IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 01.10.2020
Pronounced On : 31.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17209 of 2017

V.S.Soundarajan ... Petitioner / Petitioner / Complainant

Vs.

1.Saravanan
2.Indumathi
3.Dr.R.Sendamaraikannan
4.R.Sentamizhselvi
5.R.Rajesh Kannan
6.S.V.Srinivasan ... Respondent / Respondent / Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the impugned order dated 21.01.2016, passed by the learned Principal District and Sessions Judge, Vellore in Cr.R.P.No.45 of 2013, dismissing the said Revision Petition and thereby confirming the order dated 25.06.2013 passed by the learned Judicial, Magistrate No.IV, Vellore in C.M.P.No.1894 of 2013.

For Petitioner : Mr.Arun Anbumani

For R1 & R2	:	Mr.E.Kannadasan
For R3 To R5	:	Mr.R.Sathish Kumar Legal Aid Counsel
For R6	:	Mr.C.Prabhakaran

ORDER

This Criminal Original Petition has been filed praying to set aside the impugned order, dated 21.01.2016, passed by the learned Principal District and Sessions Judge, Vellore, in Cr.R.P.No.45 of 2013, dismissing the Revision Petition and thereby confirming the order dated 25.06.2013 passed by the learned Judicial, Magistrate No.IV, Vellore in C.M.P.No.1894 of 2013.

2. The brief facts of the case is that the Petitioner / Complainant has filed a private complaint before the trial Court stating that accused persons, by inducing the petitioner to join the real estate business, dishonestly cheated to the tune of Rs.10,00,000/-, for which, the petitioner had preferred a complaint before the Superintendent of Police, Vellore, initially on 02.08.2010, again on 19.12.2010 and the same has been forwarded to District Crime Branch Police. Since for inaction by the District Crime Branch, the petitioner, filed a petition before

this Court in Crl.O.P.No.8874 of 2012, seeking a direction to expedite the investigation and file the final report on his complaint. This Court dismissed the said petition on 31.07.2012 observing that when alternative remedy is available to the petitioner, he can work out the same in the manner known to law. Hence, the petitioner filed a private complaint before the learned Judicial Magistrate No.IV, Vellore, which was dismissed on 25.06.2013 observing that the High Court had already decided the issue stating that the matter is of civil in nature. Aggrieved over the same, the petitioner preferred a Revision before the learned Principal District and Sessions Judge, Vellore, who initially by order 22.11.2013, finding prime case, set aside the order of Magistrate, against which, R1 and R2 had filed a Revision Crl.R.C.No.172 of 2014. This Court by order dated 16.07.2014 set aside the Sessions Judge order, dated 22.11.2013 to decide the case afresh after issuing notice to respondents, thereafter, the Sessions Judge, by order dated 21.01.2016 dismissed Cr.R.P.No.45 of 2013, confirming the order of the learned Judicial Magistrate No.IV, Vellore. Hence, the petitioner is before this Court for the aforesaid relief.

3. The learned counsel appearing for the Petitioner / Complainant would submit that the accused approached the petitioner for the purchase of a certain piece of land in Survey Nos.361, 361/1, 361/4, 361/5, 361/6 of Adukkamparai Village of a total extent of 1.07 acres and through A-6, the power agent, for a sale consideration of Rs.30 lakhs. In acceptance of the said transaction, amounts to the tune of Rs.10 Lakhs were paid. However, it was represented that due to passage of time in the payment of sale consideration, the value of the land had escalated by Rs. 7 Lakhs and it was informed that A-3 would shell out the said amount and get the sale deed executed. However, curiously, while A-3 paid Rs.5 Lakhs, had got the sale deed executed in the name of his mother / A-4, and in pursuant to the same paid the amount of Rs.5 Lakhs. The amounts paid and sale deed handed over to the petitioner and power of attorney executed by R4 in favour of petitioner and R5 latter cancelled, since no steps taken by the Accused to lay the house plots, a complaint was lodged with the Superintendent of Police, Vellore on 02.08.2010. Therefore, a private complaint before the learned Judicial Magistrate, Vellore in Crl.M.P.No.1894/2013 and a complaint before the Vellore North

Town police in Crime No.826 of 2012 was filed for incident dated 12.12.2011. However, the said private complaint u/s 203 and 200 Cr.P.C. was dismissed which necessitated in filing of a revision in Cr.R.P.No.45 of 2013. The lower Appellate Court confirmed the order of the trial court by dismissing the revision petition vide order dated 21.01.2016.

4. Adding further, the learned counsel for the petitioner submitted that when clear evidence was on record, the learned Magistrate ought to have proceeded with the private complaint by taking cognizance of the offences and summoning the accused under Section 204 of Cr.P.C., the dismissal of the petitioner's complaint under Section 203 of Cr.P.C., is wholly unwarranted. The power of attorney given by the 4th respondent does not in any way run contrary to the complaint given by the petitioner and the observations made by the learned Principal District and Sessions Judge, Vellore, in this regard are unsustainable. In fact, power of attorney clearly mention that the agents are authorized to form lay-outs / plots and sell the same and obtain necessary sanction from the local authorities. The learned counsel invited the attention of this Court to the Judgment of the Hon'ble Supreme

Court in ***Rajendra Rajoriya Vs. Jagat Narai Thapak and Another*** reported in ***(2018 (17) SCC 234)*** and in ***(Jitender Kumar Jain Vs. State of Delhi and Others)*** reported in ***(1998 (8) SCC 770)***. The learned counsel for the petitioner submitted for the proposition, and the principle in filing of a private complaint, further, the High Court can entertain a petition against the order of revision and not to refuse the same on mere technicality.

5. The first respondent filed a counter contending inter alia that the petitioner is well aware that sale transaction was over between the 6th respondent and the 4th respondent, as early as on 24.10.2008 and thereafter, he come forward and approached one Arulanandam, expressed his willingness to join in real estate business and thereafter, the said Arulanandam and the petitioner approached the 4th respondent and negotiated for doing real estate business. Further, the sale consideration amount due payable to the 6th respondent, the petitioner issued a cheque for a sum of Rs.10 lakhs. As per the agreement, the petitioner paid Rs.10 Lakhs on various spells, which was collected by the 1st respondent and handed over to the 6th respondent. Further, the petitioner

filed a complaint before the Inspector of Police, North Police Station on 21.12.2011 and thereafter, approached this Court and obtained direction in Crl.O.P.No.31063 of 2012, on receipt of the same, the case was registered against the respondents in Crime No.826 of 2012, for the offence under Sections 420, 448, 294(b) and 506(ii) of IPC., on 19.12.2012. After investigation, the said complaint was closed as mistake-of-fact. Thereafter, the petitioner filed a protest petition, which was taken on file in C.C.No.371 of 2014. On receipt of summons, the 1st respondent filed a Petition in Crl.O.P.No.19423 of 2014, to quash the proceedings in C.C.No.371 of 2014 and latter, the proceeding in C.C.No.317 of 2014 on the file of the learned Judicial Magistrate, No.IV, Vellore District was quashed by this Court on 24.02.2020. He would further submit that the 2nd respondent unnecessarily roped as respondent, since she is the wife of the 1st respondent and she is no way connected with the transaction taken between the petitioner and other respondents viz., 3 to 6.

6. Despite service of notice, the respondents 3 to 5 had failed to appear before this Court. Since the petition is pending from 2017, this Court, by order dated 4.09.2020, appointed Mr.R.Sathish Kumar, as Legal Aid Counsel for respondents 3 to 5.

7. The Legal-Aid Counsel appearing for the respondents 3 to 5 by filing a counter would submit that the 3rd respondent is a Doctor by profession; 4th respondent is his mother and the 5th respondent is his younger brother. The 3rd respondent contacted one Arulanandam, for purchase of the property to the extent of 107 cents in Survey No.361/1, 4, 5, 6 for the sale consideration of Rs.15,00,000/-. The land sold by Paulin, who is the original owner of the land through her power agent one Saravanan. Accordingly, the sale deed was registered in favour of one Senthamizh Selvi, in Sale Deed, dated 23.10.2008, on the file of Kaniyambadi Sub Registrar Office, Vellore District. The entire sale consideration amount of Rs.15 Lakhs was paid on the date of registration itself. The said Srinivasan handed over the parent documents of the subject land and the original sale deed was available with Senthamizh Selvi and she became absolute owner of the property. Still the property is under her possession and enjoyment.

8. It was further contended that after one month of registration, the said Arulanandam and Saravanan came to Gingee in person informed that his mother would not come to Vellore

often to maintain the property as well as to get patta, chitta, adangal and other necessary approval from local authorities and requested to execute power of attorney in the name of V.S.Soundarrajan, as the said Soundarajan was also one of the partner in their real estate business. Accordingly, a joint power of attorney deed dated 08.12.2008 executed in the name of V.S.Soundararajan and Rajesh Kannan, who is the brother of respondent No.3 and son of Respondent No.4. The third respondent submits that S.V.Srinivasan sent a legal notice dated 18.02.2009, addressed to Arulanandam and copy of the same was marked to his mother, stating that he entered into an unregistered agreement for sale dated 23.10.2008 with Arulanandam, who agreed to purchase the land in survey No.361, 1, 4, 5, 6 for a total extent of 107 cents within 24.10.2008 and also to purchase 8 cents in survey number 359/1 within 24.12.2008, further 107 cents to Senthamizh Selvi and for which he received total consideration of Rs.15 Lakhs and the said Arulanandam failed to fulfil his assurance to purchase the adjacent property of 3 cents, according to unregistered sale agreement.

9. It is further contended that the 3rd respondent nad his mohter Senthamizh Selvi / 4th respondent were served summons from the District Crime Branch, Vellore District, to appear on 18.03.2010, on the complaint lodged by said Soundararajan and latter, the complaint was closed as civil in nature. Further, on 07.05.2009 the said Srinivasan sent a legal notice, addressed to Arulanandam, Senthamizh Selvi and Sub Registrar, Kaniyambadi, Vellore District, suppressing the pervious legal notice, dated 18.02.2009. The 3rd respondent's mother sent a reply notice, dated 01.06.2009, stating that she agreed to purchase 107 cents alone and she paid the entire sale consideration of Rs.15,00,000/-, at the time of registering the sale deed on 23.10.2008.

10. Thereafter, the said Srinivasan filed a Suit in O.s.No.89 of 2009, before the learned Subordinate Judge, Vellore, against the said Senthamizh Selvi, Arulanandam and Sub Registrar of Kaniyambadi, Vellore District and it is pending. The learned counsel further submitted that the 3rd respondent, his mother, and his brother are no way connected to the transaction between the said Soundararaja, who is the complainant and other persons.

11. I have heard the learned counsel appearing on either side and perused the materials produced available on record.

12. Considering the rival submissions and on perusal of the materials and typed sets filed by the respective parties it is seen that the petitioner had filed a complaint to the Superintendent of Police, on 19.02.2010, since no action was taken, he filed Crl.O.P.No.14141 of 2010 before this Court. It was submitted that the complaint was not available. Thereafter, this Court directed the petitioner to give a fresh complaint to the Superintendent of Police. On 02.08.2010, a complaint was lodged with the Superintendent of Police, which was forwarded to the District Crime Branch. Since no action was taken by the by the District Crime Branch, the petitioner filed a petition in Crl.O.P.No.8874 of 2012, seeking to expedite the investigation on the complaint dated 02.08.2010. On 31.07.2012, it was represented that even in the year 2010 itself, the complaint of the petitioner was closed, as civil in nature, thereafter, this Court, referring to the Judgment of Hon'ble Apex Court in ***Sakiri Vasu Vs. State of U.P. and Others*** reported in ***(2008 (1) KLT 724)***, directed the petitioner to avail

alternative remedy of filing private complaint, if he so desires. Following the same, the petitioner filed a private complaint for the offence under Sections 120-B, 406, 420 and 506(ii) r/w 34 IPC., before the learned Judicial Magistrate No.4, Vellore, against the respondents. The learned Judicial Magistrate, examined 4 witnesses, himself as P.W.1 and other 3 witnesses. He had also marked Ex.P1 to P9, which clearly proves the commission of offence and involvement of all the accused and their overt acts along with the documents viz., Exs.P1 to P9. The trial Court, by its order, dated 26.06.2014 dismissed the complaint as civil in nature. The trial Court, in its order has not considered the evidence of the petitioner as well as the other witnesses and also on the documents produced as Exhibits. On the other hand, it merely refer to the order of the High Court passed in Crl.O.P.No.8874 of 2012, proceeds on a wrong premise held that the High Court has already decided the matter as civil in nature.

13. Aggrieved against the same, the petitioner preferred a Revision before the Sessions Court in Cr.R.P.No.45 of 2013. The Sessions Judge, on perusal of the materials and on the evidence, by order dated 22.11.2013 finding that a *prima facie* case has been

made out against the respondents, set aside the order of the learned Magistrate in Crl.M.P.No.1894 of 2013, dated 25.06.2013 and directed the Magistrate to take cognizance of the private complaint fled by the petitioner. Against which, the 1st and 2nd respondents filed a Revision before this Court in Crl.R.C.No.172 of 2014. This Court on admission found that the lower appellate Court before setting aside the order of the learned Magistrate had not put on notice, the respondents / proposed accused. In view of the same, the Revision Petition was allowed with a direction that the order of the learned Principal District and Sessions Judge, Vellore, to take up the case afresh in Cr.R.P.No.45 of 2013, cause notice to the petitioner, and thereafter, proceed further in accordance with law, remanded the case to the Sessions Court, again Cr.R.P.No.45 of 2013 to be decided afresh, after giving notice to all the respondents. The respondents entered appearance, made their submissions and the Sessions Judge, by order dated 21.01.2016, failed to consider the entire evidence in total and merely referring to one of the exhibits viz., Ex.P2, the power of attorney document had held that mere cancellation of power deed would not amount to criminal nature.

14. From the counter along with the typed set filed the 1st and 2nd respondents it is seen that the 1st respondent is well known to the petitioner and the petitioner shown keen interest in joining the real estate business and thereafter, the 1st respondent introduced the said Arulanandam, who is also in the real estate business, and all the three were planning ventures into real estate business by purchasing the property, thereafter, drawing the lay out and make profit for which, they also identified the property of one Paulin. R6 is the power of attorney of the said Paulin. Since the power of attorney after receiving some amounts before registration had demanded more money and they were short of Rs.7,00,000/-. R3 was approached. R3 made arrangement for the balance amount. Since R3 was Government servant, though he paid the money, the property was registered in the name of his mother / R4. The original sale deed was handed over to the petitioner for investment of Rs.10 Lakhs on the assurance that the property would be developed by all and they could make profit. It is further contended that after introducing R6 and amount of Rs.10 Lakhs though received by R1 it was handed over to R6, in presence of Petitioner, R6 issued receipts for the same, thereafter,

R1 has nothing to do with the transactions. Further, R2 has been roped in, since she happens to be the wife of R1 and she is a teacher. He further submitted that the petitioner had also filed a complaint for the occurrence which is said to have taken place on 12.12.2011. In the said complaint, the allegations of the earlier complaint, dated 02.08.2010 are found and this complaint was given to North Town Police Station, Vellore on 21.12.2011.

15. Thereafter, the petitioner filed Crl.O.P.No.31063 of 2012 and a case was registered in Crime No.826 of 2012, for the offence under Sections 420, 448, 294(b) and 506(ii) of IPC., against R1 and R2. The Inspector of Police, North Town Police Station, Vellore, on investigation, closed the case as mistake of fact, RCS notice 49 of 2012 was served and the closure report was filed before the learned Judicial Magistrate No.4, Vellore. During investigation of Crime No.826 of 2012, it was found that the issues earlier investigated by DCB, and closed the case as mistake of fact. The petitioner filed a protest petition before the learned Magistrate and it was taken as private complaint and after examining the petitioner, the case was taken on file as C.C.No.371 of 2014 and against which, R1 and R2 filed a quash petition in

Crl.O.P.No.19423 of 2014 before this Court and considering the entire facts and circumstances of the case, this Court quashed the proceedings in C.C.No.371 of 2014, on 24.02.2020.

16. R3 to R5 filed counter along with typed set and contended that the property stands in the name of R4; R4 purchased the property from R6, for which, she had made the payment. Since she being a lady, she was along with R3 at Chenji. Further submitted that after registration of the property one Arulanandam and R1-Saravanan had come to Chenji along with the petitioner and made representation that the power of attorney to be executed in the name of the petitioner, who is also partner in the real estate business, for the purpose of business power of attorney was executed in favour of him. At that time, for the purpose of putting up a lay out, getting permission and approval, R4 appointed the petitioner and her son R5 as power of attorney, registered power of attorney in Doc.No.173 of 2008, dated 18.12.2008 executed and thereafter, she received notice from R6 making false allegations, which she replied. Finding there is some attempt to create encumbrance as well as take over the property in deceitful means, she cancelled the power of attorney

on 27.02.2009 ,by Doc.No.21 of 2009. The respondents 3 to 5 have nothing to do with the petitioner. The original of the property is still with R4. On the complaint of the petitioner, the respondents 3 to 5 were summoned by the District Crime Branch, they appeared, gave explanations and after investigation, the case was closed as civil in nature, as a precaution, they have also obtained anticipatory bail in Crl.O.P.No.27231 of 2010. There seems to be some misunderstanding between the said Arulanandam and R6, for which, the respondents 3 to 5 have been falsely implicated, further R6 had already filed a civil Suit in O.S.No.89 of 2009 against R4 and the said Arulanandam.

17. It is apparent that all the petitioners as well as the respondents have invested, purchased the property for the purpose of making profit in the real estate business. The property purchased is in a prime area in Vellore town, where the lay out has to be drawn, made into plots and thereafter to be sold. The petitioner is in possession of the original title deeds of the property. It is common that in the real estate business holding of original document is the primary security. As far as R6 is concerned, he had executed the sale deed, and got a dispute with

regard to the sale of balance small portion of the land, which was promised and not purchased. It is seen subsequently the small portion purchased by R4. R4 is the mother of R3 and she had lent her name and R3, the Doctor in person, who negotiated in the transaction with R1, petitioner and R6.

18. Now taking advantage of the property, registered in the name of R4, R3 to R5, who all are from one family, now project story, as though the property was purchased for their own use and not for business purpose. That being the case, there is no necessity for R4 to execute the power of attorney, in favour of the petitioner, who is a total stranger. According to R3 to R5, executing the power of attorney, in favour of petitioner and R5 as joint agent to have a control over the petitioner. The petitioner elaborated all these facts in his evidence before the Magistrate in the private complaint filed in Crl.M.P.No.1894 of 2013, the Judicial Magistrate No.4, Vellore. The learned Judicial Magistrate failed to consider all these aspects, dismissed the private complaint on the observations made in the High Court in Crl.O.P.No.8874 of 2012, observing that the respondent Police closed the case as civil in nature, since the case has already closed, the petitioner to work

out his remedy in the manner known to law and also referred to ***Sakiri Vasu's*** case***.*** This being so, the learned Judicial Magistrate in passing such order is not proper. The Sessions Court, at the first instance, by an order dated 22.11.2013, had gone into the evidence, analysed the same, adverting to the evidence and the documents, exhibits marked, by a detailed order, set aside the order of the Magistrate and the only mistake was that notice was not ordered to the respondents/ proposed accused. Hence, the order was set aside and remanded back to the learned Sessions Judge to pass orders after notice to all. In the the 2nd order, the learned Sessions Judge has not considered the evidence in total, only referred to Ex.P2 and passed the order, which is not proper.

19. The contention by the respondent that Crime No.826 of 2012, which culminated into a negative report and thereafter, on protest petition, taken on file as C.C.No.371 of 2014, for offence under Sections 448, 294-B and 506(ii) IPC., which is now quashed is on the same facts, is not proper and correct. The case in Crime No.826 of 2012 is for the occurrence on 12.12.2011. Though there is reference to the earlier transaction, that alone cannot be construed that investigation has been conducted with regard to

the facts of the complaint of this case also. Further, in the closure report it is clearly mentioned that since the High Court had already passed an order referring to the earlier compliant dated 02.08.2010 that it is civil in nature, no investigation in this regard was conducted. Thus, the submission of the petitioner that the fact of the Crime No.826 of 2012 and the facts of the above case are one and the same is not proper. Further, the case in C.C.No.371 of 2014 is only for the offence under Sections 448, 294-B and 506(ii) of IPC., which has been quashed by this Court in Crl.O.P.No.19423 of 2014. On perusal of the same, it is seen that it is only a submission of R1 and R2 and it is not the finding of the Court, hence, it cannot be taken in favour of the petitioner's contention. Thus, considering the case in hand, it is seen that the order of the Magistrate and Sessions Court, are not proper and not sustainable in law and on facts of the case.

20. In view of the forgoing reasons, this Criminal Original Petition is allowed and the impugned order, dated 21.01.2016, passed by the learned Principal District and Sessions Judge, Vellore, in Cr.R.P.No.45 of 2013, dismissing the Revision Petition and thereby confirming the order dated 25.06.2013 passed by the

learned Judicial, Magistrate No.IV, Vellore, in C.M.P.No.1894 of 2013, is set aside. The learned Judicial Magistrate No.IV, Vellore, is directed to take the case on file and proceed in accordance with law. Considering the fact that the case is pending for long years, the learned Magistrate is directed to give top priority and to conclude the proceedings and trial, within a stipulated period preferably, within a period of six months, from the date of receipt of the copy of this order.

21. This Court place its appreciation to the Legal Aid Counsel, Mr.Sathish Kumar, who took strenuous efforts in contacting the respondents, collecting the documents and made effective submissions.

31.03.2021

Index : Yes/No
Internet : Yes/No

MPK

To

1. The Principal District and Sessions Judge,
   Vellore.

2.The Judicial Magistrate No.IV,
   Vellore.

3.The Public Prosecutor,
   High Court, Madras.

M.NIRMAL KUMAR, J.

MPK

PRE-DELIVERY ORDER IN

Crl.O.P.No.17209 of 2017

31.03.2021