



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM:

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

Crl.O.P.(MD)No.20876 of 2016

and

Crl.M.P.(MD)Nos.10634 & 10635 of 2016

WEB COPY

1.Saradha
2.Shobana Kumari
3.Vijaya Kumar
4.Ashok Kumar
5.Eburaj @ Baburaj
6.Priyadharshini ... Petitioners/Accused Nos.4 to 9

Vs

1.State of Tamil Nadu,
Rep by the Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.
(Crime No.141 of 2009) ... Respondent/Complainant
2.K.P.Ramachandran Nair ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the Charge Sheet in C.C.No.14 of 2010 on the file of the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District in Crime No.141 of 2009 dated 26.03.2009 on the file of the Respondent No.1 and quash the same as illegal.

For petitioners : Mr.T.Lajapathi Roy
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)
For R2 : Mr.C.Godwin

ORDER

This petition has been filed to quash the proceedings in C.C.No.14 of 2010 on the file of the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District.

2.There are totally 9 accused, in which, the petitioners are arrayed as A4 to A9. Based on the complaint lodged by the second respondent herein, the first respondent registered a case against the petitioners and others in Crime No.141 of 2009, for the offences under Sections 204, 420, 465, 468 and 427 of IPC.

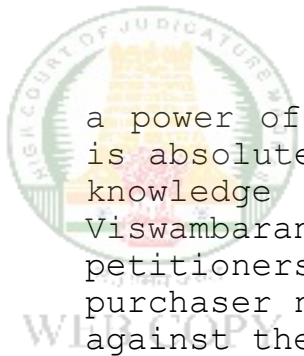
3.The case of the prosecution is that to an extent of 3 acres

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

99.250 cents comprised in R.S.No.551/4, 552/8, 852/9 and 551/3A situated at Agasteeswaram Village, was originally purchased by one Lakshmanan Pillai, by four registered sale deeds vide Document Nos. 3216, 3217 dated 28.09.1978, Document No. 2233 dated 03.10.1978, Document No.2742 dated 09.12.1978 respectively on the file of the Sub Registrar, Kottaram. The said Lakshmanan Pillai died leaving behind his legal heirs. After his demise, the legal heirs sold 10 cents to one Vijayakumar, by the registered sale deed, dated 22.11.1993, vide Document No.3988. They also sold part of the remaining property to one Helan Mary. Thereafter, they were in possession and enjoyment of the remaining property of 3 acres 54.629 cents. Be that as it may, the first accused being the Real estate Broker, sold the remaining property through two sale deeds. On 25.08.2008, when the complainant obtained an encumbrance certificate from the Kottaram Sub Registrar Office for pledging the property for securing loan for the hotel, it was found that the first accused claiming himself as the power agent of legal heirs of the deceased Lakshmanan Pillai and the first accused executed a false sale deed on 30.06.1997, in respect of property to an extent of 50 cents comprised in R.S.No.551/3A in favour of A2 and A3. He also created a similar fraudulent document dated 08.03.1999, in the name of A2 and A3 purporting learned that the first accused brought into existence yet another documents in the name of Viswambaran purporting to convey another 50 cents under document No.2900, dated 17.10.1995. Thereafter, the said Viswambaran died and now, his legal heirs are arrayed as accused Nos.4 to 9. The 10th accused, who is the power holder of accused 4 to 9, has fraudulently created another document No. 2300, dated 09.08.2004, in the name of the 11th accused. The 1st accused had no right to execute any sale deed on behalf of the legal heirs of late Lakshmanan Pillai.

4.The petitioners are arrayed as A4 to A9 and they are legal heirs of late Viswambaran. The said Viswambaran purchased to an extent of 50 cents of the property from the first accused on 17.11.1995 vide document No.2800. After his demise, his legal heirs/petitioners herein was in possession and enjoyment of the property. According to the defacto complainant, the petitioners also colluded with other accused persons have created encumbrance over the property by executing the sale deeds. It is seen that the said Viswambaran purchased the property on 17.11.1995, when the legal heirs of the said Viswambaran were minors and they had absolutely no knowledge about the purchasing of the said property.

5.In fact, the said Viswambaran purchased the property only from the first accused, who was represented as power of attorney of the original owners of the property. Further, the petitioners, who are the legal heirs of the Viswambaran, are not the relative of the first accused. In fact, the first accused is the relative of the original owner of the property. After demise of Viswambaran, his legal heirs/petitioners herein, executed the power of attorney in



a power of attorney in favour of the 11th accused. Therefore, there is absolutely no piece of evidence to show that the petitioners have knowledge in respect of purchase of the said property by Viswambaran. As such, no evidence is made out as against the petitioners, since they are being the legal heirs of the subsequent purchaser namely, Visvambaram and the entire proceedings, pending as against the petitioners cannot be sustained as against them.

6.In this regard, it is relevant to rely upon the case of Bhajanlal Case (1992 Supp (1) SCC 335) held as in ground Nos.1, 3 & 7.

" 1.Where the allegations made in the First Information Report or the complaint, even if they are taken at their fact value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused

3.Where the allegation in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

7.Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7.Therefore, in the case on hand, the entire proceeding is initiated with mala fide intention and as such, it is liable to be quashed.

8.Accordingly the proceedings in C.C.No.14 of 2010 on the file of the Judicial Magistrate No.I, Nagercoil, Kanyakumari District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

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.1,
Nagercoil,
Kanyakumari District.

2.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.

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

+1cc to MR.T.LAJAPATHI ROY, ADVOCATE, SR NO 23087

+1cc to MR.C.GODWIN, ADVOCATE, SR NO 23053

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and
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SSS (CO)

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