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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.25449 of 2017

and

CrI.M.P.No.14669 of 2017

1. Senthilkumar

2. Balan

3. Vijayaraj

4. Murugeshpandi

...Petitioners/Accused A1 to A4

Vs.

1. State rep by its

The Inspector of Police,

District Crime Branch

(Anti-Land Grabbing Special Cell),

Krishnagiri District.

...Respondent/Complainant

2. Janagiraman

...Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case in Crime No.4/2017 on the file of the 1st respondent and quash the same.

For Petitioners .. M/s.Dass and Viswa Associates

For R1

.. Mr.E.Raj Thilak

Government Advocate (Criminal Side)

For R2

.. No appearance

ORDER

The present petition has been filed under Section 482 of Cr.P.C. to call for the records relating to the case in Crime No.4/2017 on the file of the Inspector of Police, District Crime Branch (Anti-Land Grabbing Special Cell), Krishnagiri District and to quash the same.

2. The defacto complainant alleged in the complaint lodged before the first respondent that he had appointed the first



petitioner as his Power of Attorney agent. It is stated that the first petitioner, without properly accounting for any sale done by him, had sold the property to the second petitioner. In that particular sale deed, the third and fourth petitioners had signed as witnesses. This, in brief, is the reason for lodging the complaint, pursuant to which, an F.I.R. in Crime No.4 of 2017 had been registered on the file of the first respondent Police.

3. By examining the facts in more detail, it is seen that the defacto complainant was originally allotted the property from HIG Housing vide proceedings, dated 09.10.1996 bearing No.907 in Phase X, Hosur Neighbourhood Scheme. A sale deed was also registered in favour of the first petitioner in document No.4377/2015, dated 16.03.2015. The defacto complainant had given a Power of Attorney to the first petitioner, which was registered as document No.4378/2015 dated 16.03.2015 on the file of Sub-Registrar Office, Hosur.

4. The second petitioner wanted to buy the property. The first petitioner, in his capacity, as a Power of Attorney agent sold the property to the second petitioner. In that particular sale deed, third and fourth petitioners also signed as witnesses. This sale deed was said to have been executed on 12.01.2016 and registered as document No.396/2016 again at the Sub-Registrar Office at Hosur. The reasons for giving the complaint was that the first petitioner had not handed over the sale consideration to the defacto complainant. It is also stated that a receipt had been forged as if money had been paid to the defacto complainant.

5. It is also brought to the notice of this Court that the petitioners and defacto complainant are all relatives. Pending the proceedings, the first petitioner who was the Power of Attorney agent had also died. Further, the parties had also desired to settle the issue among themselves and accordingly, they had entered into a Memorandum of Understanding on 12.10.2021. A copy of the same has been produced before this Court. Pursuant to such Memorandum of Understanding, an affidavit has also been filed before this Court. The defacto complainant in the affidavit has stated as follows:

"I submit that I am the 2nd respondent/defacto complainant in the quash petition as such I am well acquainted with the facts and circumstances of the case.

2. I submit that I have given a complaint against Mr.Senthil Kumar, the 1st petitioner herein and others in Crime



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No.4/2017 on the file of 1st respondent, for the offence punishable under Section 420, 465, 468, 294(b), 506(1) IPC. I give the general power of attorney one of the Mr.Senthilkumar 1st petitioner in the above case the respect of his property. The 2nd petitioner is the purchaser of the said property. The petitioners 3 & 4 are the witnesses who signed in the receipt of transaction of sale consideration with respect to the aforesaid sale.

3. I submit that subsequently, the 2nd petitioner and 2nd respondent. The Memorandum of understanding cum agreement dated 12.10.2020. The 2nd respondent was claimed by the property based on MOU both party agree settlement. Now I feel that my complaint is unnecessary and do not want to proceed with the said complaint.

4. I submit that in the above stated circumstances, I expressed my desire that I have no objection to get the said criminal proceedings quashed before this Hon'ble Court against the petitioners. I am fully aware of the consequences of signing and submitting this affidavit before this Hon'ble Court.

5. I submit that I have no coercion and compulsion to give this affidavit and hence wholeheartedly I am placing this consent affidavit before this Hon'ble Court to quash the FIR in Crime No.4/2017 on the file of the 1st respondent as against all the accused thereupon and pass suitable orders in this regard.

In the foregoing circumstances, therefore, it is humbly prayed that this Hon'ble Court may be pleased to FIR in Crime No.4/2017 on the file of the 1st respondent as against all the accused by allowing this quash petition and thus render justice".

6. I am informed that the parties had appeared before my predecessor along with the affidavit. The second respondent/defacto complainant had also been appeared.



7. In 2019 (2) MLJ Cr1 10 (SC), State of Madhya Pradesh Vs. Dhruv Gurjar and another, which had also been reported in AIR 2019 SC 1106, the Hon'ble Supreme Court, had issued guidelines, if a matter had been compromised by the parties, and the necessary steps to be taken while recording such a compromise. The Hon'ble Supreme Court referred to an earlier judgment in 2017 (4) SCC 641, Parbatbhai Aahir @ Parbatbhai Vs. State of Gujarat, wherein it had been stated if further prosecution would be of no avail, then the Court can interfere at that particular stage and quash the proceedings. In the instant case, only the First Information Report had been registered. The parties are also relatives.

8. The crux of the complaint is that the defacto complainant had given a Power of Attorney in favour of the first petitioner/first accused who has since died. On the basis of the said Power of Attorney, the first petitioner/first accused had sold the property to the second petitioner/second accused. In that particular sale deed, the 3rd and 4th petitioners/accused had signed as witnesses. The defacto complainant claims that he had not received the sale consideration paid by the second petitioner to the first petitioner. The relief which a Principal can claim against an agent is for accounts. Further, the first petitioner/first accused had died and the charges against him naturally abates.

9. I hold that investigation of the allegations in the F.I.R by the first respondent Police will only be a futile exercise. The investigation, cannot also proceed in view of the death of the first petitioner/first accused.

10. The present Criminal Original Petition is therefore allowed and F.I.R in Crime No.4 of 2017 on the file of first respondent stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

grs/kbs



To

1. The Inspector of Police,
District Crime Branch
(Anti-Land Grabbing Special Cell),
Krishnagiri District.

2. The Public Prosecutor,
High Court, Madras - 104.

+1 cc to M/s.Dass and Viswa Associates, Advocate Sr.No. 47688

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BS[co]
NSK 02/11/2021