IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.RC.NO.1129 OF 2019

Mr.K.Poongavanam ...Petitioner/Defacto Complainant

Vs

1. The State rep by
   Inspector of Police
   Central Crime Branch,
   Chennai.
   (Cr.No.151 of 2008) ...First respondent/Complainant

2. Mr.Anthony @ Anthony Dass
3. Mr.Rajasekar
4. Mr.Palmurugesan
5. Mr.Ramachandran
6. Mr.Lala @ Jindendra Patel
7. Mr.Abdul Rahim ... Respondents/Accused

Prayer: This Criminal Revision Petition has been filed under Section 397 read with 401 of Cr.PC, to call for the records in Crl.M.P.No.145 of 2019 on the file of the Hon'ble Special Court for exclusive trial of Land Grabbing Cases-II, Periamet, Chennai-3 and set aside the order dated 09.09.2019 in Crl.M.P.No.145 of 2019 in *** C.C.No.39 of 2013** on the file of the Hon'ble Special Court for exclusive trial of Land Grabbing Cases-II, Periamet, Chennai-3.

For Petitioner : Mr.J.H.Batcha
For Respondents : Mr.M.Mohamed Riyaz (R1)
Additional Public Prosecutor
Mr.A.Vetriselvan (R2 to R7)

O R D E R

This Criminal Revision has been filed to call for the records in Crl.M.P.No.145 of 2019 on the file of the Hon'ble Special Court for exclusive trial of Land Grabbing Cases-II, Periamet, Chennai-3 and to set aside the order dated 09.09.2019 in Crl.M.P.No.145 of 2019 in *** C.C.No.39 of 2013** on the file of the Hon'ble Special Court for exclusive trial of Land Grabbing Cases-II, Periamet, Chennai-3.

2 The brief facts of the prosecution is that the petitioner/de-facto complainant in CR.No.151 of 2008 is the absolute owner of the property being the land measuring an extent of 2599 sq.ft. or thereabouts bearing Plot No.4. Rajarajan Nagar Extension, comprised in Survey No.287/1A and 287/6. As per Patta No.1319, Survey No.287/7 in Vanagaram Village, formerly Ambattur Taluk, Kanchipuram District now in Poonamallee Taluk, Tiruvallur District. The petitioner had purchased the said property vide Sale Deed dated 02.02.1996 registered as Document No.448/1996 (Joint 1 Sub Registrar, Saidapet, Chennai). The petitioner had availed loan from Mr.Lala @ Jithendra Patel, the fifth accused. At the time of lending the loan to the petitioner, the said Mr.Lala @ Jithendra Patel had collected the original title deed as Secuirty. Further he has obtained the signatures of the petitioner in blank Stamp papers, Promissory notes, * **Blank** Cheques and Green papers. Subsequently, the petitioner repaid the entire loan to Lala @ Jitehendra Patel. However, he had failed to return the documents given as security and also did not return the blank stamp papers and other connected papers. Later, it was found that the said Mr.Lala @ Jithendra Patel in collusion with the other accused had fabricated a document as if the petitioner/de-facto complainant had given power of attorney in favour of Mr.D.Rajasekar, the third accused. Thereafter, based on the forged Power of Attorney, the accused executed a Sale Deed in respect of the above said property in favour of one Mr.Palmurugesan vide document no.7126/2006 dated 19.09.2006 at Joint-II, Sub Registrar, Saidapet. Further in order to create encumbrance, the third accused executed another Sale Deed in favour of the Abdul Rahim, the sixth accused vide Sale Deed dated 17.11.2006 registered as Document No.8570/2006 at Joint-II Sub Registrar, Saidapet. Thereafter,the accused have also executed another rectification deed dated 24.12.2010 as Document No.9861/2010 at the Joint-II Sub Registrar, Saidapet. The accused have created the above documents for the purpose of grabbing the valuable property belonging to the petitioner/de-facto complainant. Based on the complaint given by the petitioner/de-facto complainant a case in Crime No.151/2008 was registered by the respondent police. The accused were arrested and during the course of investigation, the respondents have seized the following documents from the accused:

(i) Sale Deed dated 02.02.1996 registered as document No.448/1996 (Joint-1 Sub Registrar, Saidapet, Chennai).

(ii) Fabricated unregistered Power of Attorney dt.04.10.2001 claiming to be executed by the petitioner in favour of Mr.D.Rajasekar.

(iii) Sale deed in respect of the petitioner's above said property executed by Mr.D.Rajasekar in favour of Mr.Palmurugesan vide document dt. 19.09.2006 registered as Document No.7126/2006 (Joint-II Sub Registrar, Saidapet).

(iv) Sale deed by Mr.Palmurugesan infavour of Mr.Abdul Rahim vide document dated 17.11.2006 registered as Document No.8570 of 2006 (Joint-II Sub Registrar, Saidapet).

3 After completion of investigation, the respondent police has filed the final report and the case has been taken in *** C.C.No.39/2013** before the Trial Court. The petitioner/de-facto complainant had filed *** Crl.M.P.145/2019** seeking return of the aforesaid documents for the purpose of cancelling the disputed documents and also to clear the encumbrances made in the property.

4 The 1st respondent/complainant had filed a counter stating that prima facie case of offences under Sections 406, 420, 460 and 471 r/w 120 (b) of IPC., were made out against the accused and cognizance has been taken by the Court and it had been further contended that the documents sought for by the petitioner were fabricated by the accused by impersonation, forgery and thereby, had objected for return of documents, to the petitioner contending that marking of the documents are essential for proving the case during the trial and that if it is returned to the petitioner, it will be prejudiced to the prosecution.

5 The respondents R2 to R7/accused have filed a Memo before the Trial Court, wherein they had expressed no objection for return of documents to the petitioner/de-facto complainant.

6 The Trial Court, finding that return of documents to the petitioner/de-facto complainant will cause prejudice to the respondents, had dismissed the petition for return of documents vide order dated 09.09.2019. Against which, the present criminal revision has been filed.

7 The learned counsel for the petitioner would submit that the petitioner/de-facto complainant is the owner of the property and he is the victim and would submit that the accused by impersonation and forgery had fabricated the documents thereby, created encumbrance of the property belonging to him thereby, putting him to severe hardship and that the accused have now expressed their offer to settle the disputes with the petitioner/de-facto complainant and they have also agreed to cancel the subsequent sale deeds and also to clear the

encumbrance made in the property belonging to the petitioner/de-facto complainant. The learned counsel for the petitioner would further submit that the entire case of the prosecution is borne out of documentary evidence and that there is entries in the registration office to prove the same and would submit that no prejudice will be caused to the respondent police, if the documents are returned to the petitioner, whereas, the petitioner will be suffering grave hardship and prejudice, because his original documents is also now in the custody of the court.

8 The learned counsel for the respondents 2 to 7/accused would submit that the parties have entered into compromise and agreed to settle the matter with the petitioner/de-facto complainant. They are ready to appear before the Registration Authority and cancel the Sale Deed and clear the subsequent encumbrances.

9 A counter affidavit has been filed by the first respondent/complainant stating that the accused forged the documents by impersonation and therefore they have to face trial and have to be punished in accordance with law and therefore at this juncture if the documents are returned to the petitioner it may prejudice the prosecution case.

10 The learned Additional Public Prosecutor would submit that though documents in Item No.(i) is the sale deed in original in respect of purchase made by the petitioner, the other document in Item No.(ii) to (iv) are the documents which have been fabricated by the accused and he would further submit that if those documents are returned to the petitioner, it will cause serious prejudice to the prosecution, to prove its case.

11 The learned counsel appearing for the respondents R2 to R7/accused would submit that the parties have entered into compromise and the respondents 2 to 7/accused have agreed to settle the matter with the petitioner/de-facto complainant and would submit that the entire transactions are borne out by records. However, in order to clear the encumbrance, the respondents are prepared to appear before the Registration Authority and cancel the subsequent sale deeds and clear encumbrance.

12 At this juncture, the learned counsel for the petitioner would submit that if only the respondents appear along with the connected documents before the Registration Authority, the petitioner will be able to clear the encumbrance or else, the petitioner will be facing severe hardship and due to the encumbrance is created by the respondents 2 to 7/accused, the petitioner is very much affected. He would in the attentive

pray that a direction may be issued to the learned Judg to give interim custody of the document to the Investigating Officer to enable him to be present along with them before the Sub Registrar Office on a particular date so as to clear the encumbrance.

13 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and the learned counsel appearing for the respondents and also gone through the materials on record.

14 Admittedly, the documents in Serial No.(i) is the Sale Deed dated 02.02.1996 registered as Document No.448/1996, registered in favour of the petitioner/de-facto complainant whereas, the documents in Serial Nos.(ii) to (iv) are the documents created by impersonation of forgery. In the opinion of this Court, the original documents which belongs to the petitioner can be returned to the petitioner/de-facto complainant, after substituting it by a certified copy. In so far as the documents in Serial No.(ii) to (iv) are concerned, they are necessary for marking before the Trial Court. However, in order to protect the interest of the petitioner/de-facto complainant, who is a victim and in order to clear the encumbrance, this Court is of the opinion that the following directions may be issued subject to conditions.

15 In view of the same, the criminal revision stands partly allowed on the following terms and conditions:-

1) "Document in Serial No.(i) being the property of the petitioner/de-facto complainant shall be returned to him.
2) In order to clear the encumbrance with the respect of the subsequent transactions, the petitioner is directed to file a memo, fixing a date to appear before the Registration Authorities. On such a date being fixed, the Trial Court shall hand over the interim custody of documents in Serial Nos. (ii) to (iv), to the respondent police, who shall appear before the concerned registration authority and produce the documents for clearing the encumbrances.
3) The petitioner/de-facto complainant and the respondents/accused shall fix the date, after giving prior intimation to the Respondent Police.
4) After completion of the process of clearing the encumbrances, by the appropriate authority, the respondent police shall

return the documents to the Trial Court.

5) The entire process shall be completed within 6 months from the date of receipt of a copy of this Order."

16. This Criminal Revision Petition is disposed of with the above directions.

Sd/-
Assistant Registrar(CS)
20.12.2019

*** Corrected the order vide**
Court order dated 24.02.2020
made in Crl.M.P.No.2227 of 2020
in Crl.R.C.No.1129 of 2019 herein
SD/
Assistant Registrar (CCC)
04.03.2020

//True Copy//

Sub Assistant Registrar

arr/ssi

To:

1. The Special Court for exclusive trial of Land Grabbing Cases-II, Periamet, Chennai-3.

2. The Land Grabbing Cases-II, Periamet, Chennai-3.

3. The Inspector of Police, Central Crime Branch, Chennai.

To be Substituted the Order already Despatched on 22.01.2020

4. The Public Prosecutor, High Court,Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court,Madras

+2ccs to Mr.M.Murali , Advocate SR.No. 92572
+1cc to Mr.A.Vetriselvan , Advocate SR.No. 92975

A.SK(20/12/2019)
CS/04/03/2020