

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2020
PRONOUNCED ON : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.24386 of 2015

1.T.K.Viswanathan
2.R.Venkatesan
3.S.Saravanan
4.V.Sambath Kumar
5.V.Anbalagan ... Petitioners / Accused

Vs.

1.State Rep.by :
The Inspector of Police,
B4, Baluchettychatram Police Station,
Kancheepuram District.
Crime No.260 of 2013. 1st Respondent / Complainant

2.V.R.Rajagopal ... 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the pending F.I.R.No.260 of 2013, dated 25.07.2013, before B4, Baluchettychatram Police Station, Kancheepuram District.

For Petitioner : Mr.G.Thangavel

For Respondent-1 : Mr.K.Prabakar
Additional Public Prosecutor

For Respondent-2 : Ms.G.Vrinda Ramesh

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in F.I.R.No.260 of 2013, dated 25.07.2013, on the file of B4, Baluchettychatram Police Station, Kancheepuram District.

2. The defacto complainant / 2nd respondent was served with Notice on 26.10.2015. M/s.Shyamsundar and Senthil Kumar filed vakalat on 28.10.2015, thereafter failed to pursue the same, keeping the case pending without any progress for all these years would serve no purpose. In view of the same, Ms.G.Vrinda Ramesh was appointed as legal aid counsel.

3. The case of the prosecution is that on 25.07.2013, the 2nd respondent / defacto complainant had given a complaint before the Inspector of Police, B4, Baluchettychatram Police Station, Kancheepuram District, against the petitioners by stating that the defacto complainant along with 1st petitioner, who is the maternal uncle to the defacto complainant, started a Company under the name and style of "Fragrant Farms & Exports (P) Ltd'. For development of the Company, on 19.09.1994, they purchased 5.08 Acres of land in Survey No.447/1, in Ariya Perumbakkam Village. In the said Company, defacto complainant was the Managing Director and the 1st petitioner is a Director. In order to develop the Company, the defacto complainant and the 1st petitioner invited the investors and executed the sale deeds in favour of 27 persons to an extent of 4.61 Acres, on condition that within a period of three years, the consideration amount will be paid and the land will be taken back. As agreed, after three years, the consideration amount was paid to all the investors except three persons. While doing so, the 1st petitioner, in his name executed the power of attorney to an extent of 4.31 Acres, without the knowledge of the defacto complainant and latter, he sold the land in favour of the petitioners 2 to 5. On 19.12.2008, the petitioners 2 to 5 trespassed into the land, cut the trees, damaged the crop by using Bulldozer and demolished the property.

4. The learned counsel for the petitioners submitted that the the petitioner and the defacto complainant had purchased the property as Directors of Fragrant Farms & Exports (P) Ltd., on 19.09.1994. Both the defacto complainant and the 1st petitioner, representing as the Directors of the said Company, in order to develop the Company, invited the investors for the project. Hence, they received the sale consideration amount

from 27 investors and executed 27 power of attorney deeds separately. The petitioners submit that the petitioners 2 to 5 are the bonafide purchasers of the property and after purchase, they are regularly paying kists. He would further submit that the criminal proceedings initiated by the 2nd respondent is nothing but an abuse of process of law for settling a civil dispute.

5. Adding further, the learned counsel for the petitioners submitted that the defacto complainant has already filed a civil suit in O.S.No.581 of 2008, on the file of the District Munsif Court, Kancheepuram, against the petitioners. In the meanwhile, the defacto complainant lodged a complaint by suppressing the above said pending civil suit and intended to mislead the police authority with mala fide intention. It is to be noted that on 30.03.2015, the Suit filed by the defacto complainant in O.S.No.581 of 2008 was dismissed by the learned District Munsif, Kancheepuram. In support of his contention, the learned counsel for the petitioners, invited the attention of this Court to the Judgment of the Hon'ble Supreme Court in the Commissioner of Police & Ors. Vs. Devender Anand & Ors., made in Criminal Appeal No.834 of 2017, dated 08.08.2019.

6. The learned counsel appearing for the 2nd respondent / defacto complainant submitted that the defacto complainant along with 1st petitioner, who is the maternal uncle to the defacto complainant, started a Company under the name and style of "Fragrant Farms & Exports (P) Ltd'. For development of the Company, on 19.09.1994, they purchased 5.08 Acres of land in Survey No.447/1, in Ariya Perumbakkam Village. In the said Company, defacto complainant was the Managing Director and the 1st petitioner is a Director. In order to develop the Company, the defacto complainant and the 1st petitioner invited the investors and executed the sale deeds in favour of 27 persons to an extent of 4.61 Acres, on condition that within a period of three years, the consideration amount will be paid and the land will be taken back. As agreed, after three years, the consideration amount was paid to all the investors except three persons. While doing so, the 1st petitioner, in his name executed the power of attorney to an extent of 4.31 Acres, without the knowledge of the defacto complainant and he sold the land in favour of the petitioners 2 to 5. On 19.12.2008, the petitioners 2 to 5 trespassed into the land, cut the trees, damaged the crop by using Bulldozer and demolished the property.

7. The learned Additional Public Prosecutor appearing for the 1st respondent Police, would submit that based on the complaint given by the 2nd respondent / defacto complainant, a case in Crime No.260 of 2013 has been registered for the offence under Sections 420, 447 and 442 of IPC., and the investigation is going on. He would further submit that the investigation is at the early stage and even if a proceedings has been initiated against a wrong person, the investigation should be allowed to continue to find out the truth.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the materials it is seen that prior to lodging of the First Information Report, the defacto complainant filed a civil suit in O.S.No.581 of 2008, on the file of the District Munsif Court, Kancheepuram. Admittedly, the civil Suit was dismissed on merits. While dealing with the petition filed under Section 482 Cr.P.C., the Court cannot go in the question who is the owner or title holder of the property in question. The defacto complainant and the first petitioner are close relatives. There are some issues between them, for which, this case cannot be used to settle their disputes. Further, petitioners 2 to 5 are subsequent bonafide purchasers, who have nothing to do with the disputes. The petition filed under Section 482 of Cr.P.C., can be considered where any allegation is made in the complaint so as to constitute the offence alleged and to see whether there is any abuse of the court in initiating criminal proceedings. Further, the allegations contained in the First Information Report only disclosed a civil dispute and the de facto complainant availed of that remedy and failed to obtain the relief from Civil Court. The Hon'ble Apex Court in the case of Kishan Singh (D) through L.Rs. Vs. Gurpal Singh & Ors., reported in (2010) 8 SCC 775, on the question, "Whether criminal proceedings can be quashed by the High Court relying upon a finding of Civil Court on an issue involved in criminal proceedings in respect of the same subject matter.", has held in para 24, which reads as follows:-

"24.The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants'

father would not be bona fide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law."

10. In view of the above and for the reasons stated above, the initiation of the criminal proceedings by the complainant is nothing but an abuse of the process of law. Hence, this Court is inclined to quash the proceedings in F.I.R.No.260 of 2013, on the file of B4, Baluchettychatram Police Station, Kancheepuram District.

11. In the result, this Criminal Original Petition stands allowed and the proceedings pending in F.I.R.No.260 of 2013, on the file of B4, Baluchettychatram Police Station, Kancheepuram District, is hereby quashed.

12. This Court places its appreciation to Ms.G.Vrinda Ramesh, the Legal Aid counsel appointed for Respondent No.2, in meticulous preparation and sincere efforts taken in defending and in putting forth her case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

MPK

To

1.The District Munsif, Kancheepuram.

2.The Inspector of Police,
B4, Baluchettychatram Police Station,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

gp (CO)
KK 15.04.2021

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