



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.19358 of 2016

and

Crl.MP(MD)No.9716 of 2016

WEB COPY

Manimaran

... Petitioner/Accused No.3

Vs

1.State,

rep by Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.
(Crime No.125 of 2011)

... 1st Respondent/Complainant

2.R.Asaimurugan

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. call for the records relating to C.C.No.370 of 2013 pending on the file of the learned Judicial Magistrate No.I, Usilampatti and quash the same.

For Petitioner : Mr.S.Mahendrapathy

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.370 of 2013 pending on the file of the learned Judicial Magistrate No.I, Usilampatti.

2.The learned counsel for the petitioner would submit that initially the 2nd respondent lodged a complaint without mentioning the name of the petitioner. The said complaint was enquired by the 1st respondent and closed the same. Aggrieved by the same, the 2nd respondent filed a private complaint and the same was forwarded under Section 156 (3) of Cr.P.C., to the 1st respondent for registering the case and further investigation. In the complaint, there is absolutely no allegations and no averments as against the petitioner. After registration of FIR, now the petitioner has been implicated as an accused as A3 with allegation that he also conspired with other accused persons and impersonated as the original owner of the property and executed a sale deed infavour of the 1st accused. He further submitted that except the confession of



1st accused, there is absolutely no material as against the petitioner to attract any of the offence as alleged by the prosecution. Therefore, the entire proceeding is clear abuse of process of law and it cannot be sustained as against the petitioner.

3.The learned Government Advocate (Crl.Side) appearing for the 1st respondent would submit that the defacto complainant got power from the legal heir of one Valliyammai and executed sale deed in favour of the defacto complainant in respect of the property comprised in S.No.119/2A, 119/2B and 119/2C to the extent of 8.75 acres situated at Nagalapatti, Usilampatti Taluk, Madurai District. While being so, in the year 2002, A4 impersonated as the said Valliyammai and sold out the property in favour of the A1 on the instigation of A2, in which, A5 and A6 stood as witnesses. The entire transactions took place with the assistance of A3. Therefore, all the petitioners have played a specific role and conspired together and committed the crime. Further, the point raised by the petitioner herein cannot be considered by this Court under Section 482 of Cr.P.C, since all the grounds are mistake of question of fact. Though notice served, the 2nd respondent has not appeared neither in person nor in counsel.

4.There are totally 6 accused, in which, the petitioner arrayed as A3. The case of the prosecution is that the subject property was originally owned by one Valliyammai and after her demise, the legal heirs of the said valliyammai executed power of attorney in favour of the defacto complainant and through power of attorney, they executed a sale deed in favour of the defacto complainant in the year 2011. Thereafter, the defacto complainant found that the accused persons impersonated as the said Valliyammai, who died long back in the year 1998 and executed the sale deed infavour of A1. On the instigation of A2, A5 & A6 stood as witnesses to the said transactions. A3 conspired with other accused persons and impersonated as the defacto complainant. It is seen that the petitioner is arrayed as A3. He has been implicated only based on the confession of A1. Insofar as the other accused persons are concerned, they have played specific roles in the alleged crime. However, subsequently, A1 cancelled the sale deed in favour of the defacto complainant. On the strength of the same, this Court quashed the entire proceedings in Crl.OP(MD).No.7276 of 2015 as against A1. Now on the confession statement made by A1, the petitioner has been implicated as an accused. Except the confession statement of the A1, there are no other materials to implicate the petitioner as an accused.

5.On perusal of the statement recorded in 161 Cr.P.C., it is seen that no one spoke about the petitioner's role in the crime. In this regard, it is relevant to rely upon the judgment of this Court in Crl.OP(MD).No.7276 of 2015 dated 16.10.2015, which reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner is facing trial in C.C.No.370



of 2013 on the file of the Judicial Magistrate No.I, Usilampatti, for the offences under Sections 417, 419, 468, 471 and 474 r/w 34 of IPC.

2. The defacto complainant is the second respondent herein. His case is that he is the real and actual owner of the property in question. The same was purchased by the petitioner herein. Therefore, he caused registration of Crime No.114 of 2011 before the Usilampatti Taluk Police Station. Investigation was taken up and final report came to be filed not only against the petitioner but also against the four others. Cognizance of the offence was taken and the case was taken on file. To quash the impugned proceedings as far as he is concerned, this criminal original petition has been filed.

3. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the defacto complainant and the learned Government Advocate (Crl.side) for the respondent.

4. The petitioner's counsel states that he is only a bonafide purchaser. He was misled by the agents. In order to show his bonafide, the petitioner had also executed the cancellation deed, dated 08.05.2014 in favour of the defacto complainant. Thus, according to the petitioner's counsel, the petitioner is no longer having any interest in the property and that, he is not challenging the right title interest of the defacto complainant. Since the petitioner is only a purchaser of the property and since he has shown his bonafide by cancelling the entire offending transaction, I am of the view that the continuation of the impugned proceedings would amount to abuse of legal process as far as the petitioner is concerned. In this view of the matter, the impugned proceedings stand quashed as far as the petitioner is concerned.

5. The petitioner's counsel gives an undertaking, on instructions that the petitioner would appear before the trial Court as witness and depose as to what had actually happened. This undertaking is recorded. It is made clear that the co-accused will not be entitled to take benefit of this order. The proceedings will go on against the remaining accused. Since the case is of the year 2013, the Court below is directed to conclude the proceedings on merits and in accordance with law, within a period of eight months from the date of receipt of a copy of this order. This criminal original petition is allowed. Consequently,



connected miscellaneous petitions are closed."

6. The entire proceeding has been initiated as against the petitioner only based on the confession statement of A1 and to corroborate the same, there is no other materials produced by the prosecution. That apart, already the proceedings as against A1 has been quashed by this Court. Further, the judgment cited by this Court, is squarely applicable to this case on hand. Therefore, the entire proceedings is nothing, but, clear abuse of process of law and it cannot be sustained.

7. In view of the above, the proceedings in C.C.No.370 of 2013 pending on the file of the learned Judicial Magistrate No.I, Usilampatti is hereby quashed as against the petitioner herein and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.I,
Usilampatti.

2.Do-Thro-The Chief Judicial Magistrate, Madurai.

3.The Inspector of Police,
Usilampatti Taluk Police Station, Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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and

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SR (CO)

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