

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.1003 of 2021
and
CrI.M.P.No.606 of 2021

S.Dhanasekharen
S/o.Late.K.Sambanda Chettiar

... Petitioner

Vs.

The State by:-
The Inspector of Police,
Anti-Land Grabbing Special Cell,
Kanchipuram District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in K2/344/8487/2020/CPT-C.No.290/DSP/ALGSC/KPM/2020 on the file of the respondent and quash the impugned summons dated 11.01.2021.

For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.R.Suryaprakash
Government Advocate

सत्यमेव जयते
O R D E R

The respondent police received a complaint from the Phi Management Solutions, pursuant to which the respondent police has issued the impugned summon to the petitioner calling upon him to attend the preliminary enquiry scheduled on 19.01.2021. Challenging the same, the petitioner has filed this petition to quash the impugned summon.

2. The learned counsel for the petitioner would submit that pursuant to mortgage of the property in favour of the de facto complainant, a complaint is said to have been given against the owner of the property. The petitioner entered into an agreement for purchase of the property with the owner of the property.

Hence, the petitioner is only an agreement holder. The petitioner entered into such agreement without knowing the fact that such property was mortgaged. Further, no complaint has been given against the private party. The de facto complainant, who is the mortgagee, himself had admitted that the owner of the property is M/s.K.J.Developers Limited and he preferred complaint against the owner of the property. As per the Land Grabbing Act, an owner can file the complaint whereas in this case the defacto complainant, who himself admitted that he is a mortgagee of M/s.K.J.S.Developers Limited. Therefore, the complaint preferred by the de facto complainant itself is not maintainable. In support of his submission, learned counsel for the petitioner relied upon the judgment of this Court in CDJ 2015 MHC 4973 [S.Kannan Vs. The State of Tamilnadu, rep.by the Secretary to Government & Others].

3. The learned Government Advocate (Crl.Side) would submit that the respondent received the complaint and the same is at the stage of enquiry. Hence, summon was issued to the petitioner calling upon him to attend the enquiry. Therefore, the present Criminal Original Petition filed challenging the summon issued by the respondent is not maintainable.

4. Heard and perused the materials on record.

5. A perusal of the records shows that the respondent received the complaint and the same is pending at the stage of enquiry and the petitioner was issued with the impugned summon only to attend enquiry. Though it is the contention of petitioner that he is only an agreement holder of M/s.K.J.S.Developers Limited and hence, there is no necessity for him to attend the enquiry and the summon was issued only to harass the petitioner, this Court is of the opinion that once a summon has been issued by respondent police to attend enquiry, it is incumbent upon such person to co-operate with the enquiry. But, in the instant case, the petitioner, without appearing before the respondent police, has filed the present petition. Therefore, this Court is of the considered view that the present petition is pre-mature in nature and not maintainable at this stage. The question whether the complaint is maintainable or not cannot be decided at this stage. Moreover, it is an admitted fact that the de facto complainant has given the complaint only against the owner of the property viz., M/s.K.J.S.Developers Limited and the petitioner was issued with the impugned summon only to attend enquiry. In the aforestated circumstances, this Court finds that the present petition has been filed by the petitioner only to avoid the enquiry. Further, the decision of this Court relied upon by the learned counsel for the petitioner is not applicable to the case on hand.

6. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bri

To

1. The Inspector of Police,
Anti-Land Grabbing Special Cell,
Kanchipuram District.

2.The Public Prosecutor,
High Court Madras.

+lcc to M/s. Balamurugan, Advocate, sr no.4553

Crl.O.P.No.1003 of 2021
and Crl.M.P.No.606 of 2021

PMK (CO)
RMP (29/03/2021)



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