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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
07.10.2021	26.10.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.6889 OF 2018

1. Suresh
2. Santhosh Kumar .. Petitioners

- Vs -

1. State, rep. By
Inspector of Police
District Crime Branch
Kancheepuram.

2. Venkatesan .. Respondents

Criminal Original Petitions filed u/s 482 Cr.P.C. praying this Court to call for the records in C.C. No.337 of 2015 on the file of the learned Judicial Magistrate No.II, Chengalpet and quash the same.

For Petitioners :Mr. Manuraj

For Respondents :Mr.C.E.Pratap,GA(Crl.Side)for R-1
Mr. V.Raghavachari for R-2

ORDER

The present petition has been filed by the petitioners seeking quashment of C.C. No.337 of 2015 on the file of the learned Judicial Magistrate No.II, Chengalpet.

2. It is the case of the petitioners that the 2nd respondent herein had a requirement for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) for performing the marriage of his daughter for which through one Thanigaivelan @ Ravi, he got introduced to the 1st petitioner/A-1 and though the 2nd respondent proposed to lease out 2 acres of land from out of the 10 acres of land owned by him in Guduvancherry, Perumattunallur Panchayat in turn for getting the amount of Rs.25,00,000/-, A-1 refused to accept the offer and insisted that if at all the 2nd



respondent wants the amount, he may execute a sale deed parting with 2 acres of land in favour of the petitioners. Accordingly, the 2nd respondent parted with the said portion of land in return for valuable consideration of Rs.25,00,000/- in favour of the 2nd petitioner by execution of sale deed, registered as Document No.3150/2009 dated 2.9.09 at Sub Registrar's Office, Thiruporur.

3. It is the further case of the petitioner that the 2nd respondent, alleging that when he approached the petitioners to repay the principal amount along with interest on 25.8.13, the 1st petitioner refused to part away with the said lands by way of reconveyance to the 2nd respondent and, in fact, threatened the 2nd respondent with dire consequences, which resulted in the filing of the complaint on 25.8.13 before the Inspector of Police, B-2, Vishnu Kanchi Police Station, Kancheepuram and enquiry by the said investigating officer led to the conclusion that the dispute is civil in nature and, therefore, the complaint given by the 2nd respondent was closed as mistake of fact and RCS notice was also served on the 2nd respondent/defacto complainant on 27.9.13.

4. It is the further case of the petitioners that aggrieved by the above closure of the complaint, the 2nd respondent preferred a petition before this Hon'ble Court in CrI. O.P. No.8406 of 2013 for appointment of some other investigating agency to investigate the crime committed by the accused/petitioners and this Court has recorded a finding that civil suits in O.S. Nos.130 ad 2012 and 12 of 2013 are pending before the Sub Court, Chengalpet, which materials were perused by the police authorities/investigating agency before closing the complaint, as there was no impersonation, forgery and cheating. However, this Court, gave liberty to the 2nd respondent that if at all he is aggrieved, he may approach the concerned Magistrate by invoking Section 156 (3) or 200 Cr.P.C.

5. In the above backdrop, the 2nd respondent lodged another complaint before the Inspector of Police, Anti Land Grabbing Cell, District Crime Branch, Kancheepuram on 11.12.2013 and as there was no action on the said complaint, CrI. O.P. No.1173 of 2014 was preferred before this Court for a direction to the Inspector of Police, Anti Land Grabbing Cell, District Crime Branch, Kancheepuram to register a FIR on the basis of his complaint dated 11.12.2013 and this Court, vide order dated 4.8.14, observed that as the present complaint is on a different cause of action, direction was given to the police authorities therein to hold preliminary enquiry on the complaint in the presence of the petitioners and the 2nd respondent in accordance with law and the parties were given liberty to produce all the documents at the time of enquiry and subject to the outcome of the enquiry, the respondent police therein was directed to



proceed in accordance with law. However, the 2nd respondent, clubbing both the complaints into a single complaint, subverting the new cause of action, had made the allegations against the petitioners, which has been taken cognizance of by the Judicial Magistrate No.II, Chengalpet, which amounts to abuse of process of Court and, therefore, left with no other alternative, the present petition has been filed by the petitioners.

6. Learned counsel appearing for the petitioners submitted that the sale deed was executed by the 2nd respondent conveying the lands to an extent 2 acres in favour of the 2nd petitioner upon receiving valuable consideration and the same stands established by the sale deed dated 2.9.09. It is the further submission of the learned counsel for the petitioners that the unregistered agreement for sale in respect of the balance portion of lands entered into between the 2nd respondent and accused 3 and 4, who are the son-in-law and daughter of the petitioners cannot be the basis to fasten the complicity on the petitioners, when the transaction between the petitioners and the 2nd respondent was way back on 2.9.09 and that the transaction between A-3 and A-4 and the 2nd respondent was during February, 2012. However, with a devious mind, the 2nd respondent, after losing the prolonged battle to wrest control of the lands sold by him to the petitioners, has infused the complaint with the allegations made against the petitioners in the earlier round of litigation and has compositely made a complaint, which has been taken cognizance of, which is wholly not sustainable.

7. It is the further submission of the learned counsel for the petitioners that the act of A-3 and A-4, though they being the son-in-law and daughter of the 1st petitioner, cannot in any way be clubbed with the act of the petitioners in the purchase of the lands from the 2nd respondent through a registered sale deed, which was properly executed, way back in the year 2009. It is the further submission of the learned counsel for the petitioner that the sale of the lands to the petitioners by the 2nd respondent being put in issue by way of suits before the competent civil court and the observation of this Court in the earlier round of litigation that the issue is purely civil in nature, including the aforesaid act of conveyance of land in the year 2009 along with the present complaint is not only barred by res judicata, but is wholly against the spirit of the direction issued by this Court in Crl. O.P. No.1173/14.

8. It is the further submission of the learned counsel for the petitioners that under the guise of land grabbing, the 2nd respondent has utilised the opportunity to give life to his earlier grievance and made the complaint bringing in an act, which stood already settled by the order of this Court in Crl.



O.P. No.8406/2013. Once the said complaint has been closed by the investigating agency as a mistake of fact, which stood accepted by this Court vide its order dated 2.7.13, the cognizance taken upon issues, which had been given a quietus by directing the parties to agitate their rights before the appropriate civil forum in the suit, not only is the 2nd respondent estopped from giving life to the earlier issue in the present complaint, but the cognizance taken thereof also is wholly unsustainable and clearly reveals the devious mind of the 2nd respondent in trying to achieve something, which could not be achieved in the earlier round of litigation.

9. It is the further submission of the learned counsel for the petitioners that any act allegedly committed by A-3 and A-4 cannot be put against the petitioners and any crime committed by this cannot be fastened on these petitioners, who are not privy to the transaction between the 2nd respondent and A-3 and A-4. It is the further submission of the learned counsel for the petitioners that the transaction between the petitioners with the 2nd respondent is in no way connected with the transaction of the 2nd respondent with A-3 and A-4 and, therefore, taking cognizance of a complaint, in which the petitioners have not role to play, the case requires quashment at the hands of this Court.

10. Learned counsel appearing for the petitioners, to drive home his point canvassed above, placed reliance on the following decisions :-

- i) A.Krishna Rao - Vs - L.S. Kumar (1998
(1) CTC 329)
- ii) Anju Chaudhary - Vs - State of UP &
Anr. (2013 (6) SCC 384)

11. Per contra, learned counsel appearing for the 2nd respondent submitted that the transaction between the petitioners and A-3 and A-4 with the 2nd respondent is a continuing transaction and, therefore, merely citing that the transaction with the petitioners were in the year 2009 and that with A-3 and A-4 was in the year 2012 cannot be a ground to quash the complaint, more so, when A-3 and A-4 are related to the petitioners and with a clear intention to grab the lands of the 2nd respondent, A-3 and A-4 have connived with the petitioners and have entered into the deal with the 2nd respondent.

12. It is the further submission of the learned counsel for the 2nd respondent that the petitioners, on their own volition have given letter to the investigating agency in the year 2012 that they would cancel the sale deed executed by the 2nd respondent in favour of the 2nd petitioner, which is a clear



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indication of the fact that the initial transaction between the 2nd respondent and the petitioners was only with a view to holding the property as security till the amount borrowed by the 2nd respondent was returned. However, without honouring the said understanding, the petitioners, with a view to usurp the property of the 2nd respondent, has retracted from the said understanding and have not reconveyed the property to the 2nd respondent, which is nothing but an act of the petitioners in grabbing the lands of the 2nd respondent through fraudulent means. It is the further submission of the learned counsel for the 2nd respondent that only with a view to grab the balance lands at the hands of the 2nd respondent, A-3 and A-4, in connivance with the petitioners, have entered into the deal with the 2nd respondent. But inspite of the agreement and the power of attorney given to A-3 and A-4, the said accused have not performed their part of the agreed terms and have cheated the 2nd respondent, which resulted in the filing of the complaint.

13. It is the further submission of the learned counsel for the 2nd respondent that the present complaint is not barred by res judicata as the earlier round of litigation was on the basis of the petitioners disinclination to reconvey the lands and the present complaint is on the basis of the accused trying to grab the whole property of the 2nd respondent under the guise of an agreement, which terms, the petitioners and A-3 and A-4 have not fulfilled.

14. It is the further submission of the learned counsel for the 2nd respondent that it is settled law that there is no bar for entertainment of a second complaint on the same cause of action before the investigating agency so long as the same has not been concluded through a proper judicial process by the courts. In the case on hand, it is the submission of the 2nd respondent that the initial complaint against the petitioners having not been deliberated upon on merits by the trial court, the bar being pressed into service by the petitioners cannot be countenanced. On the above submissions, learned counsel appearing for the 2nd respondent vehemently opposed the submissions of the petitioners and prayed this Court to dismiss the petition.

15. To buttress his argument, learned counsel appearing for the 2nd respondent placed reliance on the following decisions :-

- i) Chelliah - Vs - Yesuvadial (1999 CrI. LJ 1013)
- ii) Jatinder Singh & Ors. - Vs - Ranjit Kaur (SLP (CrI.) 4103/1999 - Dt.30.01.2001)
- iii) Alagu Murugesan - Vs - Thanga Pandian, Asst. Commercial Tax (2002 (1) MWN (CrI.) 70)



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- iv) Mahesh Chand - Vs - B. Janardhan Reddy & Anr. (Appeal (Crl.) No. 1276/2002 - Dt. 4.12.2002)
- v) Poonam Chand Jain & Anr. - Vs - Fazru (Appeal (Crl.) No. 371/2004 - Dt. 15.10.2004)
- vi) Ranvir Singh - Vs - State of Haryana & Anr. (SLP (Crl.) Nos. 670-671/2008 - Dt. 01.09.2009)
- vii) Poonam Chand Jain & anr. - Vs - Fazru (SLP (Crl.) No. 1812/2009 - Dt. 28.01.2010)
- viii) Rekha & anr. - Vs - Abdul Wahah & Anr. (Crl. O.P. (MD) No. 7734/2010 - Dt. 30.09.2010)
- ix) Shiva Shankar Singh - Vs - State of Bihar & Anr. (Crl. A. No. 2160/2011 - Dt. 22.11.2011)
- x) Anju Chaudhary - Vs - State of UP & Anr. (2013 AIR SCW 245)
- xi) Mohammed Abdul Hakkeem - Vs - M. Ramachandran (Crl. O.P. (MD) No. 10887 & 12600/2008 - Dt. 20.09.2015)
- xii) V. Ravikumar - Vs - State of Tamil Nadu (Crl. a. No. 111/2011 - Dt. 14.12.2018)
- xiii) Om Prakash Singh - Vs - State of Bihar & Anr. (AIR 2018 SC 3242)
- xiv) Samta Naidu & anr. - Vs - State of MP & Anr. (AIR 2020 SC 2573)

16. On the above contentions, this Court heard the learned Government Advocate (Crl. Side) appearing for the 1st respondent and also perused the materials available on record as also the various decisions relied on by the learned counsel appearing for the parties.

17. The multiplicity of the decisions relied on by the learned counsel for the 2nd respondent relating to the ratio with regard to the entertainment of a second complaint on the same set of facts and cause of action is well settled and this Court is in respectful agreement with the said proposition of law laid down on that aspect. Equally, with regard to the decisions relied on by the learned counsel for the petitioners relating to the bar on entertainment of a complaint for the same cause of action also need not be gone into, as it is evident from the record that the complaint has been given by the 2nd respondent in the year 2013 for the same cause of action initially, which was closed as mistake of fact, whereinafter, after continuous litigations, the present complaint has been filed by the 2nd respondent in the year 2014. The fulcrum of the case of the 2nd respondent rests on the fact that the cause of action, though being the same, however, the issue not having been adjudicated,



there is no bar for entertainment of the complaint for the second time. However, the core issue that needs to be decided in this case is whether a case against the petitioners is made out by the 2nd respondent, even in the second complaint, which necessitates continuance of the complaint and, in turn, the trial by the court below on the cognizance taken by it. In the above backdrop of the issue which falls for consideration, this Court is of the considered opinion that there is no necessity to dwell into the various decisions relied on, as the materials available on record, clinch the issue pointedly.

18. It is not in dispute that the 2nd respondent, through one Thanigaivelan, had approached the petitioners for borrowing a sum of Rs.25,00,000/- for performing the marriage of his daughter, towards which the 2nd respondent had executed a sale deed in favour of the petitioners conveying two acres of land from a lot of 10 acres, which was owned by him. Though it is the case of the 2nd respondent that the said conveyance was executed only as a measure of security, which was to have been reconveyed on the 2nd respondent paying back the principal amount with interest, which the 2nd respondent was ready and willing to do, however, the petitioners were not ready to reconvey the said lands upon receiving the amount, which resulted in the filing of the first complaint in the year 2013.

19. In the above scenario, it is borne out by record that even before the filing of the first complaint, the 2nd respondent had entered into an unregistered agreement for sale in favour of A-3 and also executed a power of attorney in favour of A-4 on 3.2.12. Only after the execution of the said documents, the first complaint has been given against the petitioners. However, in the said complaint, there is no whisper about the acts of the 2nd respondent in entering into an agreement with A-3 and A-4.

20. It is to be pointed out at this juncture that it is even the admitted case of the 2nd respondent that he had borrowed the money from the petitioners by conveying the property to an extent of 2 acres in the year 2009. When the 2nd respondent wanted to return the principal along with interest to the petitioners and seek reconveyance of the property, the petitioners failed to reconvey the lands and threatened him. However, curiously, the complaint has been given by the son of the 2nd respondent, though he was in no way involved in the said transaction nor was oblivious to what had happened when the 2nd respondent had borrowed the money from the petitioners. No material whatsoever in this regard has been placed to substantiate the said stand. Further, the 2nd respondent has not given any complaint as against the petitioners during the year 2013, when the first round of litigation started.



21. Further, the tenor of the complaint given by the son of the 2nd respondent reveals that the property is said to have been given as mortgage to the petitioners as surety towards the amount borrowed from them. However, a perusal of the sale deed executed by the 2nd respondent clearly shows that it is a clear conveyance of land in favour of the petitioners upon receipt of valuable consideration. In the earlier round of litigation, this Court, in Crl. O.P. No.8406/2013, vide order dated 2.7.13, has clearly observed, while adverting to all the facts and circumstances surrounding the case, had held that suits relating to the validity of the sale deeds have been filed in O.S. No.130 of 2012 and 12 of 2013, which are pending adjudication and, therefore, the issue being purely civil in nature between the petitioners and the 2nd respondent, the 2nd respondent was relegated to the appropriate civil forum to agitate his rights before the civil forum and further if the 2nd respondent is aggrieved, it was open to the 2nd respondent to file appropriate petition u/s 156 (3) or 200 Cr.P.C.

22. It is to be pointed out that the complaint was given by the son of the 2nd respondent on 26.9.12 and pending investigation, the above Crl. O.P. No.8406/13 was filed for transfer of investigation, which was declined by this Court for the reasons aforesaid. On the heels of the said decision of this Court, final report was filed before the Judicial Magistrate No.I, Kancheepuram on 27.9.13 in RCS No.42/2013 closing the case as mistake of fact. Upon such a closure report being filed, the 2nd respondent, vide a fresh complaint dated 11.12.13, before the Deputy Superintendent of Police, Anti-Land Grabbing Cell, DCB, Kancheepuram, has raised allegations against the petitioners as well as A-3 and A-4.

23. As already pointed out above, when the first complaint was filed, there was whisper in the same about the act of the 2nd respondent in entering into agreements with A-3 and A-4 on 3.2.12. That being the case, the allegation was levelled only against the petitioners, which was negated by this Court by relegating the parties to agitate their rights before the civil forum.

24. Further, it is borne out by record that after the transaction with the petitioners in the year 2009, the 2nd respondent has entered into certain transactions with A-3 and A-4 in the year 2012 for the sale of the lands to an extent of about 5 acres for valuable consideration. It is further borne out by record that power of attorney has also been executed in favour of A-4 by the 2nd respondent. A perusal of the above transactions clearly reveal that the petitioners are in no way a party to the said transaction. These transactions had happened

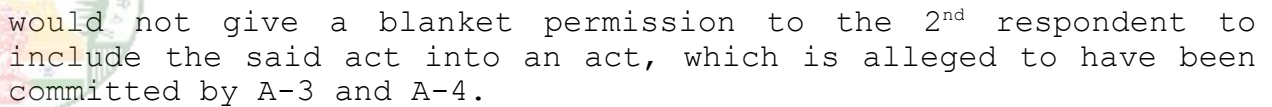


in February, 2012, while the transaction between the petitioners and the 2nd respondent had happened way back on 2.9.09. Further to the filing of the closure report by the police authorities after the dismissal of the case filed by the 2nd respondent, the 2nd respondent had once again filed the complaint, with regard to certain acts of A-3 and A-4 in relation to the purchase of the lands of the 2nd respondent, by including the petitioners as well in the said complaint and dragging the previous transaction between the petitioners and the 2nd respondent, which has no nexus with the transaction between the petitioners and the 2nd respondent. When the petitioners are in no way connected with the transaction entered into between the 2nd respondent and A-3 and A-4, bringing the petitioners within the fold of the said complaint by raking up the previous transaction with the petitioners is wholly unsustainable.

25. Further, based on the petition filed u/s 156 (3) Cr.P.C., FIR has been registered in Crime No.7/2015 by the 1st respondent and final report in C.C. No.337 of 2015 has been filed on the file of the learned Judicial Magistrate No.II, Chengalpet.

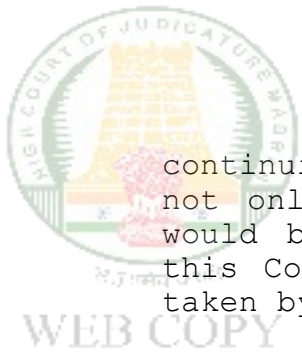
26. Not only has the 2nd respondent roped in the petitioners as alleged aggressors in the land grabbing act in the complaint lodged before the land grabbing cell, but curiously the said act pertains to transaction between the 2nd respondent and the petitioners in the year 2009, which is pending litigation in the suits before the civil court. When civil suits are pending adjudication before the appropriate civil forum, raising allegations against the petitioners for civil acts by giving a criminal colour to the same, when they are not involved in the said act, clearly shows that the 2nd respondent wants to achieve something through the back door, what he could not achieve through the front door.

27. In this regard, a careful perusal of the final report filed by the 1st respondent shows that there is no iota of material to implicate the petitioners with regard to the purchase of the lands from the 2nd respondent to an extent of 5 acres by A-3 and A-4. The said transaction is not in any way connected to the transaction between the petitioners and the 2nd respondent, which happened on 2.9.09. However, the basis of implicating the petitioners is on the basis of the conveyance of lands in favour of the petitioners by the 2nd respondent upon receipt of valuable consideration, which was the issue in the previous round of litigation, which has been given a quietus by this Court vide its order dated 2.7.13 in CrI. O.P. No.8406/13. Merely because the Court had opined that if the 2nd respondent is aggrieved it is open to the 2nd respondent to file appropriate application u/s 156 (3) or 200 Cr.P.C., as the case may be,



29. Be that as it may. After filing CrI. O.P. No.8406/13 against the petitioners and inviting an unfavourable order, the 2nd respondent had, thereafter, filed the present complaint and had sought direction from this Court for registration of the said complaint by filing CrI. O.P. No.1173/2014. This Court is at a loss to understand as to how a complaint is maintainable against the petitioners, when this Court, in CrI. O.P. No.8406/2013 had clearly opined and directed that if at all the 2nd respondent is aggrieved, the proper course open to him is to approach the Magistrate by filing appropriate petition u/s 156 (3) or 200 Cr.P.C. However, the 2nd respondent, without resorting to such an approach, as directed by this Court, had once again filed another complaint, this time before some other law enforcing agency and, thereafter, has filed CrI. O.P. No.1173/2014 seeking direction to register the said complaint.

31. The act of the 2nd respondent in instituting the above proceedings against the petitioners, when they are in no way involved with A-3 and A-4 in the transaction pertaining to sale of the properties between the 2nd respondent and A-3 and A-4,



continuing the complaint and allowing the case to proceed would not only cause hardship and prejudice to the petitioners, but would be wholly an abuse of process of court and, therefore, this Court cannot give its stamp of approval to the cognizance taken by the trial court to continue with the trial.

32. For the reasons aforesaid, this Court is of the considered opinion that the case in C.C. No.337 of 2015 is wholly arbitrary, capricious, unreasonable and unsustainable and, accordingly, the same is liable to be set aside. Accordingly, C.C. No.337 of 2015 pending on the file of the learned Judicial Magistrate No.II, Chengalpet, is quashed and this criminal original petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

- 1.The Judicial Magistrate No.II,
Chengalpet.
2. Inspector of Police
District Crime Branch
Kancheepuram.
3. The Public Prosecutor
High Court, Madras.

+1CC to Mr.S.Manuraj, Advocate, Sr.No.54937

+2CC to Mr.G.Mohanakrishnan, Advocate, Sr.No.54784(17/11/2021)

CRL.O.P.NO.6889 OF 2018

RLD(CO)
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