IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.10.2020

Delivered on: 28.10.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.OP Nos.10129 & 11206 of 2018
and
Crl.M.P.Nos.5146, 5147 & 5787 of 2018

Crl.OP.No.10129 of 2018

1.S.Ravindran
2.Lavanya ...Petitioners/Accused 2 & 3 in Crl.OP.No.10129/2018

vs.

1. The State,
Rep.by the Inspector of Police,
Central Crime Branch EDF Team I,
Vepery, Chennai.
[Crime No.89/2018]

2. Indu Anand ...Respondents in Crl.OP.No.10129/2018

PRAYER in Crl.OP.No.10129/2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the case in Crime No.89 of 2018, pending on the file of 1st respondent Police.

Crl.OP.No.11206 of 2020
1.Dr.P.manohari
2.C.Sudir
3.M.C.Pria
4.K.Chinnusamy ...Petitioners/Accused 4 to 7 in Crl.OP.No.11206/2018

vs.

1. The State,
Rep.by the Inspector of Police,
CCB-I Police Station,
Commissioner of Police Campus,
Vepery, Chennai.
[Crime No.89/2018]

2.Indu Anand ...Respondents
in Crl.OP.No.11206/2018

PRAYER in Crl.OP.No.11206/2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR and all or any further proceedings issued pursuant to the same in Crime No.89/2018, pending on the file of the respondent and quash the same.

For Petitioners

(in Crl.OP.No.10129/2018) : Mr.S.Prabakaran, Sr Advocate for Mr.A.Thiagarajan

For Petitioners
(in Crl.OP.No.11206/2018) : Mr.N.Subramaniyan

For 1st Respondent (in Both Crl Ops) : Mr.T.Shanmugarajeswaran Government Advocate (Crl.side)

For 2nd Respondent (in Both Crl Ops) : Mr.A.R.L.Sundaresan Senior Counsel for Mrs.AL.Ganthimathi

COMMON ORDER

The issue involved in both the Criminal Original Petitions are common and therefore they are taken up together and this common order is passed. The matter was posted today as a specially ordered case on the concurrence given by either side to be heard through video conferencing and after obtaining necessary orders from the Hon'ble Chief Justice.

2. The case of the prosecution is that the subject property situated at Plot No.43, Seashore Town, Survey No.12/1, Sholinganallur Village, Kancheepuram District, measuring an extent of 5 grounds originally belonged to one Saradha Menon, who is said to have purchased the said property by virtue of a registered Sale Deed dated 02.03.1967.

3. The further case of the prosecution is that one Radha Menon claiming herself to be the daughter of the above said Saradha Menon represented as if her mother had expired and she has become the owner of the subject property and pursuant to the same, she executed a General Power of Attorney Deed dt. 25.04.2012, in favour of one Selvamuthukumaran (A-1) to deal with the property. Thereafter, A-1 in his capacity as a Power Agent executed a Sale Deed dt.19.12.2013, in favour of Ravindran

(A-2) and his wife Lavanya (A-3). A portion of the property was sold in their favour, measuring an extent of two grounds through a Sale Deed dt. 19.12.2013. Similarly, A-1 by virtue of the same Power of Attorney document sold the balance portion of the property, through a Sale Deed dt. 30-11-2013 (measuring an extent of 3 grounds) in favour of P. Manohari (A-4, wife of A-7), Sudhir (A-5, son of A-7) and Pria (A-6, daughter of A-7).

4. The further case of the prosecution is that A-2 to A-6 executed a Sale Deed in favour of the de facto complainant on 11.09.2014. The de facto compliant later came to know that the Power of Attorney Deed dt. 25.04.2012, itself is a fake document that was fabricated through impersonation and the earlier transaction in favour of A-2 to A-6 is a fraudulent transaction and knowing fully about the same, the property was sold in the favour of the de facto complainant and thereby A-1 to A-7 have cheated the de facto complainant by entering into a criminal conspiracy and by fabricating documents. A compliant was lodged by the de facto complainant and an FIR (First Information Report) came to be registered by the respondent Police in Crime No. 89 of 2018. The above Criminal Original Petitions have been filed by A-2 to A-7, to quash the FIR insofar as they are concerned.

5. Mr.N.Subramaniyan, learned counsel appearing on behalf of the petitioner in Crl.O.P.No.11206 of 2018 (A-4 to A-7) made the following submissions:

- Neither the allegations made in the FIR nor the materials relied upon by the prosecution makes out any offence against the petitioners.
- The petitioners have been arrayed as an accused only with the intention to extort money from them and therefore, the FIR itself is an abuse of process of law, insofar as the petitioners are concerned.
- The petitioners themselves are victims in this case and they have been cheated by A1 and a complaint was also given in this regard on 19.3.2018 and no FIR has been registered till date in the said compliant.
- The entire transaction has taken place through Cheques and Demand Drafts and Capital Gains Tax was also paid and there was absolutely no intention to cheat the de facto complainant.
- The petitioners cannot be added as accused persons in the FIR on mere presumptions and it involves

their Fundamental Rights under Article 21 of the Constitution of India.

- The petitioners at the best can only be called as a witness since they are also victims and by no stretch they can be made as accused persons in this case.
- The complaint is an abuse of process of law and requires interference of this Court under Sec. 482 of Cr.P.C.

6. Mr.S Prabakaran, learned Senior Counsel appearing on behalf of the petitioners in Crl.OP.No.10129 of 2018, made the following submissions:

- A legal due diligence was undertaken before the purchase of the property by the petitioners (A-2 and A-3) and it was found that there was an original Sale Deed in the name of Saradha Menon, death certificate of Saradha Menon, legal heirship Certificate of Saradha Menon, patta granted in favour of Radha Menon and also the Power of Attorney executed by Radha Menon in favour of A-1 and all these documents were scrutinized and legal opinion was obtained.
- The Petitioners took loan for the purpose of purchase of the property and the entire consideration was paid through the bank loan.
- The Sale Deed in favour of the de facto complainant is a bonafide transaction and even at that point of time, the petitioners were not aware that the earlier transactions were fraudulent.
- The petitioners are also innocent and are victims who were cheated by A1 and others.
- The petitioners themselves have given a compliant against A-1 and an FIR is pending in this regard in Crime No.470 of 2017.
- The criminal case against the petitioners is an abuse of process of law and it requires the interference of this Court.

7. Mr.T.Shanmugarajeswaran, learned Government Advocate (Crl.side), appearing on behalf of the respondent police submitted that there are totally 16 accused persons in this case. It was further submitted that Saradha Menon was actually living in the State of Maryland and she died only on 25.05.2015. However, fake documents were created as if, she died in 2001 and the Power of Attorney document itself is a fabricated document created through impersonation by the accused person (A-13)

impersonating as Radha Menon. The respondent Police will have to investigate regarding the genuineness of the very title deed itself dt. 02.03.1967 and since it involves conspiracy among the accused persons, the truth will get revealed only after the investigation is completed. The learned Government Advocate submitted that the role played by the petitioners can be ascertained only at the end of the investigation and if there are materials against them, they will be shown as accused persons or they will be treated as witnesses in this case. Investigation cannot be interfered at this preliminary stage and sometime can be fixed by this Court for the completion of investigation and for filing the Final Report.

8. Mr.A.R.L. Sundaresan, learned Senior Counsel appearing on behalf of the de facto complainant submitted that even assuming without admitting that the petitioners were innocent at the time when they purchased the property, whether such innocence continued or they were aware about the fake transaction before the property was sold in favour of the de facto complainant, requires investigation. The learned Senior Counsel submitted that the First Information Report is not an encyclopedia of the entire case and the truth will get revealed only after the completion of the investigation. The learned Senior Counsel submitted that whether the petitioners will have to be treated as accused persons or as witnesses, is a decision that has to be taken by the prosecution after the conclusion of the investigation and that decision cannot be arrived at this preliminary stage of investigation. The learned Senior Counsel further submitted that there is a very limited scope of interference when it comes to quashing an FIR and the facts of the present case requires a thorough investigation. Consequently, the petitions will have to be dismissed.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court while exercising its jurisdiction under Sec. 482 of Cr.P.C., and more particularly when it comes to quashing an FIR, cannot undertake the exercise of appreciating the materials and conducting a mini investigation and it is well within the realm of investigation. This Court can only look into the allegations given in the compliant and see if it makes out an offence against the accused persons. The law on this aspect is well settled and this Court has to keep these principles in mind before venturing to decide these Criminal Original Petitions.

11. From the sequence of events it is seen that the fake Power of Attorney through impersonation is said to have been executed in favour of A-1 on 25.04.2012. After nearly one and a half years, Sale Deeds came to be registered in favour of the petitioners by using this Power of Attorney document, by A-

1. The petitioners had paid nearly Rs.1,49,72,000/- towards the sale consideration and the entire sale consideration was paid only through Demand Drafts and Cheques. In the case of petitioners in Crl.OP.No.10129 of 2018, they had taken loan from the Indian Overseas Bank, to pay the major portion of the sale consideration. It is clear from the materials placed before this Court that legal due diligence was conducted and nobody doubted the Power of Attorney executed in favour of A-1. A reading of the complaint by the de facto complainant and also the materials placed before this Court do not point out anything against the petitioners and up to this stage, the petitioners will have to be treated as bonafide purchasers for valuable consideration. It is nobody's case that the petitioners had anything to do with the earlier transaction when the Power of Attorney was executed in favour of A-1. The petitioners came to the scene after nearly one and a half years during November / December 2013. Till then, nothing can be ascribed against the petitioners.

12. The petitioners have executed two separate Sale Deeds both dt.11.09.2014, in favour of the de facto complainant. The total sale consideration works out to a sum of Rs.1,65,00,000/-. It is also seen that the petitioners have accounted for the receipt of the entire sale consideration. Nobody doubted this transaction and in fact it is found in the Sale Deed that the entire original title documents were handed over to the de facto complainant.

13.The real problem started after nearly four years when a compliant was given by the de facto complainant to the effect that she found the entire earlier transactions to be fraudulent and according to the de facto complainant, the petitioners were aware about the forgery and impersonation and in spite of the same, the property was sold in favour of the de facto complainant. Based on this compliant, the FIR came to be registered on 8.03.2018, for an offence under Sections 419, 420, 468, 471 and 120-B of IPC. Some of the accused persons were also arrested and remanded to judicial custody and later were released on bail.

14. The specific case of the petitioners is that they were not aware about the forgery and impersonation at the time when the property was sold in favour of the de facto complainant and they became aware about it only after the complaint was given by the de facto complainant. In fact, the petitioners have themselves given a compliant against A-1 in this regard and they also claimed to be the victims in the hands of A-1 and others. Therefore, according to the petitioners, they should not have been named as the accused persons in the FIR and the entire criminal prosecution is an abuse of process of law.

15.There is one very crucial aspect that requires investigation in this case. It is clear from the materials placed before this Court that the petitioners are innocent purchasers of the subject property. The only issue that requires a close scrutiny is as to whether this innocence continued even at the time when the Sale Deed was executed in favour of the de facto complainant or they came to know about the earlier fraudulent transactions later and in spite of the same proceeded to sell the property in favour of the defacto compliant. Admittedly, the petitioners in Crl.O.P.Nos. 10129/2018 and 11206/2018 are two independent groups not related to each other. However, they have come together and executed a Sale Deed in favour of the de facto complainant on the same date i.e., on 11.09.2014 and even at that point of time A-1 had actively participated during the entire transaction. This portion of the transaction is quite intriguing and some investigation is required to be done.

16. If the petitioners had innocently sold the property to the de facto complainant, they cannot be held to be accused persons in this case and they must also be treated as victims in the hands of A-1 and others, like the de facto complainant. On the other hand, if they had sold the property in favour of the de facto complainant knowing fully well about the earlier fraudulent transaction, they will also come within the net of criminal conspiracy and to that extent investigation has to be done and the truth must be found out. While conducting the investigation, the respondent Police must also take into consideration the complaints given by the petitioners against A-1. The respondent Police must conduct a consolidated investigation in this case on all the complaints.

17.This Court in exercise of its jurisdiction under Section 482 of Cr.P.C., cannot give any finding with regard to the role played by the accused persons and it will be safe to leave the issue open for investigation to find out the truth. This Court cannot adorn the role of a prosecutor and undertake this exercise. Ultimately, if the prosecution does not get any materials against the petitioners to prove that they were aware of the earlier fraudulent transaction at the time when the Sale Deed was executed in favour of the de facto complainant, obviously they cannot be made as accused persons and they can be only shown as witnesses at the time of filing the Final Report.

18. In view of the above, this Court is not in a position to interfere with the investigation at this stage and the investigation must be allowed to continued. The respondent Police is directed to complete the investigation and file a Final Report before the concerned Court strictly within a period of four months from the date of receipt of copy of this order.

19. Both the Criminal Original Petitions are disposed of accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
   Central Crime Branch EDF Team I,
   Vepery, Chennai.

2. The Inspector of Police,
   CCB-I Police Station,
   Commissioner of Police Campus,
   Vepery, Chennai.

3. The Government Advocate,
   High Court, Madras.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.35124
+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.35125
+2cc to M.s.M.A.Muthalakan, Advocate, S.R.No.35181

Pre Delivery Common Order in

Crl.OP Nos.10129 & 11206 of 2018

MG(CO)
RV(01/12/2020)