IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.4234 OF 2017
AND
CRL.M.P.NOS.3145 & 3146 OF 2017

Charles Deva Priyam ...Petitioner

Vs.

1.State represented by its
Inspector of Police,
Central Crime Branch-II ALGSC-II,
Chennai Metropolitan Police,
Vepery, Chennai - 07.

2.K.Arul Kumar

3.S.Govindarajan

4.R.Vinoth Kanna

5.V.Kumaresan

6.Natarajan ...Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure (Cr.P.C) to call for the records in C.C.No.630 of 2016 on the file of Judicial Magistrate, Alandur, Chennai and quash the same.

For petitioner : Mr.B.Kumar
Senior Counsel
for Mr.VKR Balakrishnan

For respondents : Mr.S.Vinothkumar
Government Advocate
(Criminal Side) for R.1.

Mr.V.Chanraprabhu for RR.2 to 5

O R D E R

This Criminal Original Petition has been filed to quash the proceedings laid down in C.C.No.630 of 2016, pending on the file of Judicial Magistrate, Alandur, Chennai.

2. Brief facts which are necessary for the disposal of this Criminal Original Petition is as follows:-

The crux of the charge sheet is that A.1 and A.2 created the documents and A.2 sold the property to the defacto complainant. On the basis of the complaint lodged by second respondent/ defacto complainant, FIR has been registered in Crime No.81 of 2012, under Sections 420, 465, 468, 471 r/w. 34 of the Indian Penal Code. Petitioner/second accused and Natarajan/first accused were arrested and released on bail. Charge sheet is filed in C.C.No.630 of 2016, on the file of the Judicial Magistrate, Alandur. Being aggrieved, the instant Criminal Original Petition, the present Criminal Original Petition is filed.

3. Indian Bank has filed a suit in O.S.No.133 of 1993 for recovery of a sum of Rs.9,16,622.30 and preliminary decree was passed on 29/8/1994 and final decree was passed on 4/4/1997 in I.A.No.2155 of 1995 in O.S.No.133 of 1993, on the file of the Sub-Court, Poonamallee. Subsequently, suit was transferred to Debts Recovery Tribunal, Chennai, for getting Recovery Certificate and Debts Recovery Tribunal, Chennai, numbered as O.A.No.10 of 2007. The suit has been decreed and the Recovery Certificate was issued on 10/10/2007. The total dues payable to the Bank as on 31/12/2011 are Rs.81,50,417.76 with further interest and other charges thereon. Further, it was brought for sale on 9/3/2012 and 10/5/2012, as per the security amount then it was stayed by the High Court, Chennai, and the matter is still pending.

4. Learned Senior Counsel appearing for the petitioner submitted that after verifying all the original documents as well as the encumbrance certificate relating to the property in question, the petitioner/A.2 has sold the same to the defacto complainant and his friends. Learned Senior Counsel further submitted that the petitioner has no knowledge about the prior mortgage with the bank by deposit of the title deeds by the first accused. Hence, the petitioner has not committed any offence as alleged by the prosecution.

5. Learned Senior Counsel further submitted that the complaint itself is defective and only on the assumption that there is a chance of forging the documents by the petitioner, lodged the complaint, but failed to narrate how the documents were subjected to forgery.

6. The statement do not show any semblance of involvement of A.2 for creating any false document. Based on the documents only, A.2 sold the property to the defacto complainant. There are no materials available on record to constitute an offence charged against A.2. Hence, it is his contention that

continuing the prosecution against the petitioner/A.2 is nothing but a futile exercise.

7. The petitioner has passed on the documents what was given by the first accused. But the prosecution concluded that the petitioner has forged the documents, but the same has not been established by forensic report. It is a clear case of abuse of process of law. The very materials collected by the prosecution itself indicate that A.2 is in no way connected with the forgery of documents.

8. At the time of borrowal of loan, A.2 was only nine years old. Therefore, questioning the mortgage property by A.2 does not arise at all and the witnesses examined by the prosecution indicate that A.1 has in fact executed the sale deeds in favour of A.2.

9. Learned counsel appearing for the defacto complainant submitted that A.1 and A.2 were colluded together and created a document and A.2 sold the property to the defacto complainant. Hence, it is his contention that whether there is a collusion or not could be seen only at the time of trial and not in this Criminal Original Petition.

10. Learned Government Advocate (Criminal Side) submitted that the charge sheet is already filed and materials were collected against the parties. Hence prays for dismissal of the application.

11. Heard the learned counsel appearing on either side and perused the materials available on record.

12. Normally, once final report is filed, Courts will be reluctant to interfere with the final report, in exercising the power under Section 482 of the Code of Criminal Procedure, but at the same time, when the materials collected by the prosecution prima facie indicate that the same is not sufficient to constitute any charge against the person, then continuation of prosecution is nothing but a futile exercise.

13. The main charge against A.2 is that he has sold the property to defacto complainant in the year 1998 itself. A.1 has already mortgaged the property by depositing the sale deed with Indian Bank and Indian Bank obtained recovery certificate. A.1 sold the property to A.2 and A.2 in turn to the defacto complainant and handed over the document said to be the original documents.

14. On a perusal of the materials collected by the prosecution, the charge itself indicate that as if A.1 and A.2

have handed over the original documents to the Bank and obtained loan, which is in fact highly improbable and there is no nexus between A.1 and A.2. Moreover, at the time of mortgage, A.2 is of nine years old. Therefore, charge against A.2 is highly improbable.

15. The prosecution has mainly relied upon the statements of Ramachandran and Dhanasekaran. Their statements clearly show that after A.2, paid the amount of Rs.10 lakhs as an advance, A.1 has handed over the alleged documents stated to be the original document of the property. Therefore, evidence even taken as a face value indicate that only A.1 has handed over the document and nowhere it is mentioned that A.2 has created a false document. Witness No.14 in his evidence has stated that only A.1 has handed over the document to A.2, at the time of agreement.

16. It is to be noted that report collected from the Bank indicate that mortgage loan was obtained only by A.1 in the year 1988. From the materials unearthed during the investigation, there is no materials available on record to show that A.2 has created a false document.

17. Such being a position, without any materials collected to prove against the second accused, continuing the prosecution against the second accused is a mere waste of time and abuse of process of law. To bring home the guilt of the accused for the offences punishable under Section 463 of the Indian Penal Code, it has to be established by the prosecution.

18. Section 463 of the Indian Penal Code, reads as follows:-

> "Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, can be termed as forgery.

19. Section 464 of the Indian Penal Code is as follows:-

> A person is said to make a false document or false electronic record - Who dishonestly or fraudulently -
>
> (a). makes, signs, seals or executes a document or part of a document;
>
> (b). makes or transmits any electronic

record or part of any electronic record

(c). affixes any electronic signature on any electronic record

(d). makes any mark denoting the execution of a document or the authenticity of the electronic signature.

20. Section 465 of the Indian Penal Code, reads as follows:-

> "Punishment for forgery: Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

21. To bring the person for the offence punishable under Section 465 of the Indian Penal Code, the prosecution should have unearthed certain materials to fit into any of the conditions under Section 464 of the Indian Penal Code, to make the person liable for creating false documents and similarly, to bring home the guilt of the offence under Section 420 of the Indian Penal Code, absolutely, there is no materials available on record to show that from the very inception, A.2 has deceived the defacto complainant. He has sold the property and handed over the documents to the purchaser. For that it cannot be said that he has committed an offence.

22. In such a view of the matter, this Court is inclined to quash the C.C.No.630 of 2016. Accordingly, this Criminal Original Petition is allowed. C.C.No.630 of 2016 pending on the file of the learned Judicial Magistrate, Alandur, Chennai, is quashed, as against A.2 alone. Trial Court shall dispose of the main case as against A.1 as expeditiously as possible. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

mvs

To

1.The Judicial Magistrate,
Alandur,
Chennai

2.The Inspector Of Police,
Central Crime Branch-II, ALGSC-II,
Chennai Metropolitan Police,
Vepery, Chennai - 07.

3.The Public Prosecutor,
Madras High Court,
Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+4ccs to Mr.V.K.R.Balakrishnan, Advocate SR.No.58411

Crl.O.P.No.4234 of 2017

SSV(CO)
RVM(27/12/2021)