witnesses and hamper the progress of the investigation.

(19)The materials placed before this Court by the defacto complainant / intervenor in the form of the typed set of documents, would also disclose that in his counter affidavit filed in WP.No.27120 of 2017, filed by the defacto complainant, he took a stand that he is still the owner of the property and the said Nagaraj is in physical possession of the property in question and further, according to him, one K.Kandasamy, made an arrangement to meet the Advocate, viz., K.Rajaram, who acted as the Arbitratory. According to the learned Additional Public Prosecutor, one Chandran has also played a key role in running very many Arbitration Centres across the State and he is yet to be nabbed. It prima facie appears that the said K.Kandasamy who facilitated engagement of K.Rajaram, Advocate, as the Arbitrator as well as the Arbitration Centre in which K.Rajaram, Advocate, is also a part, are yet to be apprehended.

(20)The materials placed before this Court would also prima facie point out that the legal process is sought to be abused in a clever way and in the event of the petitioner herein/A-2 on bail, the investigation is likely to be hampered and the witnesses may also be tampered.

(21) In the considered opinion of the Court, it is not a fit case for granting bail to the petitioner herein /A-2.

(22) In the result, the Criminal Original Petition stands dismissed.

-sd/-
01/10/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DHARMAPURI,
DHARMAPURI DISTRICT.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

+1 CC to M/S.S.P.MEENAKSHI SUNDHARAM Advocate on payment of necessary charges SR.No.20442

+1 CC to M/S.A.ILAYA PERUMAL Advocate on payment of necessary charges SR.No.20481

WEB COPY

CRL OP.24395/2019
& CRL.MP.13961/2019

Date :01/10/2019

cs 11/10/2019