IN THE HIGH COURT OF JUDICATURE AT MADRAS

(RESERVED ON : 05.10.2021)

(PRONOUNCED ON : 07.10.2021)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.718 OF 2018

Anandan ... Petitioner/Complainant

.. Vs ..

1. Thangamani
2. Sathya
3. Sankar
4. Nandhini

5. The Branch Manager,
   Sriram Transport Finance Co., Ltd.,
   4/9, Usha Complex,
   Opp:Tamil Nadu Theatre,
   Palladam Salai,
   Tiruppur. ... Respondents/Accused Nos.1 to 5

PRAYER:-

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the order dated 18.01.2018 made Crl.M.P.No.145 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai set aside the same.

For petitioner : Mr.Vishnu
For Mr.N.Manokaran

For R1 : No appearance

For R2 to R4 : Mr.N.Chinnaraj

For R5 : Mr.K.V.Sridharan

O R D E R

The revision petitioner has filed a private complaint before the learned District Munsif cum Judicial Magistrate, Perundurai and the same was dismissed.

2. In the private complaint it is alleged that the first respondent herein, who is the father of the respondents 2, 3 and 4 herein, along with his sons and daughters has created a false and bogus settlement deed dated 15.12.2016 in document No.2216 of 2016 and the same was registered as Doc.No.2216 of 2016, before the Sub Registrar, Thingalur, by willfully suppressing the earlier sale deed dated 08.11.2006, in Document No.1087 of 2006, for getting loan from A5 to the tune of Rs.40,00,000/-. Again the said false settlement deed, the revision petitioner herein/private complainant has given a complaint before the District Crime Branch, Erode, investigation was conducted on his complaint was closed by treating it as civil in nature. Under such circumstances, the petitioner has filed a private complaint in Crl.M.P.No.145 of 2018 before the learned District Munsif cum Judicial Magistrate, Perundurai, to take the complaint for the offence under Sections 420, 465, 467, 471 & 420 of I.P.C against the accused 1 to 5 and the same was dismissed. Hence, the Criminal Revision Case.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 to 4 and the learned counsel for the 5th respondent.

4. The learned counsel for the revision petitioner contended that by virtue of the Sale Deed dated 16.09.2004, the first respondent have purchased the petition property and sold to the private complainant on 08.11.2006. Thereafter, knowing fully well that, he is not the owner of the property and in order to cheat him had dishonestly executed a settlement deed in favour of R2 to R4 who are sons and daughters of the first respondent by a settlement deed 15.12.2006. Further, those R2 to R4 respondents have mortgaged property with 5th respondent and raised a loan Rs.40 lakhs.

5. In view of the settlement deed executed in favour of the respondents 2, 3, 4 they have also under the guise of exercise an act of ownership have mortgaged property and availed Rs.40 lakhs loan in respect of 25 cents of land petition property. The learned counsel for the 4th respondent contended that he is only a hypothecator and he has no element of 417 or any of the offence.

6. The learned counsel for the revision petitioner has filed (i) certified copies of the sale deed executed by R1- father in

his favour and (ii) Settlement Deed in favour of the respondents 2, 3, and 4 and the plaint copy in the civil suit.

7. In the decision reported in 2009 (4) SCC 439 [Mahesh Chaudhary Vs.State of Rajasthan and another], the Hon'ble Supreme Court has held that (i) to consider only the material record as a whole though the High Court is required to consider as to whether allegation made in the F.I.R or the complaint petition fulfil the ingredients of the offence alleged against the accused.

(ii) Further held that dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in case of R.Kalyani V.Janak C.Mehta [(2009) 1 SCC (Cri) 567] has held that:

> "15.....
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to held that the criminal proceedings should not be allowed to continue".

8. Keeping in the above legal position as stated by the Hon'ble Apex Court in mind, admittedly, in the instant case as per the sale deed dated 16.09.2004, the first respondent purchased the petition property which was sold to the private complainant on 08.11.2006. After execution of the sale deed in favour of the respondent the very same property appears to have been settled by the first respondent in favour the respondents 2, 3, and 4 by way of settlement on 15.12.2006.

9. Admittedly, the respondents 2, 3, and 4 are sons and daughters of the first respondent, all are admittedly major. It appears that on the strength of the alleged settlement deed, all the 3 persons have mortgaged property namely 25 cents property with the 5th respondent and availed the loan of Rs.40 lakhs and also filed a Civil Suit for bare injunction against the private complainant.

10. After comparing the photographs annexed with the sale deed dated 8.11.2006 and 15.12.2006 and Aadhar card annexed therein, as find that those sale deeds and settlement are executed the R1 and I am of the considered view that the private complainant has made out a prima facie case for offence staetd in the complaint petition namely 420, 465, 467 and 471 read with 120 of I.P.C.

11. The learned counsel for the 5th respondent could contend that based upon the documents produced by the respondent

2 to 4, the 5th respondent/Shriram Transport Finance Company Limited has granted Rs.40 lakhs. But I find that the 5th respondent ought to have exercised cautioned by comparing the Encumbrance Certificate as whether who owner of the property before granting Rs.40 lakhs and hence, I do not find any ground to exonerate since he has already Rs.40 lakhs in favour of R2, R3, and R4 when they appears to being a sale deed earlier to the settlement deed in favour of the private complainant. Thus on the date of execution of settlement in favour of R2 to R4, R1 is not owner of the property. Consequently on the date of mortgage, R2 to R4 are not owner of property. Consequently, by the fraudulent Act of R1, in connives with R2, R3, R4 and R5, was created an encumbrance of Rs.40 lakhs on the property. The 5th respondent has stated common intention to defraud true owner of the property.

12. Accordingly, this Criminal Revision petition is allowed. The order dated 18.01.2018 in Crl.M.P.No.145 of 2018 on the file of the District Munsif cum Judicial Magistrate, Perundurai is hereby set aside and he is directed to take the Crl.M.P.No.145 of 2018 on file and dispose of it in accordance with law.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nvi

To

The District Munsif cum Judicial Magistrate,
Perundurai.

Copy To:

The Section Officer,
V.R. Section
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.52875
+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.52963

CRL.R.C.NO.718 OF 2018

MG(CO)
PBS/28/10/2021