



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM:

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P. (MD) No.23055 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014 and Crl.M.P. (MD) No.9481 of 2017

1.Murugesan

2.M.Srinivasan

: Petitioners/Accused 4 & 5

Versus

1. State Rep. by its
The Inspector of Police,
District Crime Branch,
Madurai,
Madurai District.
In Crime No.28 of 2009.

: 1st Respondent/Complainant

2.Kumarandi

: 2nd Respondent/Defacto Complainant

3.K.Muthukumar

[R-3 impleaded as per the order of this Court
dated 12.06.2017, made in
Crl.M.P. (MD) No.4709 of 2017 in
Crl.O.P. (MD) No.23055 of 2014]

: Respondents

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash C.C.No.240 of 2011 on the file of the learned Judicial Magistrate No.I, Madurai, in Crime No.28 of 2009 on the file of the respondent police with regard to the petitioners.

For Petitioners : Mr.J.Lawrance

For Respondent No.1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

For Respondent No.2 : Died

For Respondent No.3 : Mr.B.N.Raja Mohamed

ORDER

This petition has been filed to quash the criminal proceedings in C.C.No.240 of 2011, on the file of the learned Judicial Magistrate No.I, Madurai.



2. Even though there are two petitioners in this petition, regarding the first petitioner/Accused No.4, this petition has been withdrawn as per the order of this Court dated 29.01.2015. Now, the present petition stands in respect of the second petitioner/Accused No.5 alone. The second petitioner has been charged with for the offences under Sections 120(B), 467, 468 and 420 of the Indian Penal Code.

3. The case of the prosecution, in brief, is as follows:

The second respondent/*defacto* complainant is a retired Government servant and he proposed to purchase a house site at Vilachery, Madurai. At that time, the second petitioner and one Gurusamy, who are land-grabbers, approached the second respondent/*defacto* complainant and informed him that a vacant house site is available, and produced the patta and sale deed in respect of the property. Thereafter, the second respondent/*defacto* complainant verified the encumbrance, and obtained encumbrance certificate, no encumbrance was found in respect of the property. Thus, he purchased the property from the alleged owner of the property, namely, Accused No.3 through his power agents Accused Nos.1 and 2, by means of a registered sale deed dated 08.10.2007. Subsequently, he came to know that the same property has already been purchased by one Mayilvahanan, in the year 1996. Now, on enquiry, he came to know that all the accused had conspired together and sold the property to him, thereby, committed the offence. Based on the complaint given by the second respondent/*defacto* complainant, a crime has been registered and after investigation, final report has been filed. Now, the matter was taken cognizance and the same is pending in C.C.No.240 of 2011. To quash the same, the present petition has been filed.

4. The learned counsel appearing for the second petitioner would contend that the second petitioner is only a broker. The second petitioner and another broker, by name Gurusamy were informed by Accused Nos.1 and 2 that they are the owners of the property and they are willing to sell the same. In such circumstances, they approached the second respondent/*defacto* complainant and the second respondent/*defacto* complainant also, after verifying the encumbrance, purchased the property. The second petitioner was not aware of the fact that, the property has already been sold to some third party. The second petitioner, being a broker, acted with a *bona fide* intention. That apart, another broker, by name Gurusamy, who was dealing with the land along with the second petitioner, was not made as an accused and he was only shown as witness. But, for the reasons best known to the second respondent/*defacto* complainant, the second petitioner has been implicated in this case as accused.

<https://hcservices.ecourts.gov.in/hcservices> The learned Government Advocate (Criminal side) appearing for the first respondent submitted that the materials collected during investigation clearly reveal that the second



petitioner herein and Gurusamy, being the brokers of the land, approached the second respondent/*defacto* complainant and sold the property in favour of the second respondent/*defacto* complainant and committed the offences. Hence, the second petitioner has been implicated as an accused in this case.

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6. The learned counsel appearing for the third respondent submitted that the second respondent/*defacto* complainant, on believing the words of the second petitioner and Gurusamy, purchased the property, subsequently, he came to know that he has been cheated by them. Hence, the present complaint.

7. I have considered the rival submissions and also perused the records carefully.

8. From the perusal of the materials collected during investigation, it could be seen that the second petitioner and one Gurusamy were land brokers, only on the information given by Accused Nos.1 and 2, they have sold the land and received their fees. There is no material available on record to show that the second petitioner had conspired with Accused Nos.1 and 2 to sell the property to the second respondent/*defacto* complainant. That apart, even though the second petitioner and one Gurusamy involved in the land dealing, now, the second petitioner alone was made as an accused, whereas Gurusamy was shown as witness in this case.

9. Considering all those circumstances, I find that there is no *prima facie* material available on record to bring home an offence against the second petitioner herein. Hence, I am inclined to quash the criminal proceedings in C.C.No.240 of 2011 on the file of the learned Judicial Magistrate No.I, Madurai, in respect of the second petitioner/Accused No.5 and accordingly, quashed. The Criminal Original Petition is allowed. Consequently, the interim stay granted by this Court on 29.01.2015 is, hereby, vacated. Since the matter is pending from the year 2011, the learned Judicial Magistrate No.I, Madurai, is directed to proceed with the trial and dispose of the same, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



2.The Inspector of Police,
District Crime Branch,
Madurai,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.LAWARANCE, Advocate (SR-77523[F] dated
25/07/2019)

Order made in
Cr1.O.P. (MD) No.23055 of 2014
Dated: 24.07.2019

SML

AE/ (09.08.2019) 4P 5C