

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.17371 of 2017
and
Crl.M.P.No.10627 of 2017

1.Dr.T.N.Gajendran

2.T.N.Manoharan

... Petitioners

Vs.

1.The State rep. by
The Inspector of Police,
District Crime Branch,
Vellore District

2.Nithiyanandam

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in Crime No.22/2016 on the file of the Inspector of Police, District Crime Branch, Vellore and quash the same so far as the petitioners are concerned.

For Petitioners : Mr.R.Shanmugasundaram,
Senior Counsel
for Mr.S.Manuraj

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for R1
: Mr.R.C.Paul Kanagaraj,
for Mr.H.Sureshbabu for R2

ORDER

This petition has been filed to quash the F.I.R. in Crime No.22 of 2016 registered by the first respondent police for offences under Sections 120(b), 420, 468, 294(b) and 506(i) of IPC, as against the petitioners.

2. The learned Senior Counsel appearing for the petitioners submitted that there are totally nine accused in this case in which the petitioners are arrayed as A5 and A7. They are brothers and the fourth accused is their father and the fifth accused is also one of their brothers. The fourth accused died after registering the FIR. The land measuring 19.93 acres situated at Vaniyampettai Village, Thanigai Polur, Arakonam belongs to mother in law of the fourth accused Smt.Thayar Ammal. She executed Will on 07.03.1974 in favour of the accused 5 to 7 and the same was registered as document No.22 of 1974 at the office of the Sub Registrar, Arakonam on 20.03.1974. Thereafter, it was cancelled and power of attorney was executed in favour of A4 by the said Thayar Ammal and registered as document No.27 of 1984 at the Office of the Sub Registrar, Arakonam for sale of the said property. Since the sale was not taken place, again the said Thayar Ammal executed another Will on 21.07.1986 in favour of the fourth accused and registered the same as document No.51 of 1986 at the Office of the Sub Registrar, Arakonam.

2.1. In the month of March 1991, the said Thayar Ammal passed away and there was a family arrangement between A4 to A7 in respect of entire land. Accordingly, the petitioners A5 and A7 had share in Survey No.384/1 to the extent of 2.50 acres, in S.No.384/3 to the extent of 0.46 acres, in S.No.384/5 to the extent of 0.86 acres, and in S.No.384/6 to the extent of 2.64 acres, in total, 6.64 acres. In respect of the second petitioner / seventh accused concerned, the property comprised in S.No.380/5 to the extent of 1.18 acres and in S.No.363/1 to the extent of 2.17 acres was allotted. Insofar as the sixth accused is concerned, the land in S.No.380/1 measuring 6.68 acres was allotted by their family arrangement cum partition deed dated 30.04.1993. On the strength of family arrangement cum partition deed, the A5 to A7 namely all the three brothers executed power of attorney in favour their father namely A4 herein on 16.06.1994 and registered as document No.73 of 1994. On the strength of the power of attorney after laying out the entire property, plot No.199 comprised in S.No.380/1 was sold out in favour of A2, namely Arumugam on 01.06.2006. In turn, the said Arumugam / A2 sold out the said house plot to the wife of the second respondent / defacto complainant and registered as document No.9480 of 2009. Thereafter the father of the petitioners namely the fourth accused died on 02.11.2012.

2.2. He further submitted that after purchase of the said house plot, the second respondent obtained planning permission to construct a house and also availed loan for putting up construction. Accordingly, he completed the construction and his house was also assessed to house tax and his name has been mutated in all the revenue records. In the year 2016, when he

approached the Panchayat President to lay road, he came to understand that the land which was gifted to municipality and allocated for park purpose and other common usage was plotted out and sold out to the second respondent.

2.3.He further submitted that the second respondent admittedly purchased the house plot in the year 2009 and thereafter he obtained loan and constructed a house. After a period of seven years the present complaint has been lodged as if his house plot is situated in a place allocated for park and other common usage. The disputed house plot situated in the land comprised in S.No.380/1, at Raghavendra Nagar, Thanigai Polur Village, Arakonam was originally allotted as per the family arrangement cum partition in favour of the petitioners' brother namely the sixth accused. Moreover the entire lay out was approved by DTCP (Directorate of Town and Country Planning) and by the gift deed the land was executed in favour of Arakonam Municipality in which the house plot purchased by the second respondent comprised in S.No.380/1 was not there and it was not gifted to Arakonam Municipality.

2.4.He further submitted that so far as the petitioners are concerned, they did not commit any offence as alleged by the second respondent and the first petitioner is a Doctor and the second petitioner is a Chartered Accountant and they are no way connected with the alleged transaction. In the year 1994 they executed power of attorney in favour of A4 and thereafter they did not even visit the said property and they have nothing to do with the crime as alleged by the prosecution. Therefore, he prayed for quashment of the FIR in Crime No.22 of 2016.

3. Per contra, the learned counsel for the second respondent filed counter and submitted that his wife is working as Chief Commercial Clerk in Southern Railway. One, Mr.Munusamy approached and induced her to purchase the house plot. He introduced A2 and they convinced by producing fabricated and concocted lay out plan which was entirely different to that of original approved plan. Based on which the second respondent purchased the said house plot in the name of his wife for valid consideration on 23.09.2009. Thereafter he obtained planning permission and constructed house on a loan availed from the bank. While the second respondent approached the Panchayat President to lay road, thereafter he came to understand that the place which was originally allocated for park and other common usage was plotted out and sold out to the petitioner thereby all of them committed offence punishable for the offences under Sections 120(b), 420, 468, 294(b) and 506(i) of IPC registered by the first respondent. Therefore, he prayed for dismissal of this quash petition.

4. The learned Additional Public Prosecutor would submit that the FIR in Crime No.22 of 2016 has been registered for the offences under Sections 120(b), 420, 468, 294(b) and 506(i) of IPC. Totally nine accused in which the petitioners are arrayed as A5 and A7. This petition has been filed to quash the FIR and it cannot be quashed on its threshold. The investigation agency has to investigate to unearth the truth and original land grabbers. Therefore, he prayed for dismissal of this quash petition.

5. Heard the learned Senior Counsel for the petitioners, learned counsel for the second respondent and the learned Additional Public Prosecutor appearing for the first respondent.

6. The petitioners are arrayed as A5 and A7 in Crime No.22 of 2016 registered for the offences under Sections 120(b), 420, 468, 294(b) and 506(i) of IPC on the file of the first respondent. Admittedly, the land originally belonged to mother in law of the fourth accused and on the Will dated 21.07.1986, the fourth accused became absolute owner of the entire land. On the family arrangement cum partition deed, the said property was divided into three shares for her three sons namely A5 to A7 herein. The property comprised in S.No.380/1 was allotted in favour of the sixth accused. It is seen from the gift deed executed by A4 in favour of Arakonam Municipality, the land comprised in S.No.380/1 is not gifted to Arakonam Municipality. After family arrangement cum partition deed A5 to A7 executed power of attorney in favour of A4 on 16.06.1994 and the same was registered as document No.73 of 1994 at the Office of the Sub Registrar, Arakonam.

7. The entire land was laid out and Plot No.199A was sold out by the fourth accused to the second accused on 01.06.2006 and registered as document No.1507 of 2006. In turn, in respect of the said house plot comprised in S.No.380/1 situated at Sri Raghavendra Nagar, Thanigai Polur Village, Arakonam, the said Arumugam A2 executed sale deed in favour of the wife of the second respondent herein by the sale deed dated 23.09.2009. After purchase of the said house plot, the second respondent obtained planning permission and also obtained loan for construction of house. Thereafter his house was also assessed for house tax and his name has been mutated in all the revenue records. When the second respondent insisted the panchayat to lay a road, the second respondent came to understand that the house situated in the land was originally gifted to Arakonam Municipality.

8. Admittedly, the land comprised in S.No.380/1 was allotted in favour of A6 namely one of the brothers of the

petitioners herein / A5 and A7. It is also seen from the gift deed that the property comprised in S.No.380/1 was not gifted to Arakonam Municipality. The second respondent house was also assessed for house tax and he is paying house tax regularly and availed all the benefit from the panchayats. Thereafter after a period of seven years, the present complaint has been lodged and all the owners of the property have been implicated as accused.

9. Insofar as the petitioners are concerned, they executed power of attorney in favour of their father on 16.06.1994 itself. Thereafter, they did not involve in any transaction. After selling out the entire house plots, on 02.11.2012 their father namely A4 also died. Even then, the first respondent registered the case as against the dead person and shown him as A4. The said house plot was originally sold out to A2 and he sold out the property in favour of the second respondent herein.

10. As discussed above, the petitioners did not commit any offence as alleged by the prosecution. That apart, there is absolutely no prima facie case made out to attract any of the offences alleged by the prosecution against the petitioners. There is no ingredients to attract the offences and the impugned FIR is sheer abuse of process of law and it cannot be sustained as against the petitioners. Even assuming that the land comprised in S.No.380/1 was gifted to Arakonam Municipality, the said property was not allotted to the petitioners and as such the petitioners are no way connected with the said property. If at all any offence committed only by their father who was being the power of attorney and the petitioners did not have any knowledge about the transactions. Therefore, the present FIR is liable to be quashed as against the petitioners.

11. Accordingly, this Criminal Original Petition is allowed and the proceedings in Crime No.22/2016 on the file of the Inspector of Police, District Crime Branch, Vellore is quashed in respect of the petitioners alone. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

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

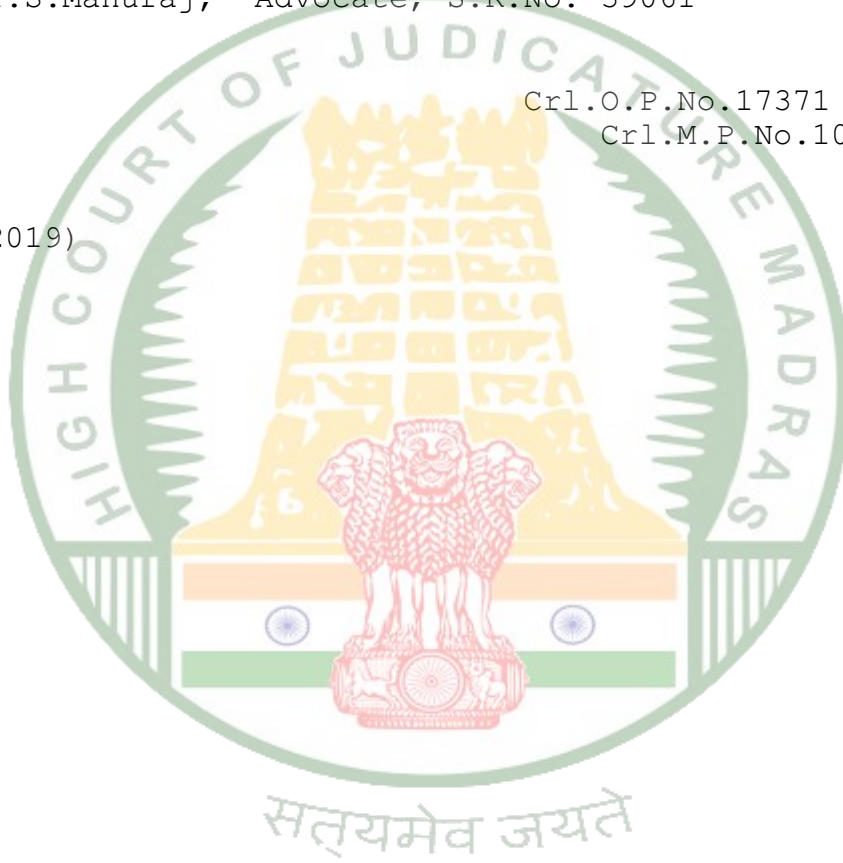
2.The Additional Public Prosecutor,
High Court of Madras

+2cc to Mr.H.Suresh Babu, Advocate, S.R.No. 39601

+1cc to Mr.S.Manuraj, Advocate, S.R.No. 39061

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SVI (CO)
GN(08/05/2019)



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