

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2020

PRONOUNCED ON : 10.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.32211 of 2014 and M.P.No.1 of 2014

AND

CRL.O.P.No.2885 of 2015 and M.P.Nos.1 & 2 of 2015

CRL.O.P.No.32211 of 2014

Sasikala Ragupathy ... Petitioner/Accused No.6

Vs

1.The Inspector of Police ... Respondents/Defacto Complaint
Central Crime Branch
Team-XVIII, Vepery
Chennai-7
(Thro' Public Prosecutor)

2.Jaya Thamby

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records pertaining to F.I.R. in Crime No.394 of
2014 on the file of the 1st respondent herein and quash the same as
far as the petitioner herein is concerned.

For Petitioner : Mr.D.Ravichander

For 1st Respondent : Mrs.P.Kritika Kamal
Govt. Advocate (Crl.Side)

For 2nd Respondent : Mr.P.Kumaresan

CRL.O.P.No.2885 of 2015

1.Rohit Kumar Someshwar Shelat @ Rohit Kumar .. Petitioner/
2.Anil Kumar Someshwar Shelat @ Anil Kumar Accused No.3 & 4

Vs

1.State rep. by ... Respondents/Defacto Complaint
The Inspector of Police
Central Crime Branch
Team-XVIII, Vepery
Chennai-7

2.Jaya Thamby

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to F.I.R. in Crime No.394 of 2014 on the file of the 1st respondent herein and quash the same as far as the petitioners herein are concerned.

For Petitioners : Mr.Arun Karthick Mohan

For 1st Respondent : Mrs.P.Kritika Kamal
Govt. Advocate (Crl.Side)

For 2nd Respondent : Mr.P.Kumaresan

COMMON ORDER

In view of commonality of the issue involved, these Criminal Original Petitions are considered and decided by this common order.

2. For the sake of convenience, the parties will be referred to by their names.

3. On a complaint lodged by Jaya Thampi, the police registered a case in Crime No.394 of 2014 on 11.09.2014 under Section 419, 420, 465, 468, 471, 448 read with 120-B IPC against 1.Krishnaswamy, 2.M/s.Shelat & Sons, 3.Rohit S.Shelat, 4.Anil Kumar S.Shelat, 5.Impersonators of Saradha Sukumar, 6.Sasikala Raghupathy, (Proprietor, M/s.Vaani Estates Pvt. Ltd.), for quashing which, Sasikala Raghupathy has filed CRL.O.P.No.32211 of 2014, and Rohit S.Shelat & Anil Kumar S.Shelat have filed CRL.O.P.No.2885 of 2015.

4. Before advertng to the averments in the F.I.R., it is essential to state the history of the dispute. The dispute is with regard to a property measuring 30 cents and 568 sq.ft. in Gandhi Nagar, Adyar (for brevity "the property") which originally belonged to Gandhi Nagar Co-operative House Construction Society Limited (for brevity "the Society").

4.1. One Shankar Reddy was a member of the Society and he was allotted the property, by way of a hire purchase agreement dated 09.08.1949. Shankar Reddy transferred the allotment to one Saradha Sukumar in 1954. When Saradha Sukumar approached the Society for conveying the property to her, they refused to accede to her request, on the ground that the property was allotted to Shankar Reddy and not to her. Therefore, Saradha Sukumar filed a suit for specific performance in C.S.No.98 of 1960 in the Madras High Court against Shankar Reddy and the Society. The suit was decreed on 15.01.1963 in favour of Saradha Sukumar with a direction to the Society to convey the property to her. However, Saradha Sukumar also did not want the property to be conveyed to her and

instead, she assigned her right to M/s.Shelat & Sons by giving a letter dated 24.02.1968 to the Society. Accordingly, the Society executed a Sale Deed dated 04.02.1971 registered as document No.208 of 1971 on the file of the SRO, Saidapet in favour of M/s.Shelat & Sons.

4.2. Saradha Sukumar died in January 2012. In the year 2013, M/s.Shelat & Sons negotiated with M/s.Vaani Estates represented by Sasikala Ragupathy/A6 for the sale of the property. M/s.Vaani Estates issued advertisements in Times of India, Hindu, local newspaper as well in Gujarat, since M/s.Shelat & Sons was a firm operating in Gujarat conveying their intention to purchase the property and calling for objections, if any. Since there was no objections, M/s.Vaani Estates purchased the property for Rs.21 Crores on 12.12.2013 from M/s.Shelat Brothers, by a Deed of Sale registered as document No.3022 of 2013 on the file of the SRO, Adyar.

4.3. One Vyomesh Shelat, a grandson of the original Shelat filed a partition suit in C.S.No.236 of 2014 for partitioning all the properties of M/s.Shelat & Sons, partnership firm, in which, M/s.Vaani Estates Pvt. Ltd. has been shown as 11th defendant.

4.4. After the death of Saradha Sukumar, her children started claiming the property. Ginju Fathima claiming to be a power agent of the heirs of Saradha Sukumar gave a police complaint alleging that the sale of the property by the Society to M/s.Shelat & Sons was fraudulent. This complaint was investigated and closed by the Inspector of Police, Adyar Police Station as civil dispute on 17.06.2014.

4.5. Thereafter, M/s.Vaani Estates filed a suit in C.S.No.417 of 2014 in the Madras High Court against Anil Thamby and Ginju Fathima. Now, Jaya Thampi, daughter of Saradha Sukumar lodged a complaint, based on which, the police have registered an F.I.R. in Crime No.394 of 2014, which is the subject matter of the present quash petitions.

4.6. In the complaint, it is alleged that Saradha Sukumar had not given the assignment letter dated 24.02.1968 to the Society, assigning the allotment to M/s.Shelat & Sons and that, the said letter is a fabricated one. It is also alleged that another letter dated 26.02.1968 purported to have been written by Saradha Sukumar to the Society, is also a forged one.

5. Heard Mr.D.Ravichander, learned counsel for Sasikala Ragupathy (A6); Mr.Arun Karthick Mohan, learned counsel for Rohit S.Shelat and Anil Kumar S.Shelat (A3 & A4) and Mrs.P.Kritika Kamal, learned Govt. Advocate (Crl. Side) appearing for the respondent State and Mr.P.Kumaresan, learned counsel for Jaya Thampi (de facto complainant).

6. Mr.Kumaresan, learned counsel for Jaya Thampi submitted that the signature of Saradha Sukumar in these two letters differs

from her signature in other documents and therefore, a full-fledged police investigation is necessary.

7. Per contra, Mr.D.Ravichander submitted that Saradha Sukumar obtained assignment from Shankar Reddy and when the Society did not execute the Sale Deed in her favour, she filed the suit in C.S.No.98 of 1960, obtained the decree, after which, she assigned her right to M/s.Shelat & Sons, from whom, M/s.Vaani Estates had purchased in the year 2013.

8. This Court gave its anxious consideration to the rival submissions.

9. The fact remains that the property in question belonged to the Society. The Society allotted the property to Shankar Reddy. Shankar Reddy sold the allotment to Saradha Sukumar. When the Society refused to recognise Saradha Sukumar, she filed C.S.No.98 of 1960 against the Society and Shankar Reddy, and obtained a specific performance decree against the Society. After obtaining the decree also, Saradha Sukumar did not have the property conveyed to her. She assigned her right to M/s.Shelat & Sons on 24.02.1968.

10. Initially, the Society was under the impression that, a Sale Deed can be executed by them only in favour of members of the Society and not to their assignees. This stand of the Society was rejected by the High Court in C.S.No.98 of 1960 that was filed by Saradha Sukumar. Therefore, when Saradha Sukumar asked the Society to execute the sale deed in favour of M/s.Shelat & Sons, the Society executed the sale deed on 04.02.1971. From 1971 to 2012, M/s.Shelat & Sons were holding the property.

11. The fact that Saradha Sukumar did not take any steps to obtain the sale deed in her favour from the Society albeit the fact that she had succeeded in the suit in C.S.No.98 of 1960, does go to show that she had sold her allotment to M/s.Shelat & Sons. Saradha Sukumar having fought a legal battle and obtained a decree in her favour, would not have remained content by keeping the decree framed and hung in her drawing room from 1963 up to her demise. After the death of Saradha Sukumar, her legal heirs are now suddenly waking up and are saying that the assignment letter given by their mother to the Society in 1968 was a forged document; that the Society ought not to have sold the property to M/s.Shelat & Sons; and that M/s.Shelat & Sons ought not to have sold the property to M/s.Vaani Estates, etc.

12. Mr.Kumaresan submitted that the legal heirs of Saradha Sukumar believed that the property belongs to them and in that fond belief, they were living in Kerala. Only after the death of Saradha Sukumar, they came to know about the aforesaid transfers. He contended that the thumb impression of Saradha Sukumar is not available in the office of the Sub Registrar.

13. This Court is unable to appreciate these submissions also for the following reasons :

In 1960s, 70s and 80s, there was no great scramble for immovable properties. Immovable properties became gold mines only in 1990s and thereafter, there was a mad rush, like the California rush for gold. The transactions between the Society, Shankar Reddy, Saradha Sukumar and M/s.Shelat & Sons took place between 1965 and 1971. Even in the sale deed dated 04.02.1971 that was executed by the Society to M/s.Shelat & Sons, all these facts have been stated. Thus, in the opinion of this Court, the impugned complaint is an abuse of process of law and hence, it deserves to be quashed. If the heirs of Saradha Sukumar are of the opinion that the sale by the Society to M/s.Shelat & Sons was illegal, the remedy if any, was only through a civil suit for declaration and not a police complaint. Having not done that, they cannot use the police to set at naught the transactions that had taken place during 1968-71.

In the result, these Criminal Original Petitions are allowed and the F.I.R. in Crime No.394 of 2014 on the file of the respondent police as against all the petitioners herein, is quashed.

-sd/-

Assistant Registrar (cs)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Inspector of Police
Central Crime Branch
Team-XVIII, Vepery
Chennai-7

2.The Public Prosecutor
High Court, Madras

+1 C.C. to MR.D.RAVICHANDER, Advocate SR.NO.39929

+1 C.C. to MR.P.KUMARESAN, Advocate SR.NO.40262

+1 C.C. to MR.P.ARUN KARTHIK MOHAN, Advocate SR.NO.40272

CRL.O.P.No.32211 of 2014

AND

CRL.O.P.No.2885 of 2015

SRA (CO)

UMY (19/12/2020)