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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.09.2020
Order Pronounced on : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.23878 & 28751 of 2015

Crl.O.P.No.23878 of 2015:

Goa Ocenarium Pvt. Ltd.,
rep. by N.Arul

... Petitioner

Versus

1. K.E.Dayalan
2. Krishnamoorthy
3. State, rep. by
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
(Crime No.89/2015)

... Respondents

Crl.O.P.No.28751 of 2015:

1. K.E.Dayalan
2. D.Krishnamoorthy

... Petitioners

Versus

The State of Tamil Nadu
rep. by The Inspector of Police,
Central Crime Branch,
EDF -III, team-xx,
Vepery, Chennai 600 007.

... Respondent

PRAYER in Crl.O.P.No.23878 of 2015: Criminal Original Petition is filed under Section 439(2) of Criminal Procedure Code, to cancel the bail order granted to the respondents 1 & 2/accused No.1 & 2 in Crl.M.P.No.2346 of 2015 on the file of the Principal District & Sessions Judge at Thiruvallur on 27.08.2015, in Crime No.89 of 2015 on the file of the 3rd respondent.

PRAYER in Crl.O.P.No.28751 of 2015: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to relax the conditions imposed by the Principal Sessions Judge at Tiruvallur in Crl.M.P.No.3313 of 2015 dated 30.10.2015.



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In CrI.O.P.No.23878 of 2015:

For Petitioner : Mr. Shanmuga Sundaram,
Senior counsel.
for Mr. Veerasekaran

For Respondents : Mr. Shajahan, (for R1 & R2)
for Mr. Ramesh Kumar Chopra
: Mr. Mohammed Riyaz, (for R1)
Additional Public Prosecutor

In CrI.O.P.No.28751 of 2015:

For Petitioners : Mr. Shajahan,
for Mr. Ramesh Kumar Chopra

For Respondent : Mr. Mohammed Riyaz,
Additional Public Prosecutor

COMMON ORDER

Criminal Original Petition No. 23878 of 2015 is filed by the de-facto complainant, to cancel the bail order granted to the 1st and 2nd respondents/ accused in Crime No.89 of 2015, who were granted bail by the Principal District & Session Judge, Thiruvallur, on 27.08.2015 in CrI.M.P.No.2346 of 2015.

2.The Criminal Original Petition No. 28751 of 2015 is filed by the accused/A1 & A2 in Crime No.89 of 2015, who had filed CrI.M.P.No.3313 of 2015 before the Principal District & Session Judge, Thiruvallur, seeking relaxation of bail condition. The learned Session Judge by an order dated 30.10.2015, modified the order and directed the petitioners to appear before the Investigation Officer once in a week i.e, on every Monday at 10:30 am, until further orders against which the present petition is filed.

3.Since both the Criminal Original Petitions are arising out of the same Crime No.89 of 2015 and the parties are common, both petitions are disposed of by this common order.

4.The gist of the case is that the land measuring 8 acres and 11 cents in Survey Nos.538/2, 535/1 and 538/1 in Ayanambakkam Village, Ambattur Taluk, Thiruvallur District belongs to one A.S.Samikannu and others. They have entered into an agreement of sale on 25.10.2004 for selling the aforesaid



lands in favour of the first petitioner/Dayalan. As per the agreement of sale, it was agreed by both the purchaser and seller that Rs.16,000/- will be the sale price for one cent of land. On the basis of such agreement of sale, the first petitioner/Dayalan paid Rs.32,00,000/- (Rupees Thirty Two Lakhs Only) as advance sale consideration by way of cheque between 08.03.2005 to 13.07.2006. One of the conditions incorporated in the agreement of sale is that the sale will be effected after the Urban Land Ceiling proceedings initiated against the lands are resolved. According to the proposed purchaser namely first petitioner/Dayalan, even after two years, the ceiling proceedings have not attained finality. Further, even after two years, he could not mobilise the balance sale consideration of about Rs.32 Lakhs. Therefore, with the consent of the land owners, the first petitioner - Dayalan approached the de-facto complainant viz., M/s.Goa Ocenarium Private Limited and requested to purchase the aforesaid lands along with other adjacent lands for Rs.1,69,00,000/-. The de-facto complainant, accepting such an offer, paid the entire sale consideration to the first petitioner by way of cheque as well as cash. However, the first petitioner has failed to complete the sale in favour of the de-facto complainant, rather, sold the aforesaid lands, through his power of Attorney holder/Seenivasan, who is arrayed as A2, in favour of the second petitioner herein/A3, by way of registered sale deed dated 01.12.2006 registered as document Nos.13566 of 2006, on the file of the Sub-Registrar, Ambattur. When it was questioned by the de-facto complainant, the first petitioner threatened them with dire consequences, which resulted in registration of the case.

5.The petitioners were arrested and remanded in the above case on 28.07.2015. Thereafter, the petitioners have moved bail applications before the Judicial Magistrate No.I, Poonamalee and the same was dismissed on 07.08.2015 in C.M.P.No.3350 of 2015. Thereafter, they filed bail application before the Sessions Court which was dismissed on 17.08.2015 in Cr.M.P.No.2183 of 2015. Thereafter, the petitioners have filed another bail application in CrI.M.P.No.2274 of 2015, the same got dismissed on 21.08.2015, before the Sessions Court. The petitioners/accused had filed their fourth bail application in CrI.M.P.No.2346 of 2015 on 27.08.2015, within a period of three days without any change of circumstances filed bail petition one after another. The learned Sessions Judge by an order dated 27.08.2015 granted bail by imposing certain conditions. Against which Criminal Original Petition in CrI.O.P.No.23878 of 2015 is filed by the de-facto complainant for cancellation of the bail.

6.The respondents 1 and 2/accused in CrI.O.P.No.23878 of



2015, were granted bail on 27.08.2015 in CrI.M.P.No.2346 of 2015, directing them to deposit a sum of Rs.25 Lakhs to the credit of Crime No.89 of 2015, before the Judicial Magistrate No.I, Poonamallee and also execute a bond for Rs.25 Lakhs (Rupees Twenty Five Lakhs Only) each, with two sureties each for a like sum to the satisfaction Court and also to appear before the Investigating Officer daily at about 10:30 a.m, till the completion of investigation. Thereafter, the respondents 1 & 2/accused have filed CrI. M.P. No. 3313 of 2015 seeking total relaxation of conditions imposed in CrI.M.P.No.2346 of 2015, dated 27.08.2015, before the Principal District & Session Judge, Thiruvallur. The learned Session Judge, observed that total relaxation is not proper, however, directed the petitioners to report before the Investigation Officer once in a week ie., on every Monday at 10:30 a.m, until further orders. Against which, Criminal Original Petition in CrI.O.P.No.28751 of 2015, is filed by the petitioners/accused.

7.The contention of the petitioner/de-facto complainant in CrI.O.P.No.23878 of 2015, is that the respondents 1 & 2/accused are powerful persons, even thwarting the registration of this case. At the initial stage, the complaint was lodged by the petitioner/de-facto complainant on 13.03.2015, which was kept pending by the respondent police without taking any action. Thereafter, the de-facto complainant's company had filed a direction petition, seeking a direction to direct the respondent/police to register the complaint made by the de-facto complaint/petitioner, before this Court by way of filing CrI. O.P. No. 8442 of 2015. By order dated 01.06.2015, this Court had held that the complaint filed by the de-facto complainant has to be handled by the Commissioner of Police and directed to nominate a competent Officer in the rank of Assistant Commissioner of Police with impeccable integrity and to enquire into the complaint of the de-facto complainant. Thereafter only the case was registered in Crime No.89 of 2015 and the respondents/ accused were arrested and produced before the Judicial Magistrate No.I, Poonamallee. The respondents 1 & 2/accused has filed an application for bail and the same was the dismissed on 07.08.2015. Thereafter, on 10.08.2015, they filed bail application before the District & Sessions Court, Tiruvallur. Finally the application was dismissed on 17.08.2015. On 24.08.2015, the respondents 1 & 2/accused filed another bail application in CrI.M.P.No.2274 of 2015 and the same was also dismissed on 27.08.2015. The respondents 1 & 2/accused once again filed another bail application in CrI.M.P.No.2346 of 2015 before the Principal District & Sessions Judge, Tiruvallur, in which, the petitioner/de-facto complainant filed a intervening petition and objected to grant of bail. On the day, when the order passed in the above said bail application, the learned



Additional Public Prosecutor was on leave, the intervenor/de-facto complainant had appeared and made submissions before the learned Sessions Judge. The learned Sessions Judge after hearing the arguments made by the accused and the de-facto complainant and without hearing the learned Additional Public Prosecutor, the Investigation Officer, who was present in the Court was not enquired, but, granted bail by imposing certain conditions.

8.The contention of the petitioner/de-facto complainant is that the grant of bail to the respondents 1 & 2/accused is erroneous and without application of mind. The learned Session Judge failed to look into the difficulty faced by the de-facto complainant to get the case registered. Only at the intervention of this Court in Crl.O.P.No.8442 of 2015, the complaint dated 12.03.2015 was registered and directed the Commissioner of Police to nominate a competent officer to investigate the case. Earlier this Court also made observations against the respondent/police to close the case, without conducting proper investigation, despite crores of rupees have been cheated, more so, when the substantial portion of the amount have been made through bank payments. The learned Sessions Judge, while dismissing the petition on 17.08.2015 observed that the investigation is at the preliminary stage. On the contrary, within few days bail was granted to the respondents 1 & 2/accused. Further, he submitted that in the case in Crime No.89 of 2015, the investigation was completed and charge sheet filed and the same is taken on file in CC.No.102 of 2019, which is pending before the learned Judicial Magistrate No.1, Poonamallee. During trial, PW.1 to PW.3 were examined and none of the witnesses were cross-examined by the respondents 1 & 2/accused. By filing petition for one reason or other, the trial has been protracted and witnesses have been harassed and they are undergoing untold misery. Further, due to slackness and complacency, the trial is not progressing. The respondents 1 & 2/accused persons are powerful and mighty persons continued to disturb the petitioner/de-facto complainant's peaceful possession. The respondents 1 & 2/accused, by employing muscle men, claiming title, are removing the fencing stone. The de-facto complainant's company personnel are threatened, one of its Director had lodged a complaint before the Thiruverkadu Police station against the acts of the respondents/ accused, who made attempt to enter into the property to put up fencing and construction in the property on 28.08.2020. When the same was questioned by the petitioner/de-facto complainant, the respondents 1 & 2/accused abused and threatened, for which a complaint was lodged and the case in Crime No.89 of 2015 was registered for the offence under Sections 406, 420 and 506(ii) of IPC. Thus, the respondents 1 & 2/accused, despite receiving substantial sale consideration, from the year 2006, not executed



the sale deed, on the other hand, by creating forged documents, encumbered the property. The complaint was given in the year 2015, and the charge sheet was filed in the year 2017, which is pending trial.

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9. In view of the letharginess on the part of the prosecution the accused got emboldened to commit offence of similar nature on 28.08.2020. This would clearly show, the scant respect, shown by the respondents to abide by law.

10. Heard Mr. Shanmuga Sundaram, learned Senior counsel for the petitioner/defacto complainant, Mr. Shajahan, for Mr. Ramesh Kumar Chopra, learned counsel for the respondents 1 & 2/accused and Mr. Mohammed Riyaz, learned Additional Public Prosecutor for the third respondent/State.

11. The respondents 1 and 2/accused in CrI.OP No. 23878 of 2015 and the petitioner in CrI.OP No. 28751 of 2015 submitted that originally the case investigated by the Central Crime Branch Police, who had received a complaint on 12.03.2015. On completion of investigation, the petitioner/de-facto complainant was enquired and it was found that there was no material to proceed with the complaint. It was also found that there was no agreement of sale to sell the land by the respondents 1 & 2/accused to the de-facto complainant. Therefore, the de-facto complainant was directed to approach the competent Civil Court. Accordingly, the complaint was closed on 03.04.2015. Later CrI.O.P No.8442 of 2015 was filed before this Court and obtained a direction, thereafter the First Information Report came to be registered against the respondents 1 & 2/accused. The respondents 1 & 2/accused were arrested in this case on 28.07.2015. Their bail application was rejected by the learned Judicial Magistrate No.1, Poonamallee. The respondents/accused were also taken on police custody for 3 days on 03.08.2015. During the police custody the respondents 1 & 2/accused were forced and threatened to execute sale deeds and transfer the property in favour of the persons identified by one Mr.Desabandu, who is a powerful personality, well connected with the people in power. The respondents thereafter filed a bail application before the learned Sessions Judge. Finally, they were granted bail on 27.08.2015, after 30 days with condition, the respondents 1 & 2/accused, to deposit Rs.25 lakhs to the credit of Crime No.89 of 2015 and also to execute bond for Rs.25 lakhs with two sureties each for a like sum to the satisfaction of the Court. Further, a direction was issued to appear before the investigation officer daily till the completion of investigation.



12. Not satisfied with the same, the de-facto complainant was able to register another complaint in Crime No.118 of 2015, before the Central Crime Branch Police and in that case the respondents 1 & 2/accused were arrested on 25.09.2015. Thereafter, their bail application was dismissed by the learned Judicial Magistrate, Poonamallee on 01.10.2015. In the meanwhile the respondents have filed a Quash Petition before this Court in CrI.O.P.No.24558 of 2015 in Crime No.89 of 2015 and in CrI.O.P.No.24585 of 2015 in Crime No.118 of 2015. Thereafter, Contempt Petition was also filed. On 09.10.2015, the respondents 1 & 2/accused were granted bail by the learned Sessions Judge in CrI.M.P.No.3038 of 2015, on certain conditions and the same complied with. Thereafter, the respondents 1 & 2/accused filed Petition to relax the condition in Crime No.89 of 2015 which was registered based on the complaint dated 13.03.2015 and the same was modified directing the respondents to appear once in a week ie., every Monday. Thereafter, they filed another relaxation petition in CrI.M.P.No.1672 of 2016, before the learned Sessions Court. The Sessions Court, by order dated 04.05.2016 recording the submission of the Investigation Officer, that investigation has been completed, and the respondents 1 & 2/accused complying the condition for six months regularly, totally relaxed the condition, directing the respondents 1 & 2/accused to appear before the Trial Court on receipt of summons. On 19.06.2019, the respondents 1 & 2/accused and other accused appeared before the learned Judicial Magistrate No.1, Poonamallee on receipt of summons in C.C.No.102 of 2019. Thereafter, they are regularly appearing before the Trial Court. On 21.06.2019 charges were framed and the case was posted for examination of witnesses on 17.07.2019. On 17.07.2019, PW1 was examined. For further examination of witness the case was posted to 14.08.2019. Since the witnesses PWs 1 to 3 speak identical facts, a petition filed under Section 242(2) for deferring cross of PW1 On 17.09.2019, PW2 & PW3 examined in Chief. Thereafter, a petition under Section 311 was filed and the same was allowed. From 27.11.2019 to 23.03.2020, witnesses not turned up. After 23.03.2020, due to Pandemic situation, the functioning of the Courts have been restricted only for urgent hearing of cases, therefore, the trial could not progress.

13. The Cancellation of bail application and the relaxation petition have to be dismissed. The cancellation of bail petition has been filed during the investigation. Now, the investigation has been completed, charge sheet filed and the same taken on file. The witnesses also examined.



14.As regards the relaxation petition, subsequent to order passed in Crl.MP No.3313 of 2015, the respondents 1 & 2/accused moved a petition for relaxation before the learned Sessions Court in Crl.M.P.No.1672 of 2016. The Sessions Judge, by an order dated 04.05.2016 granted total relaxation of the conditions. In view of the same, nothing survives for further adjudication in the Crl.OP No.28751 of 2015, filed as against the above said order.

15.The de-facto complainant/petitioner wants some how or other, to keep the petitions pending before this Court and by using the same, to enter into the disputed property. The respondents 1 & 2/accused have lodged complaints before the Thiruverkadu Police, whenever de-facto complainant attempted to enter into the property or cause nuisance or disturbance to the peaceful possession of the property. On 27.09.2017, the sewage water was let out from the tanker, into the disputed property, hence, a complaint in CSR.No.770 of 2017 came to be registered, a complaint was also lodged with PWD, Executive Engineer on the same day i.e., 27.09.2017. On 20.01.2018, another complaint was lodged by the first respondent to the Thiruverkadu Police in CSR No. 27 of 2018. The respondent-police, knowing well about the de-facto complainant using muscle men, failed to take any action. On 27.08.2020, one more complaint was lodged for similar offence in CSR. No.860 of 2020. The de-facto complainant's company director lodged a complaint on 31.08.2020, as though they were abused and threatened on 28.08.2020 by the respondents 1 & 2 /accused and got Crime No.894 of 2020 registered against them, thus, the de-facto complainant is projecting the respondents 1 & 2 /accused as regular offenders. The de-facto complainant lodged false complaints, taking advantage of the pendency of the above criminal original petition and prayed for dismissal of the same.

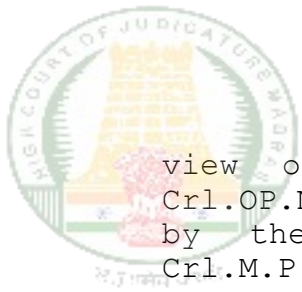
16.The learned Additional Public Prosecutor submitted that in this case huge sums of money are involved running to crores of rupees have been received by the respondents 1 & 2 /accused from the petitioner/de-facto complainant, on the premise that they are the power holders and person in authority for the disputed land. The respondents 1 & 2 /accused have received major portion of the monies through banking channel, later projected that the sale deeds will be executed after the Urban Land Ceiling proceedings are resolved. Once the prohibition lifted, the sale deed will be executed. On the contrary, through power of attorney, sale deeds were executed to one of the close relatives of the respondents 1 & 2 /accused thereby created encumbrance. Now, they are fencing the property, now the value of the property has increased many fold. The respondents



1 & 2 /accused are creating encumbrance, now physically obstructing the de-facto complainant for enjoyment of the property. Initially the case came to be registered as per the direction of this Court. Taking into consideration, the complicity of the offence and the person involved, this Court directed the investigation officer to be in the rank of Assistant Commissioner of Police with impeachable integrity and enquire the case. Thereafter, the investigation was taken up and the respondents 1 & 2 /accused were arrested. The accused have filed barrage of bail applications before the Judicial Magistrate Court as well as Sessions Court. An intervening petition filed by the de-facto complainant before the learned Sessions Judge. The fourth bail application was entertained and granted bail by imposing certain conditions. The respondents 1 & 2 /accused were taken in police custody for three days. After completion of investigation, the charge sheet has been filed and the same taken on file in C.C. No. 102 of 2019 which is pending trial. The accused in this case are adopting dilatory tactics. The witnesses were not cross-examined by giving one reason or other from the year 2019 till today. For cross-examination of PWs 1 to 3, the case is pending. Now, taking advantage of Pandemic situation, the respondents 1 & 2/accused are further delaying the trial. The prosecution is ready to complete the trial within a stipulated period. Further, the respondents are now flushed with funds, and with muscle power, taking advantage of their clout in the area, encroached the property by putting up fencing and constructions. When the same was questioned by the de-facto complainant, they were abused and threatened by the respondents 1 & 2/accused. Thereafter, the complaint was lodged with the Thiruverkadu Police in Crime No.118 of 2019 and investigation is under progress. The respondents 1 & 2/accused have no remorse, on the contrary emboldened, taking advantage of the procedural slackness, now physically entering the disputed land of the de-facto complainant.

17.The learned Additional Public Prosecutor further sought direction of this Court to direct the respondents 1 & 2/accused to abide by the condition not to interfere with the investigation, trial and also further not to violate conditions of bail, in which event the bail to be cancelled against the accused and necessary directions to be issued to the Trial Court to take coercive action against them and also to complete the trial, within a stipulated period.

18.Considering the rival submissions and perusal of materials, it is seen that the investigation in Crime No.89 of 2015 is completed and charge sheet is filed before the learned Judicial Magistrate No.I, Poonamalee in C.C.No.102 of 2019. In



view of the same, nothing survives for consideration in Crl.OP.No.23878 of 2015 filed for cancellation of bail granted by the learned Sessions Judge during investigation, in Crl.M.P.No.2346 of 2015, dated 27.08.2015.

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19.From the bail order, the main contention seems to be that barrage of the bail application have been filed thrice within a short period, initially before the Judicial Magistrate Court and thereafter, the fourth bail application in short span of time was filed before the learned Sessions Judge. The learned Sessions Judge, on the fourth occasion granted bail to the respondents/accused. On that day of granting bail on 27.08.2015, the learned Additional Public Prosecutor was not available in the Court for objecting grant of bail.

20.The bail order is a detailed one. On perusal of the bail order, it is seen that the Court has recorded the events of the case, stage of investigation, the respondents 1 & 2/accused taken to police custody and their statements recorded. The de-facto complainant's counsel appeared and made his submissions and the same is recorded. Further, the payment particulars recorded and the major portion of the amount paid to one Samikannu and one Gopala Krishnan. In order to safeguard the interest of the de-facto complainant, in this case, the learned Sessions Judge directed the respondents 1 & 2/accused to deposit a sum of Rs.25 Lakhs to the credit of Crime No.89 of 2015 and also directed them to execute the sureties for like sum and appear before the respondent/police daily at 10.30 a.m, till the completion of investigation, which has been complied for quite sometime. Thereafter, a modification petition in Crl.M.P.No.3313 of 2015 was filed and the conditions came to be modified directing the respondents 1 & 2/accused to appear on every Monday at 10.30 a.m, instead of appearing daily. Thereafter, this condition was also relaxed by the Sessions Court in Crl.M.P.No.1672 of 2016, by an order dated 04.05.2016, directing them to appear on receipt of summons. Now investigation completed, charge sheet filed, taken on file in C.C.No.102 of 2019 and pending trial, before the Judicial Magistrate No.II, Poonamalee. The respondents/accused are appearing before the Trial Court.

21.The subsequent events which had taken place after registration of the case are separate cause of action. The de-facto complaint's complaint, and counter complaints were filed before Thiruverkadu Police Station. This is mainly with regard to the possession and encroaching into the property, to put up fencing or construction. Be that as it may, as regards, the



subsequent event, it is for the petitioner/ de-facto complainant as well as the respondents 1 & 2/accused to workout their remedy in the manner known to law. With regard to the prayer sought for in the both Criminal Original Petitions, in view of the passage of time and further development, no orders need to be passed and the prayers in these petitions have now become infructuous.

22.On the allegation that respondents 1 & 2/accused were adopting dilatory tactics by giving one reason or other taking the advantage of the pandemic situation, dragging the trial Court proceedings, this Court is inclined to direct the Trial Court to take coercive action, if the respondents 1 & 2/accused in C.C.No.102 of 2019, adopt any dilatory tactics in violation of conditions of bail, which includes, entering into the disputed land, putting up construction or fencing or by creating encumbrance, and other physical activities, causing commotion and law and order problem, having no sense of remorse and respect to the law. Thus, this Court directs the Trial Court to complete the trial, within a period of four months, from the date of normal functioning of the Court proceedings.

23.With the above directions, the Criminal Original Petitions are dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Principal District & Sessions Judge,
Thiruvallur.
2. The Judicial Magistrate no II,
Poonamallee
3. Judicial Magistrate I
Poonamallee
4. The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.



5. The Inspector of Police,
Central Crime Branch,
EDF -III, team-xx,
Vepery, Chennai 600 007.

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6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D. Veerasekaran, Advocate, S.R.No.27537

Cr1.O.P.Nos.23878, 28751 of 2015

GMI (CO)
PM(27/07/2021)