

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 21.01.2020

Pronounced on : 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.24570 of 2019
and
CRL.MP.No.13053 of 2019

V. Nedumaran ...Petitioner/Defacto complainant

versus

1. State rep. By its
The Inspector of Police,
C.C.B., EDF-II, Team - III,
Vepery, Chennai,
Cr.No.484/2012

2.Jothimani (A-1)

3.Selvi (A-2)

...Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to withdraw the C.C.No.229 of 2013, on the file of Judicial Magistrate Court-I, Poonamallee and transfer the same to the file of Judicial Magistrate Court, Alandur or to any other competent court.

For Petitioner :Mr.S.Anantha Narayanan
(in both Crl.OPs) Senior Counsel
assisted by Mr.S.Angamuthu

For Respondents :Mr.M.Mohamed Riyaz,
(in both Crl.OPs) Additional Public Prosecutor for R1
Mr.P.Kumaresan for R2 and R3

ORDER

This petition has been filed by the defacto complainant under Section 407 of Cr.P.C., to withdraw the case in C.C.No.229 of 2013 from the file of the Judicial Magistrate No.1, Poonamallee and transfer the same to the Judicial Magistrate, Alandur, or to any other competent court.

2. Heard Mr.S.Anantha Narayanan, learned Senior Counsel assisted by Mr.S.Angamuthu for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the first respondent and Mr.P.Kumaresan for respondents 2 and

3.

3. The learned Senior Counsel for the petitioner has submitted that the third respondent through her power agent (second respondent) entered into a sale agreement with the petitioner on 05.07.2007 and agreed to sell 2.94 acres of land situated in S.No.171/2 A of Thalambur Village of Chengalpattu Taluk, Kancheepuram District. The second respondent made the petitioner to believe as power of attorney of the third respondent and received a sum of Rs.3 Crores 50 Lakhs as advance and later the petitioner came to know that the second respondent was neither power agent of the third respondent nor owner of the land. He further submitted that after entering into sale agreement with the petitioner, the respondents 2 and 3 sold the property to one G.S.K.Velu under a registered sale deed dated 23.01.2009 and thereafter, the respondents 2 and 3 failed to return the amount, however, the second respondent issued three cheques, out of which, two cheques were returned unpaid and third cheque was returned with an endorsement "stop payment". He further submitted that the respondents 2 and 3 cheated the petitioner and hence, the petitioner has lodged a complaint before the first respondent and based on the same, a case was registered in Cr.No.484 of 2012 under Sections 406, 506 (i) and 420 r/w. 34 of IPC. He further submitted that after investigation, the first respondent has filed a charge sheet and based on the same, the learned Judicial Magistrate, Poonamallee, has taken the case on file as C.C.No.229 of 2013.

4. The learned Senior Counsel for the petitioner has further submitted that the case is pending for trial. The first respondent collected certain important new facts and materials, which would show that the accused persons (respondents 2 and 3) did not have title over the said land and the said land has been classified as "ANADEENAM" land and the same was evident by the Order of Sub-Collector, Chengalpattu, dated 09.05.1981 and the same was confirmed by the Commissioner for land Administration by the order dated 25.09.1998. He further submitted that the aforesaid proceedings would show that the aforesaid land does not belong to the respondents 2 and 3, but with a view to cheat the petitioner, have fabricated the patta in their names and induce the petitioner to enter into a sale agreement and received a huge amount of Rs.3 Crores and 50 Lakhs as advance.

5. The learned Senior Counsel for the petitioner has further submitted that on 25.07.2018, the aforesaid case was posted for continuation of Chief Examination of PW6 before the trial court and on that date, the Assistant Public Prosecutor has filed a petition seeking permission for further investigation. On that date, LW4 was present in the court, but the learned Magistrate insisted the Assistant Public Prosecutor, to examine LW4 without adjudicating the petition which was filed seeking permission for further investigation.

Hence, the learned Assistant Public Prosecutor refused to examine LW4. The learned Magistrate has directed the Inspector of Police to examine the LW4. Accordingly, she examined the said witness which is against the provisions of Section 302 of Cr.P.C., He further submitted that when the cheques were returned by the bank, the first accused has chatted with the petitioner by sending SMS and the petitioner has produced the text messages of SMS to the Investigating Officer, but he failed to produce before the court and hence the petitioner has filed CrI.MP.No.550 of 2019 to recall him for further examination to mark the text messages of SMS and also mobile bills, but the learned Magistrate has dismissed the said petition under the pretext that the petitioner has not stated with regard to the text message in his statement recorded under Section 961 (3) Cr.P.C., He further submitted that the petitioner has stated in his statement recorded under Section 161(3) Cr.P.C., and also in his deposition with regard to sending of SMS to the first accused.

6. The learned Senior Counsel for the petitioner has further submitted that the prosecution realised that inadvertently failed to produce those documents and hence filed a petitioner under Section 173(8) Cr.P.C., seeking permission to conduct further investigation and to file supplementary report to the court but the same was returned on the ground of maintainability and trivial defects. The prosecution is very much entitled to file petition for further investigation even during trial. He further submitted that the conduct of the learned Judicial Magistrate made the petitioner to believe that the accused persons have ample political power to influence the learned Judicial Magistrate and further, the said Magistrate is not a straight forward person. In this regard, the petitioner has already sent two complaints dated 13.11.2018 and 24.12.2018 to the Registrar General of this Court. Thereafter, the petitioner has sent one more complaint dated 10.07.2019 to the Registrar (Vigilance) of this court.

7. The learned Senior Counsel for the petitioner has further submitted that the first respondent has filed CrI.MP.No.1998 of 2019 seeking permission for further investigation but the learned Judicial Magistrate has dismissed the said petition. The first respondent has filed another petition in CrI.MP.No.2297 of 2019 to bring the text messages of chatting between the petitioner and the second respondent regarding repayment of the advance amount and the said petition was also dismissed by the learned Judicial Magistrate by the order dated 18.06.2019. He further submitted that the prosecution has filed another petition under Section 216 of Cr.P.C., to alter the charges under Section 406, 420, 506 (i) r/w. 34 IPC (2) under Section 294 (b) 406, 420, 386 and 506(i) IPC r/w 34 of IPC as early as on 09.08.2019 itself but the learned Judicial Magistrate without passing any order on the said petition, she proceeded with the

case and questioned the accused persons under Section of 313 of Cr.P.C.,

8. Under the aforesaid circumstances, the petitioner has filed petition before the Chief Judicial Magistrate, Tiruvallur, to transfer the case to some other court and the same was dismissed by the learned Chief Judicial Magistrate. He further submitted that the third respondent through her power agent (second respondent) has purchased an extent of 1.25 acres of the land from one Venkatesan (PW12) under a registered sale deed dated 03.05.2006. Inadvertently the said document has not been submitted along with the charge sheet. The said document has been marked through PW12. Hence, on 03.09.2019 the prosecution has filed an application under Sections 173 (5) and 311 of Cr.P.C., to recall PW12 and to mark the aforesaid document, but the learned Judicial Magistrate has partly allowed the said petition only to mark the said document through PW13, but, she refused to allow the petition to recall PW12. He further submitted that the petitioner believed that the respondents 2 and 3 have ample political power to influence the Presiding Officer of the court and the learned Judicial Magistrate has not followed the procedures properly and under the said circumstances, if the aforesaid case is conducted before the said court, the case will be resulted in acquittal and therefore he prayed to transfer the said case to the court of Judicial Magistrate, Alandur or to any other competent court.

9. Per contra, Mr. P.Kumaresan, learned counsel for the respondents 2 and 3 has submitted that the petitioner has not come to the court with clean hands and he filed the present petition by suppressing the material facts. He further submitted that the first respondent initially did not register the case and only based on the order passed by this court in CrI.O.P.No.17945 of 2012, the first respondent has registered the case in Cr.No.484 of 2012. He further submitted that after investigation, the first respondent has laid a charge sheet and based on the same, the case was taken on file and when the case was pending for trial, the petitioner herein has filed CrI.OP.No.3836 of 2018 to direct the trial court to dispose of the case expeditiously. This court by the order dated 05.04.2018 has allowed the said CrI.OP.No.386 of 2018 and directed the trial court to complete the trial within a period of six months and thereafter, the petitioner did not cooperate to dispose of the aforesaid case as directed by this court.

10. The learned counsel for the respondents 2 and 3 has further submitted that even though the petitioner appeared before the trial court on several hearings in person, he did not come forward to adduce evidence and the Assistant Public Prosecutor also has not come forward to examine the petitioner as PW1. Further L.Ws 2 to 5 also not appeared in spite of service of summons and hence, the learned Judicial Magistrate has issued bailable warrants and secured them and

thereafter, the said witnesses were examined before the court. He further submitted that the petitioner has filed an application under Section 301 Cr.P.C., seeking permission to assist the prosecution and the same was allowed and subsequently, he filed another application by engaging some other counsel, since no consent was obtained from the previous counsel in the vakalat, the said petition was returned. He further submitted that on 25.07.2018, though the petitioner herein was appeared before the court, the Assistant Public Prosecutor did not examine him as witness and on the contrary, he filed a petition under Section 173 (8) Cr.P.C., He further submitted that the said petition was dismissed by the learned Judicial Magistrate and thereafter, citing the said reason, the petitioner has filed Tr.CMP.No.596 of 2018 on the file of the Chief Judicial Magistrate, Tiruvallur and the same was dismissed by the Chief Judicial Magistrate, Tiruvallur on 20.09.2018. He further submitted that the learned Chief Judicial Magistrate has directed the petitioner to cooperate for disposal of the case as directed by this court, but even thereafter, the petitioner did not cooperate and he filed petition after petition either by himself or through Assistant Public Prosecutor with a sole intention to drag on the proceedings.

11. The learned counsel for the respondents 2 and 3 has further submitted that the oral evidence of PW9 and Ex.D5 would clearly show that the accused persons have paid Rs.90 Lakhs more than the amount due to the petitioner and only after examination of PW9, the petitioner has adopted dilatory tactics. He further submitted that against the dismissal of the Tr.CMP.No.596 of 2018 by the Chief Judicial Magistrate, Tiruvallur, the petitioner has filed Crl.OP.No.23232 of 2018 before this court and when the said petition came up for hearing, the petitioner has withdrawn the said petition and hence the petitioner is not entitled to file the present petition for the same relief. He further submitted that the learned Judicial Magistrate has dismissed the petition in Crl.MP.No.1998 of 2019 which was filed by the first respondent seeking permission of the court for further investigation. As against the dismissal of the said petition, the first respondent herein has filed Crl.RC.No.764 of 2019 before this court and when the said revision case came up for hearing, this court was about to dismiss the said Criminal Revision Case on merits with an exemplary costs and at that time, the learned Government Advocate (Crl.Side) sought permission to withdraw the case and accordingly, the said case was dismissed as withdrawn. He further submitted that the Assistant Public Prosecutor colluded with the petitioner and filed petition after petition. He further submitted that the Assistant Public Prosecutor has filed Crl.MP.No.549 of 2019 to recall P.Ws.5 and 6 and the same was allowed by the Judicial Magistrate, by the order dated 12.02.2019. The Assistant Public Prosecutor has filed Crl.MP.No.550 of 2019 to recall PW10 (petitioner herein) and the same was dismissed. He further submitted that

the Assistant Public Prosecutor has filed one more application in CrI.MP.No.551 of 2019 to summon Sub-Registrar and Officer of BSNL to produce certain documents and the said petition was dismissed. He further submitted that the petitioner with a view to drag on the proceedings has made false allegations against the Judicial Magistrate and sent complaints to this court and having failed in his attempt to get transfer of the Judicial Magistrate, he filed this petition to transfer the case and therefore, he prayed to dismiss the petition.

12. The learned Additional Public Prosecutor who is appearing for the first respondent has submitted that he leave it to the discretion of the court.

13. It is seen from the typed set of papers filed by both the parties, the petitioner herein has filed CrI.OP.No.3836 of 2018 before this court to direct the Judicial Magistrate No.1, Poonamallee, to complete the trial as expeditiously as possible in C.C.No.229 of 2013. This court by the order dated 05.04.2018 has allowed the said petition and directed the trial court to complete the trial in C.C.No.229 of 2013 within a period of six months and also directed the accused persons to cooperate with the trial court and cross examine the prosecution witnesses, on the day, they are examined-in-Chief as held by the Hon'ble Supreme Court in Vinod Kumar Vs. State of Punjab 2015 (1) MLJ (CrI) 288 and also directed the accused that they shall not adopt any dilatory tactics. It appears that the accused persons have complied with the aforesaid directions without deviation. On the contrary, the petitioner who is being the defacto complainant has adopted dilatory tactics. After obtaining order from this court for speedy disposal of the case, the petitioner should have cooperated for early disposal of the case but the diary extract of the trial court shows that eventhough the petitioner has appeared in person before the trial court on several hearings, he did not enter into the witness box. The Assistant Public Prosecutor also has not insisted the petitioner to examine himself as witness before the court. Eventhough the petitioner herein has been cited as LW1 in the charge sheet, since he did not cooperate for examining himself as PW1, it appears that the learned Judicial Magistrate, has proceeded to examine other witnesses. After examination of some of the witnesses, the learned Assistant Public Prosecutor has filed petition under Section 173 (8) Cr.P.C., seeking permission for further investigation and the same was numbered as CrI.MP.No.1998 of 2019 and refused to examine LW4, even though the said witness was present before the court. Under the said circumstances, the learned Judicial Magistrate has directed the Inspector of Police to examine the said witness.

14. It is also to be pointed out that the Inspector of Police has filed an affidavit before the trial court stating that the whereabouts of the L.Ws 5 and 6 are not known

and to that effect also filed a certificate of the Village Administrative Officer and even thereafter, the Assistant Public Prosecutor did not come forward to dispense with the said witnesses and taking into consideration of the affidavit of the Inspector of Police and the Certificate of Village Administrative Officer, the trial court has dispensed with the said witnesses suomotu and proceeded with the case. The diary extract further shows that after examination of the Investigating Officer, the evidence on the side of the prosecution was closed and the accused were questioned under Section 313 of Cr.P.C., and thereafter, the matter was posted for examination of the witnesses on the side of the accused and at that stage, the Assistant Public Prosecutor has filed three petitions in Crl.MP.Nos.549, 550 and 551 of 2019. The Crl.MP.No.549 of 2013 was filed to issue summons to LW5 and 6; Crl.MP.No.550 of 2019 was filed to recall PW10 (petitioner herein); Crl.MP.No.551 of 2019 was filed to summon the Sub-Registrar, Tiruporur and Officer of BSNL to produce certain documents.

15. The learned Judicial Magistrate after recording the fact that eventhough the Inspector of Police has filed an affidavit stating that the aforesaid witnesses are not available and the Village Administrative Officer also has issued certificate to that effect, but in order to satisfy the prosecution, she allowed the said application directing the prosecution to produce the aforesaid witnesses within 15 days. However, she dismissed Crl.MP.Nos.550 of 2019 and 551 of 2019. Challenging the dismissal of Crl.MPs.550 and 551 of 2019, the first respondent has not filed any Crl.OP before this court. On the contrary, the petitioner herein who is being the defacto complainant has filed Crl.OP.No.26567 of 2019 to set aside the order passed by the trial court in Crl.MP.No.550 of 2019.

16. It is also to be pointed out that when the petition filed by the first respondent seeking permission of the trial court for further investigation in Crl.MP.No.1998 of 2019 was pending, he filed another petition for the same relief in Crl.MP.No.2297 of 2019. The learned Judicial Magistrate, has dismissed both the said petitions by a common order dated 18.06.2019. Eventhough the learned Judicial Magistrate has dismissed the Crl.MP.Nos.1998 and 2297 of 2019 by a common order, the first respondent herein has filed Crl.RC.No.764 of 2019, challenging the order passed in Crl.MP.No.1998 of 2019 alone. He did not file any revision against the dismissal of Crl.MP.No.2297 of 2019.

17. In Crl.RC.No.764 of 2019, this court has passed an order on 06.08.2019 as follows:

"2. When this Court was about to dismiss the case on merits with exemplary costs, since this Court did not find any infirmity in the well considered order passed by the learned Judicial

Magistrate No.I, Poonamallee, the learned Government Advocate

(Crl.Side) sought permission of this Court to withdraw this petition and she has also made an endorsement to that effect.

3. In view of the above submission and endorsement made by the learned Government Advocate

(Crl.Side) this petition is dismissed as withdrawn. Connected miscellaneous petition is closed."

18. From the aforesaid order, it is clear that when this court was about to dismiss the said Revision case on merits with exemplary costs, the learned Government Advocate (Crl.Side) sought permission to withdraw the case and accordingly, the said case was dismissed as withdrawn.

19. It is also to be pointed out that the petitioner herein has filed Crl.OP.No.23232 of 2018 before this court challenging the dismissal of Tr.Crl.MP.No.596 of 2018 by the learned Chief Judicial Magistrate, Tiruvallur to transfer the case in C.C.No.229 of 2013 to some other court. When the said petition came up for hearing before this court on 03.10.2018, the learned counsel appearing for the petitioner sought permission to withdraw the said petition and accordingly, the said petition was dismissed as withdrawn with liberty to file a fresh petition, if a fresh cause of action arises.

20. Relying upon the said observation, the learned Senior Counsel for the petitioner has submitted that since this court has granted liberty to file a fresh petition to the petitioner, the petitioner has filed the present petition. He further submitted that after dismissal of the Crl.OP.No.23232 of 2018, the first respondent has filed number of petitions before the trial court and all those petitions were dismissed and hence fresh cause of action has arisen for filing the present petition.

21. It is true that after dismissal of Crl.OP.No.23232 of 2018, the first respondent has filed Crl.MP.Nos.549 to 551 of 2019 and Crl.MP.Nos.1998 and 2297 of 2019 and that the learned Judicial Magistrate has allowed Crl.MP.No.549 of 2019 alone, however, she dismissed the other petitions. The first respondent has filed Crl.RC.No.764 of 2019 challenging the order passed in Crl.MP.No.1998 of 2019 alone, he has not filed any Revision challenging the dismissal of other petitions. Further, that in Crl.RC.No.764 of 2019, when this court was about to dismiss the case on merits with exemplary costs, the learned Government Advocate (Crl.Side)

sought permission to withdraw the case and accordingly, the said case was dismissed as withdrawn.

22. Further, as admitted by the petitioner in his petition, he has already sent two complaints against the learned Judicial Magistrate to the Registrar General of this court and one complaint to the Registrar (Vigilance) of this court, It appears that the petitioner has sent those complaints on the fond hope that this court, on taking action on the said complaint, the concerned Judicial Officer will be transferred to some other court, but the said Judicial Officer has not been transferred. It is also to be pointed out that the petitioner himself has stated in paragraph No.17 of his affidavit that he gave a letter before the trial court requesting to transfer the case to some other court. The conduct of the petitioner shows that having failed in his attempts to transfer the case by filing transfer CMP before the Chief Judicial Magistrate and Criminal Revision Case before this court, and sending complaints to the Registrar General and Registrar (Vigilance) of this court, has filed the present petition to transfer the case to some other court.

23. As already pointed out, the petitioner himself has filed Crl.OP.No.3836 of 2018 to direct the Judicial Magistrate to dispose of the case at early and after getting such an order in his favour, it would not be fair on the part of the petitioner to drag the case by adopting dilatory tactics by sending the complaints against the Judicial Magistrate and also filing petitions through Assistant Public Prosecutor. It is seen from the diary extract of the trial court, already the case reached the stage of arguments. Under the said circumstances, the petitioner has to cooperate for the disposal of the case. In case, the case ended in acquittal, he is having remedy to file an appeal. Hence, this court does not find any merit in this petition.

24. For the aforesaid reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gv
To

1.The Inspector of Police,
C.C.B., EDF-II, Team - III,
Vepery, Chennai,
Cr.No.484/2012

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Judicial Magistrate Court-I,
Poonamallee.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Angamuthu , Advocate SR.No. 7132

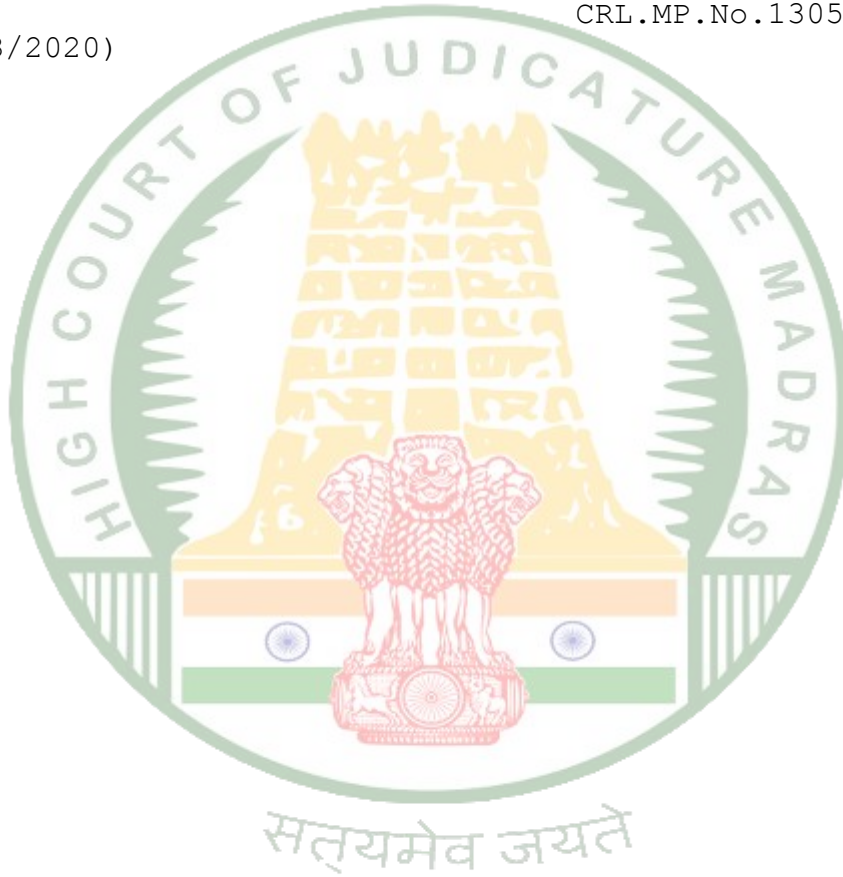
+1cc to Mr.P.Kumaresan , Advocate SR.No. 7881

CRL.OP.No.24570 of 2019

and

CRL.MP.No.13053 of 2019

A.SK(05/03/2020)



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