



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.11.2020
CORAM
THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.20480 of 2016

and

Crl.M.P.(MD).Nos.10422 and 10423 of 2016

K.A.Balan ... Petitioner/Accused No.6
Vs

1.State represented by its,
The Inspector of Police,
Periyur Circle,
Madurai District. ... 1st Respondent/Complainant

Thavamani (died) ... 2nd Respondent/Defacto Complainant
3.T.Eswari ... 3rd Respondent
4.T.Sathish Kumar ... 4th Respondent
(R3 and R4 impleaded as per order
of this Court dated 15.10.2020, in Crl.M.P.(MD).
No.4286 of 2020 in Crl.O.P.(MD).No.20480 of 2020)

... Respondents

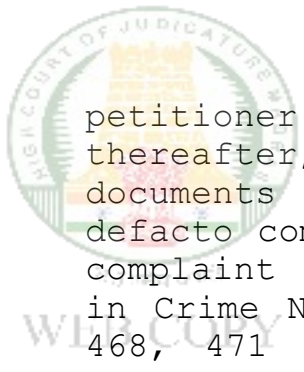
PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records and to quash the proceedings against the petitioner/6th accused in C.C.No.77 of 2016 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur.

For Petitioner : Mr.M.Rajaraman
For R-1 : Mr.KR.Bharathi Kannan
Government Advocate (Crl. Side)
R2 died
For R3 & R4 : No appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.77 of 2016 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur, as against the petitioner/6th accused.

2.The case of the prosecution is that the first accused viz., Thavamani taking advantage of the similarity in the name of the defacto complainant and his name impersonated the defacto complainant and along with A2 to A4, without any title over the property, had executed a power of attorney deed in favour of the fifth accused and the same was registered vide Doc. No.371 of 2008 dated 20.06.2008. Thereafter, the fifth accused in turn has registered the property for valuable sale consideration to the



petitioner herein by registered sale deed dated 25.08.2008 and thereafter, the petitioner has also obtained a patta and other documents got empowered in his name and thereby cheated the defacto complainant and hence, the defacto complainant has given a complaint and the first respondent Police has registered the case in Crime No.149 of 2014 for the offence under Sections 419, 420, 468, 471 r/w Section 34 of IPC as against the petitioner and others and the same has been taken cognizance in C.C.No.77 of 2016 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur.

3.The learned counsel appearing for the petitioner submitted that the petitioner had absolutely no knowledge about the power attorney, which was executed by the first accused in favour of the fifth accused and also he had no knowledge about impersonation committed by the first accused. He further submitted that the petitioner is being a bona fide purchaser and after purchasing the subject property, he is in possession and enjoyment of the property. In fact the petitioner is also paying kist regularly and his name in the subject property. He further submitted that no one spoken about the role played by the petitioner, except he is a bona fide purchaser of the property. Therefore, no offence is made out as against the petitioner. Hence, the entire proceedings is nothing but an abuse of process of Court and the same is liable to be quashed.

4.Though notice has been served on the respondents 3 and 4, but none appeared on behalf of the respondents 3 and 4 either in person or through pleader.

5.The learned Government Advocate (CrI. Side) appearing for the first respondent Police submitted that totally there are six accused in this case, in which, the petitioner has been arrayed as A6. He further submitted that originally the property belonging to the defacto complainant. The name of the defacto complainant as well as the first accused happens to be the same. The first accused impersonated the defacto complainant as if he is the owner of the property and executed power of attorney in favour of the fifth accused with the help of A2 and A3. The fifth accused in turn has executed sale deed in favour of the sixth accused/petitioner herein. Thereby, all the accused with intention to grab the entire property belonging to the defacto complainant. He further submitted that the grounds raised by the petitioner cannot be considered by this Court under Section 482 of Cr.P.C., since all the occurrence are disputed question of facts. Hence, he prayed to dismissal the criminal proceedings.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (CrI. Side) appearing for the



first respondent and none appeared on behalf of the respondents 3 and 4.

7. Totally, there are six accused in this case, in which, the petitioner has been arrayed as A6. The subject property is a vacant land and it was originally owned by the defacto complainant. According to the defacto complainant, he was impersonated by the first accused, since the petitioner is also having same name of the defacto complainant and executed power of attorney in favour of the fifth accused with the help of A2 to A4 on 20.06.2008 vide Doc. No.371 of 2008. Thereafter, the fifth accused in turn has registered the property for valuable sale consideration to the petitioner herein by registered sale deed dated 25.08.2008. After purchasing the said subject property, the petitioner has obtained patta in his name in respect of the subject property and also paying kist regularly. After period of six years, the defacto complainant has lodged a complaint alleging that he was impersonated by the first accused and with the help of the other accused executed power of attorney in favour of fifth accused. On perusal of the patta and kist, the property stands in the name of the petitioner herein and it shows that the petitioner is in possession and enjoyment of the subject property. Further, there is no explanation for the delay in lodgment of the complaint. Since power of attorney executed on 20.06.2008 and sale deed was executed on 25.08.2008, the complaint was lodged in the year 2014. That apart the petitioner is a bona fide purchaser for valuable sale consideration in respect of the subject property and he has been implicated as an accused in this case. On perusal of the statements of the witnesses, it revealed that except allegation, no one spoken about the relationship of the petitioner along with the other accused persons. There is no prima facie material to attract the offence as alleged by the prosecution. Admittedly, the petitioner is a bona fide purchaser for valuable sale consideration of the subject property and now patta and any other documents also empowered in his name. Therefore, the petitioner is a bona fide purchaser of the subject property and he has been falsely implicated in this case and as such the entire proceedings cannot be sustained as against the petitioner and it is a clear abuse of process of law and hence, the petition is liable to be quashed in respect of the petitioner.

8. Accordingly, this criminal original petition stands allowed and the proceedings in C.C.No.77 of 2016 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur, is quashed only as against the petitioner/6th accused alone. However, the trial Court is directed to complete the trial in respect of the other accused persons within a period of six months from the date of



receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsg

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 District Munsif Cum Judicial Magistrate,
Peraiyur.
- 2.The Inspector of Police,
Periyur Circle,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

CrI.O.P. (MD) .No.20480 of 2016
and

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