

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2020

Pronounced on : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P.Nos.5235 & 6504 of 2019

CrI.O.P.5235 of 2019

1. R.Maruthachalam  
2. R.Visalakshi ... Petitioners/Accused 1 & 2

Versus

1. State rep. By  
Rep. By the Inspector of Police,  
Central Crime Branch,  
Coimbatore City,  
Coimbatore District. ... 1<sup>st</sup> Respondent

2. K.Velusamy ... 2<sup>nd</sup> Respondents/Defacto  
Complainant

CrI.O.P.6504 of 2019

1. Sindhu Vinodhini  
2. A.Sathasivam ... Petitioners/Accused 6 & 7

Versus

1. State rep. By  
Rep. By the Inspector of Police,  
Central Crime Branch,  
Coimbatore City,  
Coimbatore District.

2. K.Velusamy ... 2<sup>nd</sup> Respondents/Defacto  
Complainant

Common Prayer: Petitions filed under Section 482 Cr.P.C., to call for the records in Cr.No.40 of 2018 on the file of the 1<sup>st</sup> Respondent and quash the same as illegal, incompetent and abuse of process.

For Petitioners : Mr.R.Singaravelan, Sr. Advocate  
in both Crl.O.Ps. for Mr.R.Jayaprakash

For Respondents : Mr.S.Karthikeyan (for R1)  
in both Crl.O.Ps. Additional Public Prosecutor.  
Mr.K.Doraiswami, Sr.Advocate (for R2)  
for M/s.Muthumani Doraiswami

C O M M O N O R D E R

Both these Criminal Original Petitions have been filed praying to quash the FIR registered in Cr.No.40 of 2019, on the file of the 1<sup>st</sup> respondent police, as illegal.

2. The petitioners 1 and 2 in Crl.O.P.No.5235 of 2019 are arrayed as Accused Nos.1 and 2 in the above referred crime number. Similarly, the petitioners in Crl.O.P.No.6504 of 2019, are arrayed as Accused Nos.6 and 7 in the said FIR.

3. The case of the prosecution in a nutshell, is as follows:

(i) On 15.10.2008, vide Document No.6130 of 2008, the defacto complainant Velusamy along with his wife Vijayalakshmi and daughter G.V.Saranya, purchased a land measuring an extent of 80 cents in S.F.No.352 (part), Ganapathy West Village, Coimbatore. The said property has been purchased by the defacto complainant and others from one Valliammal @ Valliaathaal, Vasanthi, K.Keerthana and K.Jayashri. Originally, the said land has been purchased by one Kandasamy, who is the husband of the said Valliammal from one Arunachala Gounder vide Document No.5887 of 2006. In the SLR Register, maintained in Covai City, the said land was mentioned as TSLR No.40 as corresponding to Survey No.352 (part) and for S.F.No.350/1. After making sub division, the land measuring an extent of 80 cents pertaining to S.F.No.352 was referred in TSLR Register as 40/2 and the same stands in the name of the defacto complainant and his family members. The remaining property in S.F.No.350/1 is classified as TSLR No.40/1.

(ii) Originally the land measuring an extent of 2.66 acre pertaining to S.F.No.350/1 was allotted in favour of one Duraisamy, S/o.Arunachala Gounder in the partition deed, registered in D.No.2912/1978 of Ganapathi Sub Registrar's Office. Vide Document No.2311 of 1992, the said Duraisamy sold the land measuring an extent of one Acre in favour of his brother Palanisamy. Thereafter, he mortgaged the remaining property for loan availed by one Smt.Sridevi Selva (Rithik Agencies) in Central Bank of India, Chithaputhur Branch, Coimbatore. Since the loan account maintained in respect to the Rithik Agencies becomes NPA, the officers attached with Central

Bank of India decided to bring the land which was mortgaged, for auction. In this regard, they sent a letter on 07.03.2006 to Tahsildar, Coimbatore North for measuring the property found in S.F.No.350/1.

(iii) During the time of measuring the property, it was identified that only 86 cents alone available in SF No.350/1. In this regard, the Tahsildar issued a memo to the party concerned to approach the competent forum, for resolving the dispute. However, on 06.03.2012, the bank authorities published the auction notice, in respect to the property measuring an extent of 1.66 acres. In this regard, one Rathnasamy and Marudhachalam who are the neighbouring land owners, sent legal notices to the bank stating that in SF No.350/1 an extent of 86 cents alone is available to the said Duraisamy. Without considering the same, the bank authorities published the auction notice mentioning the particulars that in S.F.No.350/1, a land measuring an extent of 1.66 acres, is to be auctioned for the loan availed by Rithik Agencies.

(iv) In the said auction, the 1<sup>st</sup> and 2<sup>nd</sup> accused participated and were declared as successful bidders. They bought the property for Rs.1,65,75,000/- and in respect to the same, on 13.03.2014, the bank issued the sale certificate, mentioning as in S.F.No.351/1, TSLR Part an extent of land is 1.66 acres. Further the said sale certificate has been registered in SRO, Ganapathi in Document No.1493 of 2016. At the time of registering the sale certificate, the accused inserted the word "TSLR No.40 (part) 1 and 2 Extent 1.66 Ward No.22, Block No.23 and created a forged document. With an intention to evict the defacto complainant, the 1<sup>st</sup> and 2<sup>nd</sup> accused fraudulently created the said document and now when the same was questioned by the defacto complainant, they made a life threat.

4. Heard Mr.R.Singaravelan, learned Senior counsel appearing for the petitioners in both the Criminal Original Petitions; Mr.S.Karthikeyan, learned Additional Public Prosecutor, appearing for the 1<sup>st</sup> respondent and Mr.K.Doraisami, learned Senior counsel appearing for the 2<sup>nd</sup> respondent/defacto complainant and perused the materials available on record.

5. The contentions raised by the counsel appearing on either side and the documents enclosed along with the typed set produced by either side reveal the fact that an extent of 5.93 Acres of agricultural property, which includes the property under dispute was originally owned by one Arumuga Gounder. By way of a registered sale deed he sold an extent of 3.19 acres in SF No.350/1, and extent of 1.57 acres in SF No.351/1, 1.17 acres in SF No.352 to one Thambi Gounder @ Palani Gounder on

10.02.1936. Arunachala Gounder being the sole legal heir of the Thambi Gounder @ Palani Gounder inherited the said property. The said Arunachala Gounder had two sons viz., Palanisamy and Duraisamy. They have partitioned the property among themselves. Schedule 1 properties to the Deed of partition measuring an extent of 3.78 acres in S.F.No.341/1 was allotted to Arunachala Gounder. Schedule 2 properties to the Deed of partition was allotted to Palanisamy and Schedule 3 properties to the Deed of partition was allotted to Duraisamy. Schedule 2 consists of 2.66 acres in S.F.No.350/1 and 0.08 acres in S.F.No.350/2 and 351/2.

6. In so far as property in SF No.352 measuring an extent of 1.17 acres, the same was retained by the said Arunachala Gounder, in other words, it was not included in the partition. Out of this 1.17 acres, he sold 0.80 acres in SF No.352 to one Kandasamy by way of a registered sale deed. The said sale deed was ratified by the Notarised Deed of Ratification dated 08.10.2008 by the legal heirs of the Arunachala Gounder in favour of the legal heirs of P.Kandasamy. The Legal heirs of the P.Kandasamy Gounder viz., Valliammal, the mother, Vasantha, wife and the daughters, sold the property measuring an extent of 0.80 acres in SF No.352 in favour of one Veluchamy, Vijayalakshmi, G.V.Saranya, wherein, the said Veluchamy, is the defacto complainant herein.

7. While the matter stood thus, on 19.11.2004, the above referred Duraisamy who is the son of Arunachala Gounder, had deposited documents of title to his property situated at Ganapathy, Coimbatore, in Central Bank of India, as a security for repayment of cash credit facility granted to M/s.Rithik Agencies Door No.19, 6<sup>th</sup> Street, Thanneer Pandal, Peelamedu, Coimbatore - 4. Only upon the said document the said Arunachala Gounder created an encumbrance in respect to his property.

8. Thereafter, due to the non repayment of the said loan, the bank authorities of Central Bank of India, Sidhapudur Branch, Coimbatore, brought the property measuring an extent of 1.66 acres in SF No.350/1, for auction alleging that the said property was given as a security to the loan availed by M/s.Rithik Agencies.

9. It is the case of the petitioners that out of 2.66 acres, given to the Duraisamy Gounder in SF No.350/1, vide registered partition deed, he sold away one acres of land in favour of his brother vide registered sale deed dated 30.03.1992 and thereby after deducting one acres, the remaining land in SF No.350/1 i.e., 1.66 acres is with the guarantor. The said land alone was given as security for the loan amount of Rs.50 lakhs availed by M/s.Rithik Agencies.

10. On the other hand, it is the case of the 2<sup>nd</sup> respondent that since there was a dispute, with respect to the ownership of Duraisamy in T.S.No.350/1, the Central Bank of India, addressed a letter to the Tahsildar, Coimbatore (North) on 07.09.2006, to clarify as to the total extent of the land belonging to the Duraisamy Gounder in SF No.350/1. The Tahsildar vide his communication in L.Dis.F.L.418/2006/E1 dated 19.02.2007, clarified that the said Duraisamy owns only 86 cents and he does not have right over the remaining 80 cents, which belongs to Ramasamy Gounder. Thus, the bank was put on notice that the security offered is in respect to the 86 cents only and not in respect to the remaining 80 cents.

11. It is the further case of the 2<sup>nd</sup> respondent that the 1<sup>st</sup> petitioner herein / A1, on his part caused a legal notice dated 22.03.2012 issued by his lawyer clearly asserting before the bank that the said Duraisamy is the owner of only 86 cents in SF No.350/1 and therefore the bank can auction only 86 cents in SF No.350/1. Further, after becoming a successful bidder and after receiving the sale certificate in his favour on 11.03.2014, the 1st petitioner herein / A1 inserted the following words.

"New TS No.40 Part 1 & 2 extent 1.66 acres  
Ward No.22 Block No.23"

Thereafter, he registered a sale certificate as if the same was issued by the bank authorities. Accordingly, with an intention to deceive the defacto complainant, the petitioners herein and other accused, have fabricated a false document and attempted to grab the property measuring an extent of 80 cents, which belongs to the defacto complainant.

12. Now, on considering the submission made by the counsel appearing on either side, for disposing these two applications, it is necessary to find out whether the averments found in the FIR has constituted a prima facie case for the offence under Sections 424, 468, 471, 420 and 34 IPC.

13. The documents which have been produced by the petitioners in the additional typed set of papers shows that on 01.04.2014 itself the Thasildar, Coimbatore (North) has issued a proceedings in R.D.R No.682/14, wherein he has stated that the Sub Division 40 is having an extent of 0.7439/0 sq.metres. Further, the said survey number was sub divided as 40/1 and 40/2 measuring an extent of 0.4200.0 and 0.3239.0 sq.metres, respectively. According to the said proceedings, only on 01.04.2014, the said sub divisions i.e 40/1, 40/2 came into effect.

14. In the said circumstances, on 11.03.2014 itself, the sale certificate was issued in favour of the 1<sup>st</sup> petitioner R.Marudhachalam and in favour of the 2<sup>nd</sup> petitioner R.Visalakshi. On the other hand on going through the registered copy of the sale certificate, it appears that the same was issued on 04.03.2016 by the bank authorities, wherein it was mentioned in the description of the immovable property as Old Survey No.350/1 (TSLR No.40 Part) measuring an extent of 1.66 acres in Ganapathy Village was deposited as a security.

15. This Court do not understand under what capacity the authorised officer, Central Bank of India Coimbatore, issued two sale certificates in respect to one property. However, in respect to the extent of land, which was brought under auction by the bank authorities, the defacto complainant herein before lodging the present complaint has filed a suit against the 1<sup>st</sup> petitioner R.Marudhachalam in OS No.1646 of 2012 and the same is pending on the file of the District Munsif, Coimbatore.

16. In the said suit, he had prayed the relief of declaration, declaring that the 2<sup>nd</sup> respondent therein / Central Bank of India, is not entitled to proceed in any manner whatsoever in respect to the property covered under SF No.352, to an extent of 1.17 acres. Further case of the defacto complainant is that the land measuring an extent of 80 cents which was sold to the 1<sup>st</sup> petitioner is within the Survey No.352. The said contention made by the defacto complainant has to be decided only based on his right over the said property. Further, the same can be decided only by the Civil Court. In otherwise, criminal Courts should ensure that proceedings before it are not used for settling the scores or to pressure the parties to settle a civil dispute.

17. It is admitted on either side that in OS.No.1646 of 2012, an Advocate Commissioner has been appointed by the Court, wherein the bank is also a party. Further, since the Thasildar effected sub division only on 01.04.2014 it cannot be said that the auction conducted by the bank authorities during the month of January 2014 is after acquiring the knowledge in respect to the sub division of the property. Therefore, it is crystal clear that the bank initiated auction proceedings before effecting the sub division in TS No.40. Therefore, it is impossible for the bank authorities to know the real issue/dispute having by the defacto complainant.

18. Moreover on 06.03.2013 itself, the defacto complainant herein has sent a letter to the Regional Manager, Central Bank of India stating that they are interested in purchasing the property to an extent of 1.66 acres situated at S.F.No.350/1 in T.S.No.40, Ganapathy West Village, Coimbatore North Taluk,

Coimbatore District for Rs.125 lakhs, infact the said property alone has been mortgaged by Mr.A.Duraisamy as Security for the loan availed by M/s.Rithvik Agencies. Sending of the said letter by the defacto complainant reveals the fact that on 06.03.2013 itself, he knows the details of extent i.e. the SF No.350/1 TS No.40 is having 1.66 acres. In the said situation, now the bank authorities has also brought the property for auction measuring an extent of 1.66 in TS No.40 in SF No.350/1. Therefore, it cannot be held that the bank authorities conducted auction after including the another property. Only upon the assurance and the details averred in the sale notice, the 1<sup>st</sup> and 2<sup>nd</sup> petitioners herein, purchased the property.

19. Therefore, even if the claim made by the defacto complainant is a genuine one, the same has to be settled only in the suit which has been filed by him in O.S.No.1646 of 2012. In otherwise, it cannot be said that the petitioners with an intention to cheat the defacto complainant purchased the property in the e-auction and registered the same after introducing the new TS Number, in the sale certificate issued by the bank authorities.

20. In this connection, it is necessary to see the judgment of our Hon'ble Apex Court in Mohammed Ibrahim and Others Vs. State of Bihar and Another, reported in 2009 (8) SCC 751, wherein it was held as follows:

"When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code."

21. Further in the judgment in Rajeshbhai Muljibhai Patel and Others Vs. State of Gujarat and another, reported in 2020 (3) SCC 794, our Hon'ble Apex Court has held as follows:

"When the issue as to the genuineness of receipts is pending consideration in civil suit, FIR ought not to have been allowed to continue as it would prejudice the interest of parties and the stand taken by them in civil suit."

22. Herein also, when the issue in respect to the extent of property pertaining to SF No.350/1 in TS No.40/1 and 40/2, is the subject matter in OS No.1646 of 2012, it is not necessary to continue the investigation in the present FIR. Though the counsel appearing for the 2<sup>nd</sup> respondent / de facto complainant relied on the judgments of our Hon'ble Apex Court in Sonu Gupta Vs. Deepak Gupta and others, reported in 2015 (3) SCC 424, and in Sau.Kamal Shivaji Pokarnekhar Vs. The State of Maharashtra in Criminal Appeal No. 255 of 2019 dated 12.02.2019, herein it is a case, the issue pertaining to the criminal complaint is only the subject matter of the civil suit, which is already under consideration before the Principal District Munsif, Coimbatore.

23. Therefore, if the FIR is allowed to be continued, definitely, it would affect the interest of the parties and the stand taken by them in the civil suit. Accordingly, this Court is of the considered opinion that the averments found in the FIR is a matter pertaining to the Civil suit, which is pending before the civil Court and therefore, the prayer sought by the petitioner is maintainable under law. If really the defacto complainant is aggrieved over the attitude committed by the bank authorities, in bringing out the property for auction, it is not necessary for him to send a letter wherein he made a consent for purchasing the said property which is measuring an extent of 1.66 acres. That alone is sufficient to hold that the 2<sup>nd</sup> respondent herein with an intention to coerce the petitioners, have lodged the complaint before the 1<sup>st</sup> respondent and accordingly, thereupon the case has been registered. Therefore, this Court is inclined to the allow the criminal original petitions filed by the petitioners. Accordingly, Crl.O.P.Nos.5235 and 6504 of 2019 are allowed and the FIR dated 16.08.2018 registered against the petitioners herein in Crime No.40 of 2018, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

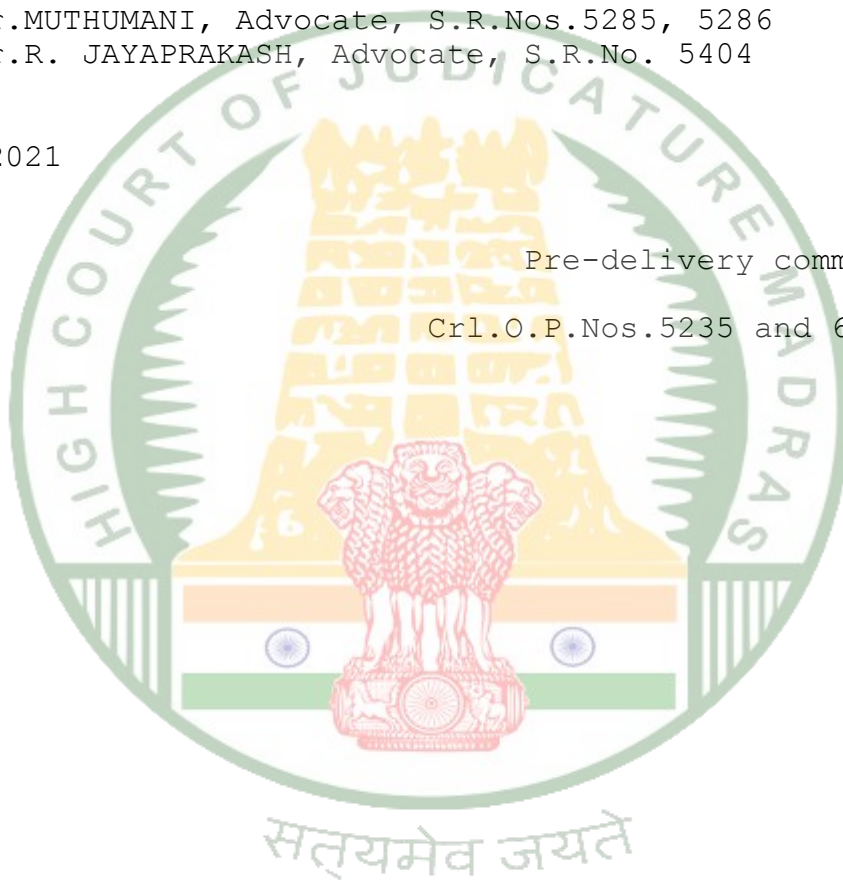
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To

1. The Inspector of Police,  
Central Crime Branch,  
Coimbatore City,  
Coimbatore District.
2. The Public Prosecutor,  
High Court, Madras.

+2cc to Mr.MUTHUMANI, Advocate, S.R.Nos.5285, 5286  
+1cc to Mr.R. JAYAPRAKASH, Advocate, S.R.No. 5404

MG(CO)  
SM/17/02/2021



Pre-delivery common order in  
CrI.O.P.Nos.5235 and 6504 of 2019

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