



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2020

Delivered on : 11.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.16935 of 2018

and

Cr1.M.P. (MD)No.7486 of 2018

WEB COPY

1.Bashiam, S/o.Sundarrajan
2.Murali @ Muralidharan, S/o.Sundarrajan
3.Gopalakrishnan, S/o.Sundarrajan
4.Pankaja, D/o.Sundarrajan
5.Padmaja, D/o.Sundarrajan
6.Pargavi, D/o.Sundarrajan
7.Kuppan, S/o.Krishnan

... Petitioners/
A1 to A6 & A10

Vs.

1.State Rep. by
The Inspector of Police,
Srirangam Police Station,
Trichy District.
(Crime No.42 of 2018)

... 1st Respondent/
Complainant

2.Srinivasan, S/o.Sadagopan

... 2nd Respondent/
de-facto complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for records pertaining to the F.I.R. in Crime No.42 of 2018, on the file of the first respondent police and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners	: Mr.T.Lenin Kumar
For R1	: Mr.S.Chandrasekar
	Additional Public Prosecutor
For R2	: Mr.P.Arun Jayatram

ORDER

This Criminal Original Petition has been filed seeking the relief, to call for the records pertaining to the F.I.R. in Crime No.42 of 2018, on the file of the first respondent Police and quash the same as illegal insofar as the petitioners are concerned.

2.The petitioners herein are arrayed as A1 to A6 and A10 in Crime No.42 of 2018, on the file of the first respondent Police. Based on the complaint given by the second respondent/de-facto complainant, the said F.I.R. has been registered against the petitioners and three others for the offence punishable under Sections 120-B, 420, 465, 468, 471, 474, 354, 509 and 506(i) I.P.C.



3.The case of the petitioners is that initially, the second respondent's father viz., N.Sadagopan lodged a complaint on 14.03.1998 against the first petitioner and three others before the City Crime Branch, Trichy, alleging that he is the owner of the house bearing Door No.26, S.R. Extension, Malligaipoo Agraharam, Srirangam, Trichy - 6. He purchased the said property from one K.Ponmoorthi through a registered Sale Deed dated 10.06.1983 and rented out the said property to the first petitioner's father viz., K.Sundarrajan, who is arrayed as A2 in the said complaint. As the said K.Sundarrajan defaulted in payment of rent, the second respondent's father - N.Sadagopan wanted him to evict from the house.

4.As the eviction proceedings got delayed, the second respondent's father - N.Sadagopan engaged one K.Devaraj / A9, who was an influential person, to evict the first petitioner's father - K.Sundarrajan. Believing the said K.Devaraj / A9, the second respondent's father - N.Sadagopan executed a Power of Attorney in his favour on 08.08.1997 with a condition that the same should be used only for eviction purpose.

5.On the other hand, the said K.Devaraj / A9 acted in favour of the first petitioner's father - K.Sundarrajan. On coming to know about the same, the second respondent's father - N.Sadagopan cancelled the Power of Attorney on 29.11.1997 and the same was also informed to the said K.Devaraj / A9. Though the Power of Attorney was cancelled on 29.11.1997, the same was registered only on 24.02.1998. In the meantime, the said K.Devaraj / A9 executed a registered Sale Deed dated 04.12.1997 in favour of the first petitioner viz., S.Bashyam and his mother [S.Saroja] and his father [K.Sundarrajan].

6.The further case of the petitioners is that the said K.Devaraj / A9 after knowing the fact that the Power of Attorney executed by the second respondent's father - N.Sadagopan was cancelled, executed the sale deed without consulting the second respondent's father and thereby, cheated him.

7.For the above said occurrence, a case in Crime No.5 of 1998 has been registered for the offence under Sections 420, 406 and 468 read with Section 34 I.P.C. After investigation, the Inspector of Police, City Crime Branch, Trichy, had filed a charge sheet against the said K.Devaraj / A9 before the Judicial Magistrate Court No.III, Trichy and the same was taken on file in C.C.No.336 of 1999. The Trial Court after full-fledged trial, held that the alleged Sale Deed executed by the said K.Devaraj / A9 is within the period in which the Power of Attorney given by the second respondent's father - N.Sadagopan is in existence and acquitted the said K.Devaraj / A9, vide judgment dated 24.09.2003.



8.The learned counsel appearing for the petitioners would submit that though the second respondent is aware of the judgment passed by the Trial Court, dated 24.09.2003 in C.C.No.336 of 1999, he filed one another complaint against the petitioners under Section 156(3) Cr.P.C. before the Judicial Magistrate Court No.III, Trichy. Subsequent to that, the present F.I.R. has been registered against the petitioners.

9.The learned counsel appearing for the petitioners would further submit that earlier, the second respondent filed a suit in O.S.No.1613 of 2006 before the II Additional District Munsif Court, Trichy, seeking the relief of declaration to declare that the Sale Deed dated 04.12.1997, which was executed by the said K.Devaraj / A9, as null and void. Though the said suit is pending for eight years, the second respondent did not proceed with the suit. Thereafter, the said suit was dismissed for default on 05.09.2014. Subsequent to that, no steps have been taken by the second respondent to restore the said suit. Therefore, the impugned F.I.R., which is now required to be quashed, is in violation of Article 20(2) of the Constitution of India and Section 300 of Cr.P.C.

10.Further, the present complaint has been filed by the second respondent after suppressing the entire material facts and also the present complaint is not having any new cause of action. Moreover, since the suit filed by the second respondent was dismissed for default, it should be presumed that the Sale Deed, dated 04.12.1997, is valid one. Therefore, the learned counsel appearing for the petitioners prayed to quash the F.I.R. registered against the petitioners in Crime No.42 of 2018, now pending on the file of the first respondent Police.

11.Per contra, the learned counsel appearing for the second respondent would contend that the present complaint has not been registered for the sale transaction took place between the said K.Devaraj / A9 and the father of the first petitioner - K.Sundarrajan and only for the incident dated 30.04.2016, the second respondent presented the complaint before the Judicial Magistrate Court No.III, Trichy. In the said complaint, it was specifically mentioned by the second respondent/de-facto complainant as the petitioners/accused have tried many times to break open and trespassed into the house and were thwarted by the second respondent/de-facto complainant with the help of Police and neighbours. Further, for the said incident, the second respondent/de-facto complainant and his mother lodged a complaint on 29.05.2015 before the Inspector of Police, Srirangam, for which, there is no action by the Police. Hence, an online complaint was lodged on 27.05.2016 to confer a right to commence appropriate legal action to protect the property rights. Without understanding the



under Section 482 of Cr.P.C., which is not maintainable under the provisions of law.

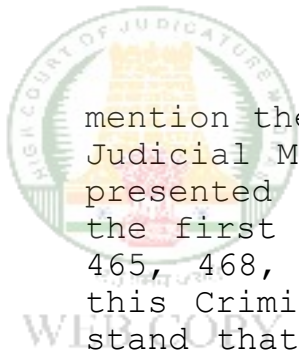
12. Heard the learned Additional Public Prosecutor appearing for the first respondent.

WEB COPY

13. Upon considering the submissions made by the learned counsels appearing on either side, it is not in dispute that earlier, the father of the second respondent - N.Sadagopan purchased the alleged disputed property and thereafter, rented out the same in favour of the first petitioner's father - K.Sundarrajan. Further, it was admitted on either side that the father of the second respondent - N.Sadagopan executed a Power of Attorney in favour of one K.Devaraj / A9 and based on the said Power of Attorney, K.Devaraj / A9 executed a sale deed in favour of the first petitioner's father - K.Sundarrajan. For the said execution, a case has been registered against K.Devaraj / A9, alleging that he committed a fraudulent transaction in favour of the first petitioner's father - K.Sundarrajan. However, after full-fledged trial, the case registered against the said K.Devaraj / A9 ended in acquittal. Further, in the said judgment, it was observed as the Sale Deed was executed within the time in which the Power of Attorney executed by the second respondent's father is in force. Further, the second respondent herein filed a Suit in O.S.No.1613 of 2006 before the II Additional District Munsif Court, Trichy, and the same was not persuaded by the second respondent for a period of eight years and ultimately, the same was dismissed for default on 05.09.2014.

14. After suppressing the entire material facts, the second respondent has presented the complaint before the Judicial Magistrate Court No.III, Trichy, on the very same allegation, alleging that during the time of occurrence, the fraudulent sale had been effected by one K.Devaraj / A9, by using the forged document as if the same was given by the second respondent's father - N.Sadagopan. The crux of the allegation levelled by the second respondent against the petitioners is, the Sale Deed effected in favour of the first petitioner's father - K.Sundarrajan is not within the time in which the Power of Attorney given by the second respondent's father - N.Sadagopan is in force.

15. On a close scrutiny of the F.I.R. registered in Crime No.42 of 2018 would reveal the fact that the second respondent lodged the complaint for the entire occurrence, particularly, in respect of the Sale Deed executed by K.Devaraj / A9 in favour of the first petitioner's father - K.Sundarrajan, alleging that the same was a fraudulent one. Only by placing reliance on the said averment, the present case has been registered against the petitioners for the offences stated supra. Now, the allegation in respect of attempt made by the petitioners to enter into the disputed property, it is



mention the entire details in the complaint given before the learned Judicial Magistrate No.III, Trichy. Further, if the complaint is presented only for criminal trespass, it is also not necessary for the first respondent Police to register a case under Sections 420, 465, 468, 471 and 474 I.P.C. It is made clear that after filing this Criminal Original Petition, the second respondent has taken a stand that the present complaint has not been given in respect of the occurrence happened in the year 1997. In the impugned F.I.R., though it was stated as the alleged occurrence had happened for the period from 30.04.2016 to 13.01.2018, it appears that the act of the petitioners/accused will not attract the offence under Sections 120-B, 420, 465, 468, 471, 474, 354, 509 and 506(i) I.P.C. Therefore, I am of the view that the present F.I.R. has been registered as a second time for the quarrel arose between the petitioners and the second respondent in the year 1997.

16.At this juncture, it is necessary and relevant to see Article 20(2) of the Constitution of India, which reads as follows:-

''20.Protection in respect of conviction for offences.-

(2) No person shall be prosecuted and punished for the same offence more than once''

17.Further, as per Section 300 Cr.P.C., a person once convicted or acquitted not to be tried again for the very same offence. In this regard, it is necessary and relevant to extract below the said Provision.

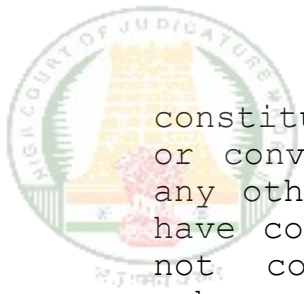
''300. Person once convicted or acquitted not to be tried for same offence.-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence



constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code.

Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.''

Therefore, the above said provision is very clear as no person shall be prosecuted and punished for the same offence more than once.

18. Further, in the case of **Anju Chaudhary Vs. State of U.P. and another** reported in **2013 (1) MLJ (Cr1) 176 (SC)**, our Hon'ble Apex Court has held that there cannot be two F.I.Rs. registered for the same offence. The relevant portion of the said judgment is extracted hereunder:-

'15. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence.''

19. Therefore, the purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two F.I.Rs. registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the F.I.R. recorded first, then a second F.I.R. could be registered. However, if really the second respondent is aggrieved over the execution of sale deed by K.Devaraj / A9, it is not necessary for him to leave the suit for a period of eight years. Therefore, registering the case against the petitioners once again, falls under the category '6 and 7' referred in the judgment of our Hon'ble Apex Court in the case of **State of Haryana and others Vs. Ch.Bhajan Lal and others**



reported in **1992 Supp (1) SCC 335**. The said categories read as under:-

''(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.''

20. Therefore, registering the F.I.R. once again for the very same occurrence is nothing but sheer abuse of process of law and the same is also in violation of well settled position of law. Hence, the proceedings pertaining to Crime No.42 of 2018, shall stand quashed insofar as the petitioners are concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

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 Inspector of Police,
Srirangam Police Station,
Trichy District.

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

CRL OP(MD)No.16935 of 2018
11.09.2020