IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.11007 of 2013 and
M.P.Nos.1 & 2 of 2013

B.Shanmukheswara Rao ... Petitioner/8th Accused

Vs.

1. State of Tamil Nadu rep. by
   The Inspector of Police,
   Central Crime Branch Team - 1,
   Chennai Suburban,
   St.Thomas Mount, Chennai - 600016.
   .. 1st Respondent/Complainant

2. C.Kavitha Devi
   ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash the proceedings in C.C.No.1201 of 2011 on the file of the learned Judicial Magistrate, Tambaram, as against the petitioner.

For Petitioner : Mr.Prakash Goklaney
For Respondents: Mr.R.Surya Prakash
Govt.Advocate (Crl.Side) for R1
Mr.Swami Subramanian for R2

ORDER

The first respondent police has registered a case against the petitioner and seven others, based on the complaint given by the second respondent for the offence under Sections 420, 468, 471 & 506(i) r/w 34 of IPC. After investigation, the first respondent police filed a charge sheet before the learned Judicial Magistrate, Tambaram. The learned Magistrate taken cognizance on the complaint in C.C.No.1201 of 2011. During pendency of the above case, A8 has filed the present petition seeking to quash the case against him.

2 The learned counsel appearing for the petitioner would submit that the second respondent purchased some properties from A1 and subsequently executed power of attorney in the name of family members of the second respondent. The first accused, without revealing the above fact, had sold the same properties to Sudhama Realtors Pvt. Ltd., Hyderabad, in which the petitioner was Director. The first accused has received entire sale consideration and executed sale agreement in the name of the company, but the company was not shown as accused. The petitioner is only a Managing Director of the Company, who was not aware of the fraud played by A1. The petitioner is a bonafide purchaser and there is no allegations against this petitioner and the ingredients of the charges made against him are not made out. The sale deed executed by A1 in favour of the company itself reveals that A1 received entire sale consideration by way of demand draft. Therefore, prosecuting this petitioner as accused is nothing, but, abuse of process of law and the case against him is liable to be quashed.

3 The learned Government Advocate (Crl.Side) would submit that this petitioner is fully aware of the power of attorney executed by his vendor i.e. A1 in favour of the second respondent/defacto complainant. In fact, one of the witnesses has clearly intimated the petitioner about the power of attorney and also already his vendor sold the properties to third party. Knowing fully well that there is dispute in the properties, the petitioner has purchased the properties in order to cheat the second respondent. Therefore investigation reveals that this petitioner also involved in the offence. Further, in this case, trial commenced and some of the witnesses have already been examined and so far 20 documents were marked. Therefore the case against the petitioner need not be quashed, when there is sufficient materials to proceed trial.

4 The learned counsel appearing for the second respondent submitted that the petitioner was fully aware of the power of attorney executed by A1 in favour the second respondent, despite, with an intention to cheat the second respondent, the petitioner has purchased the properties, which would amount to offence charged against him.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is not in dispute that the owner of the properties one Vijaya W/o. Late Kannan executed power of attorney in favour of the second respondent in the year 2005. The allegation is that A1 and her husband received entire sale consideration from the second respondent and on receipt of the same, instead of executing sale deed in favour of the second respondent, A1 had executed power of attorney and this petitioner purchased the same properties from A1. It is the contention of the petitioner that he is a bonafide purchaser, but, investigation reveal that even before entering into sale agreement with A1, some of the witnesses have informed the petitioner about the power of attorney executed by A1 in favour of the second respondent and also the dispute over the properties between A1 vendor of the petitioner and the second respondent. Even then, the petitioner did not care about information and purchased the properties and now claiming that he is innocent purchaser. On reading of the entire materials, it reveal that some of the witnesses have spoken about the knowledge of the petitioner about the facts and whether he is a bonafide purchase or not is a matter to be decided after trial. This is not the fit case to invoke Section 482 of Cr.P.C and this Court is not inclined to quash the case against this petitioner.

7 Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petitions are closed. However, the petitioner is at liberty to raise all his defence before the trial. Since, the case in C.C.No.1201 of 2011 is pending for more than nine years, the learned Judicial Magistrate, Tambaram, is directed to dispose of the above calender case in accordance with law within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Tambaram.

2. The Inspector of Police,
   Central Crime Branch Team - 1,
   Chennai Suburban,
   St.Thomas Mount, Chennai - 600016.

3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.Prakash Goklaney, Advocate sr.3316
+1cc to Mr.Swami Subramanian, Advocate sr.3123

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mp(co)
nr 06/03/2020