

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2020
PRONOUNCED ON : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7440 of 2014
and
Crl.M.P.No.1 of 2014

1.Ramakrishnan
2.Indumathi Petitioners/Accused 1 & 2

Vs.

1.State rep by its,
The Inspector of Police,
Anti Land Grabbing Special Cell,
Kancheepuram District. 1st Respondent/Complainant

2.O.J.Lukosh2nd RespondentDefacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records pertaining to the proceedings pending in C.C.No.93 of 2014 on the file of the learned Judicial Magistrate No.II at Chengalpet and quash the same.

For Petitioner : Mr.J.C.Durairaj

For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

For R2 : Mr.A.Ashwin Kumar,
Legal Aid Counsel

ORDER

The petitioners/A1 & A2, who are facing trial in C.C.No.93 of 2014, for offence under Sections 420, 406 and 506(i) IPC, have filed this quash petition.

2.The case projected by the prosecution is that the 2nd respondent, from the year 2003, was running inn in the name of Southern Residency at Kelambakkam, Kancheepuram District. The 2nd respondent and others purchased some property and the 2nd

respondent was given power of attorney for 5.10 cents of property in survey No.83/1, at Thaiyur Village, Kancheepuram District.

3. During the year 2005, one Pappathi Krishnan was Panchayat President of Thaiyur Village. The 2nd respondent, after getting permission from Pappathi Krishnan, Panchayat President developed layout in the name of Richwood Garden in 4 to 76 plots, totally 72 plots and 37,900 cents were allotted for usage of road and public purpose. The 2nd respondent sold most of the plots and some plots were not sold. During 2006, the 1st petitioner was elected as Panchayat President. LW3/Rajappa had purchased 3 plots in the said layout, in which, he wanted to construct Multi Speciality Residential Flat, for which, he approached the 1st petitioner for getting necessary approval. The 1st petitioner demanded Rs.3,00,000/- for giving approval and further made demand one plot. The 2nd respondent informed the 1st petitioner that selling rate of one plot is Rs.1,000/- per sq.ft in that area, for the 1st petitioner, who being the Panchayat President, the 2nd respondent agreed for lesser price. LW3 agreed to pay Rs.3,00,000/- to the 1st petitioner for approval. This amount was paid by the 2nd respondent in two instalments on 12.04.2008 [Rs.2,00,000/-] and on 16.04.2008 [Rs.1,00,000/-] to the 1st petitioner. When the 2nd respondent enquired about the approval for construction, the 1st petitioner demanded to settle one plot to him. On 23.05.2008, the 1st petitioner prepared sale deed in the name of his wife/2nd petitioner and the sale deed was registered in Sub Registrar Office, Thiruporur. During registration, it was found that the 1st petitioner prepared sale deed for 3.25 grounds (7,744 sq.ft) instead of one ground (2,400 sq.ft). When the 2nd respondent questioned the same, the 1st petitioner informed that the plots 10 & 13 are adjacent to each other, which makes a complete square and it would be better that both the plots are acquired by him.

4. Since the 1st petitioner was adamant, LW5 & LW6 gave assurance that the 1st petitioner would make the payment of Rs.17,50,000/- for one ground (2,400 sq.ft), totally, he would make a payment of Rs.56,46,666/- for 3.25 grounds (7,744 sq.ft). Believing the words of the 1st petitioner, plots 10 & 13 were registered in the name of the 2nd petitioner vide document No.4441/2008, dated 23.05.2008. Thereafter, the 1st petitioner failed to make the payment, despite several reminder and request made by the 2nd respondent and by LW5 and LW6. The 1st petitioner not only failed to make the payment, he also threatened the 2nd respondent claiming that he belongs to powerful political party, which was in power then and further, if any demand is made in this regard, the 2nd respondent would be done away.

5.The 2nd respondent by approaching known persons, took all possible steps to recover the balance sale consideration from the petitioners. After the political party of the petitioner lost power and dethroned, through which, the 1st petitioner claimed all his strength and muscle power, the 2nd respondent lodged a complaint to the Superintendent of Police, Kancheepuram, which was forwarded to the District Crime Branch, Kancheepuram District on 22.08.2011, from there, it was forwarded to the 1st respondent Police. On receipt of the same, the 1st respondent registered a case in Crime No.128 of 2011 on 13.10.2011, for offence under Sections 406, 420 and 506(i) IPC. The 1st respondent on completion of investigation, filed charge sheet against the petitioners, citing LW1 to LW19 and annexing documents. Challenging the same, the present petition.

6.Despite notice served to the 2nd respondent, no representation for him. Hence, this Court by order dated 06.07.2020 appointed Mr.A.Ashwin Kumar as Legal Aid Counsel for the 2nd respondent.

7.The learned counsel for the petitioners submitted that the 1st petitioner was Panchayat President of Thaiyur Village, Kancheepuram District and his wife/2nd petitioner purchased two plots from the 2nd respondent, for which payments were made. He further submitted that the sale consideration, as per the document No.4441/2008 for plot 10 measuring 3671 sq.ft and for plot 13 measuring 4073 sq.ft, totally 7,744 sq.ft, is only Rs.7,74,400/-. The sale deed had been executed before the Sub Registrar, Tiruporur on 23.05.2008. As per the document, the sale consideration of Rs.7,74,400/- has been paid. Since the registration fee for the document was deficient, the Sub Registrar, Thiruporur forwarded the document under Section 47A of the Indian Stamp Act and kept pending in No.300/2008. Thereafter, on fixing of proper value and collecting the deficient fee, the Sub Registrar, Thiruporur registered the document in No.4441 of 2008.

8.The learned counsel for the petitioner further submitted that the 2nd respondent, at the instance of enimical to the 1st petitioner, has falsely implicated the petitioners. The 2nd respondent, for greed of extracting more money falsely projected the case as land grabbing case. The occurrence took place in the year 2008, but the complaint was lodged in the year 2011, no reason was given for the delay. Till now, the 2nd respondent has not filed any suit to set aside the sale deed. Taking advantage of the prevailing situation then, the 2nd respondent lodged a false complaint against the petitioners. In this case, the person who proved the identity of buyer and seller of the properties and the witnesses to the sale, are not cited as witnesses.

9. In this case, the offence under Section 420 would not arise, as could be seen from the payments of the bank details produced by the 1st petitioner. For the payments, the 2nd respondent gave a different explanation that these payments were for the rental room. In this case, the offence of cheating, misappropriation and criminal intimation would not arise as could be seen from the sale deed. It is clearly admitted by the 2nd respondent that the entire sale consideration has been received and document has been registered in the Sub Registrar Office, Thiruporur in the presence of witnesses. The persons may lie, but not the documents. Hence, to spite vengeance and with ulterior motive, the above complaint was lodged. Further, the respondent Police conducted investigation in a partisan manner, for the reason that the 1st petitioner belongs to opposition party. Hence, without collecting and ascertaining the true facts, charge sheet has been filed against the petitioners. Hence, he prayed for quashing of the charge sheet against the petitioners.

10. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that after completion of investigation, by examination of witnesses and collection of documents, charge sheet came to be filed before the learned Judicial Magistrate No.II, Chengalpet on 12.02.2014. During March 2014, the above quash petition was filed and interim stay was granted by this Court. Due to which, the trial before the lower Court could not be proceeded and the case is pending for the past six years. He further submitted that the delay for lodging the complaint has been explained by the 2nd respondent and the situation prevailing at that time when the offence took place has also been explained. LW1/the defacto complainant has stated about the transaction taken place between 1st petitioner and LW3. LW3 is a flat promoter, who intended to construct Multi Speciality Residential Flat, for which, he approached the 1st petitioner. Since the 1st petitioner was the then Panchayat President, he demanded Rs.3 lakhs to give approval and the same was also paid and the particulars were given. Added to it, one ground in the layout was demanded by the 1st petitioner. The 2nd respondent agreed for the same at lesser rate. The 1st petitioner taking advantage of his position and contrary to the understanding, the 1st petitioner prepared sale deed for 3.25 grounds (7,744 sq.ft) instead of one ground (2,400 sq.ft). When the same was questioned by the 2nd respondent, the 1st petitioner gave reason that the plot 10 and 13 are adjacent, which makes a complete square and it would be better if these two plots are acquired by him. At that time, LW5 and LW6 gave assurance to collect sale consideration from the 1st petitioner. Both LW5 and LW6 have given 161 Cr.P.C., statements to that effect and expressed inability to collect the sale consideration from the

1st petitioner. LW2 is the Manager of LW1, who corroborated 161 Cr.P.C statement of LW1. LW4 is the then Panchayat President of Thaiyur Village. LW4 has stated about LW1 and others were developing layout. LW7/Thangaraj is the witness to the Observation Mahazar, his statement is similar to LW5 & LW6. LW8 has stated about the Observation Mahazar and Rough Sketch. LW9, LW10 and LW11 corroborated the statements of LW1, LW2, LW5 and LW6. LW12/SRO, Thiruporur has stated about forwarding the document/sale deed under Sections 47A of the Indian Stamp Act and subsequently, registered the same. LW13/VAO stated about the revenue records. LW14, the purchaser of plot 12 has stated the prevailing market value then. LW15, the son of Karthikeyan has stated about his father Karthikeyan prepared sale deed. LW16 is the husband of LW4. LW17, the Manager of Central Bank of India, Kelambakkam Branch has stated about the receipt and payment of LW1. LW18 and LW19, the police officials, registered FIR, examined the witnesses, collected the documents and on completion of investigation, filed charge sheet in this case. Thus, all the witnesses have stated about the role played by the petitioners. The lower Court, on perusal of the charge sheet along with statement and documents, had taken cognizance of the case. Further, the points raised by the petitioner are to be decided only during trial and not in the quash petition.

11.The learned counsel for the 2nd respondent submitted that it is known fact that during the year 2008, the persons with muscle power and political support were involved in exploiting and encroaching the valuable properties of innocent people. On change of Government, there were several complaints with regard to land grabbing, which necessitated the Government to constitute Special Cell for investigation of cases under the land grabbing. In order to deal with the land grabbing cases, Special Courts were formed. The formation of Special Cell for investigation of land grabbing cases is not in dispute.

12.In this case, the 1st petitioner was Panchayat President at the time of committing the offence. He demanded money for giving approval for construction of Multi Speciality Building. Apart from demanding money, he also demanded a plot, which was agreeable to the 2nd respondent. The 2nd respondent offered a plot at lesser rate. But, the 1st petitioner prepared sale deed for 3.25 grounds (7,744 sq.ft) instead of one ground (2,400 sq.ft) and compelled the 2nd respondent to sign in the sale deed, without paying sale consideration. LW5 and LW6, who were in negotiation assured that the 1st petitioner would make the payment.

13.The learned counsel for the 2nd respondent further submitted that the 1st petitioner was using a room in the third floor of the 2nd respondent's hotel for his work and used to meet

the people and stayed regularly for nearly a year. Believing the assurance given by the 1st petitioner that he would make payment, the 2nd respondent executed the sale deed in favour of the 2nd petitioner. Thereafter, the 1st petitioner refused to make the payment. Added to it, he threatened the 2nd respondent and others. After change of the Government, the 1st petitioner vacated his room. The portion of the dues had been paid to the hotel, which is projected as part of sale consideration by the 1st petitioner. In order to prove the act of the petitioners, several witnesses were examined and documents collected. There is no materials to prove that the 1st petitioner had resources and made any payments towards the sale consideration. The 1st respondent after thorough investigation, by recording statement of witnesses and collection of documents, filed charge sheet in this case. Once the charge sheet is filed, only on exceptional circumstances, it can be quashed. In this case, there is no such circumstances. The 2nd respondent had lodged the complaint, after the 1st petitioner demitting his office. Hence, he prayed for dismissal of the quash petition with a direction to complete the trial within specific period of time.

14.This Court considered the rival submissions and perused the materials available on record.

15.It is seen that the 1st petitioner was Panchayat President of Thaiyur Village, Kancheepuram District during the relevant period. The 2nd petitioner is the wife of the 1st petitioner. The 1st petitioner prepared sale deed for plots 10 and 13 and registered in the name of his wife/2nd petitioner. The 2nd respondent had developed layout of 72 plots and had sold most of the plots. LW3, a flat promoter purchased some plots and wanted to construct Multi Speciality Residential Flat, for which, LW3 and the 2nd respondent approached the 1st petitioner for getting approval. At that time, Rs.3 lakhs was demanded and the same was paid. When the 2nd respondent enquired about the approval for construction, the 1st petitioner demanded to settle one plot to him. With regard to registration of sale deed document No.4441 of 2008 for plots 10 and 13, there is dispute in the manner in which the sale deed was made ready. The payment agreed between the parties in furtherance to the registration of sale deed, but it was not later paid.

16.As stated above, the 1st respondent examined the persons, who were present at the time of registration of sale deed and transactions of amount. From the statement of witnesses recorded, it is seen that the ward members of Panchayat as well as residents of Thaiyur Village were involved in the negotiation and they were stated about the deceivment of the 1st petitioner. The statements of the witnesses and the materials collected culminated into charge sheet. On perusal of the charge sheet,

this Court finds that there is no infirmity. Hence, the points raised by the petitioner are to be raised only during the trial and cannot be decided in the quash petition.

17. In view of the same, the petition is dismissed. Taking into consideration the trial is pending without any progress from the year 2014, this Court directs the trial Court to complete the trial, by giving priority within a stipulated time. It is made clear that the observations made herein is only for the purpose of disposal of the above quash petition. It is open for the trial Court to decide the pending trial on its own merits, uninfluenced by this order. Consequently, the connected miscellaneous petition is closed.

18. This Court appreciates Mr. A. Ashwin Kumar, Legal Aid Counsel for the 2nd respondent for meticulous preparation and presentation of the case.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Judicial Magistrate No. II,
Chengalpet.

2. The Inspector of Police,
Anti Land Grabbing Special Cell,
Kancheepuram District.

3. The Secretary,
Legal Aid Service Authority,
High Court, Madras.

4. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.7440 of 2014

PVS (CO)
GN(22/10/2020)