IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.09.2021	07.09.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.25910 OF 2018

M.Raghunath ..Petitioner

- Vs -

1. State, thro'
The Inspector of Police
Peerkankaranai Police Station
Kancheepuram District.

2. N.Mohan ..Respondents
(R-2 impleaded vide order of Court
dated 13.3.19 in Crl. MP 3745/19)

Criminal Original Petitions filed u/s 482 Cr.P.C. praying this Court to call for the records in FIR in Crime No.192 of 2018 on the file of the respondent and quash the same.

For Petitioner : Mr. N.Ananthapadmanabhan
for M/s. APN Law Associates

For Respondents: Mr. C.E.Pratap,
GA (Crl. Side) for R-1

ORDER

The present petition has been filed to call for the records pertaining to Crime No.192/2018 on the file of the 1st respondent and quash the same.

2. The case of the prosecution as unfolds from the complaint given by the defacto complainant is that the defacto complainant is the father of three sons of which the petitioner as well as the 2nd respondent are two of them. The other son is one Kumar. It is the admitted case that the 2nd respondent is working in Australia while the

defacto complainant and his other two sons were residing in Chennai. Out of the earnings from his avocation, the 2nd respondent had purchased the property through the defacto complainant and had put a superstructure on the said property for being used by his parents. The said purchase is said to have been made in the year 1990. Thereafter, the 2nd respondent, for the purpose of maintaining and developing the property, had given an unregistered general power of attorney to the defacto complainant. Thereafter, it is case of the defacto complainant that the the petitioner along with his other son Kumar, with a view to swallow the property, using the incapabilities and the old age of the defacto complainant, under the veil of trying to get loan for putting up further construction on the property, caused adjudication of the general power of attorney on 17.9.1999 and, thereafter, lured the defacto complainant to execute the sale deed under the garb of obtaining loan for putting up further construction. The defacto complainant, melting at the sugar coated words of the petitioner and his other son, had signed in the alleged sale deed, believing it to be a document executed for the purpose of obtaining loan.

3. It is the further case of the defacto complainant that when the 2nd respondent came over to India and started taking steps to put up further construction by obtaining loan, the sleight hand of the petitioner and his brother in defrauding the defacto complainant came to light. Thereafter, when the defacto complainant tried to give a complaint against the petitioner and his other son, he was threatened with dire consequences including threat to his life and was driven out of the house in which he was living, which was purchased by the 2nd respondent and fearing for his life, the defacto complainant took shelter at he house of his relative at Vellore and, thereafter, gave the present complaint. However, the complaint was initially not registered, which resulted in the filing of Crl. O.P. No.1583/18 before this Court for a direction to the 1st respondent to register the complaint and pursuant to the direction of this Court, the crime came to be registered. Assailing the registration of the crime by the 1st respondent, the present petition for quashing the same has been filed by the petitioner.

4. Learned counsel appearing for the petitioner submitted that the land, which is said to be purchased by the 2nd respondent on which a superstructure is alleged to have been put up by the 2nd respondent stands negated by the sale deed executed by the defacto complainant in favour of the petitioner as the said sale deed clearly reveals that what is purchased by the petitioner through the said sale deed is only vacant land and that no superstructure is shown in the said sale deed.

5. It is the further submission of the learned counsel for the petitioner that the sale deed had been executed by the defacto complainant way back in the year 1999, but the complaint has been filed only in the year 2018 and there is no explanation for the delay in lodging the complaint after such a long delay.

6. It is the further submission of the learned counsel for the petitioner that the 2nd respondent has arranged to file the original petition before this Court in the name of the defacto complainant, though the defacto complainant was terminally ill at the point of time and defrauding the Court, orders were obtained for registration of the case.

7. It is the further submission of the learned counsel for the petitioner that though the 2nd respondent had frequented to India since the year 1999, however, the case has been registered only in the year 2018. The alleged sale deed had already been entered in the year 1999 and, therefore, the act of the defacto complainant and the 2nd respondent in not coming before the court at the earliest point of time is detrimental to their case.

8. It is the further submission of the learned counsel for the petitioner that no material whatsoever has been placed before this Court or before the investigating agency by the defacto complainant and the 2nd respondent to show that there existed a superstructure in which the defacto complainant and his wife were residing and in the absence of such material, the complaint at the behest of the defacto complainant is wholly unsustainable.

9. It is the further submission of the learned counsel for the petitioner that the averments on the basis of the documents should prevail in view of Sections 91 and 92 of the Evidence Act and nothing more could be admitted in evidence. It is therefore the submission of the petitioner that when the sale transaction is put in issue, the course open to the defacto complainant is only to approach the civil court and resorting to invocation of the criminal machinery is nothing but an attempt on the part of the defacto complainant and the 2nd petitioner to arm twist the petitioner and cause harassment to the petitioner.

10. It is the further submission of the learned counsel for the petitioner that after purchasing the property, the petitioner had obtained building permission in the year 2002 and had put up construction, which is evident from the permission granted by the appropriate authority and, therefore, the stand of the defacto complainant that already construction was put up by the 2nd respondent and the defacto complainant was living in the said premises is not borne out by record.

11. Therefore, the learned counsel for the petitioner prayed that the FIR registered at the instance of the defacto complainant is wholly unsustainable, as a civil dispute is given a criminal cloak by the defacto complainant and the 2nd respondent for the purpose of enriching themselves and the present FIR cannot be allowed to continue and, accordingly, seeks for quashment of the same.

12. On the above contentions, this Court heard the learned Government Advocate (Crl. Side) appearing for the 1st respondent, who submitted that the investigating agency, based on materials and the directions from this Court, had registered the FIR and is continuing with the investigation and the stand of the petitioner that the investigating agency is trying to give a civil dispute a criminal colour is nothing but a figment of imagination on the part of the petitioner to wriggle out of the offence and, accordingly, sought for dismissal of the present petition.

13. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

14. In State of Haryana – Vs – Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

> "In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:
>
> (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose

a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

15. In yet another case in R.P.Kapur – Vs – State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

> "(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of juscite;
> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;
> (iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

16. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfills the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

17. This Court is not averse to the invocation of its powers u/s 482 Cr.P.C., but the only limitation being that the tests as adumbrated by the Hon'ble Supreme Court in the aforesaid decisions should stand satisfied so as to continue the case, else, the same would deserve setting aside.

18. The defacto complainant is not someone, who is unknown to the petitioner. The defacto complainant is the father of the petitioner as well as the 2nd respondent. It is the admitted case of the parties that the 2nd respondent was working in Australia even prior to 1990 when the land is said to have been purchased in his name by the defacto complainant utilising the money sent by the 2nd respondent. It is the case of the defacto complainant that utilising the money sent by the 2nd respondent, the defacto complainant not only purchased the said land, but also constructed a superstructure and the defacto complainant along with his wife as also his other two sons, viz., the petitioner and one Kumar, were residing in the said premises.

19. It is evident from the record that the general power of attorney has been given by the 2nd respondent in favour of his

father, viz., the defacto complainant on 17.9.1999 and adjudication order in No.39/ORB/99 has been issued on 5.10.99. It is the averment of the defacto complainant in the complaint that by way of adjudication, the general power of attorney issued by the 2nd respondent in favour of the defacto complainant had been registered in the Sub Registrar's Office, Saidapet on 5.10.1999. Thereafter, on 9.11.1999, the alleged fraudulent sale deed, has been entered into between the defacto complainant and the petitioner.

20. It is evident from the complaint that to a query made by the defacto complainant as to the necessity for two persons, who had signed as witnesses to the said sale deed, the petitioner is said to have informed the defacto complainant that they are standing sureties to the loan transaction. It is further to be pointed out that as is evident from the complaint, the defacto complainant was residing in the said house, but on coming to know about the fraudulent act perpetrated by the petitioner and his brother, he was threatened with dire consequences and was even driven out of the house only to get asylum at the house of his relative at Vellore.

21. The main ground of attack by the petitioner is that there is undue delay in filing the complaint, which casts a serious doubt about the veracity of the complaint and the complaint is merely an instrument which is used by the defacto complainant only to harass the petitioner at the instance of the 2nd respondent.

22. True it is that there is a delay of about 18 years in lodging the complaint. But it is the case of the defacto complainant that he came to know about the fraud perpetrated by the petitioner only in the year 2017 when the 2nd respondent wanted to obtain loan and put up additional construction when the 2nd petitioner had come over to Chennai. It is the insistent case of the defacto complainant that he was staying in the house put up by the 2nd respondent in the said land along with his wife and his children, including the petitioner. However, it is the case of the petitioner that he had entered into the sale deed and after purchasing the property, had put up construction in the year 2002 and to that end, has placed in the typed set of papers the Form-I submitted to the Perunkalathur Panchayat. However, it is to be pointed out that though the petitioner has stated that he had put up construction in the year 2002 by obtaining necessary planning permission and has been residing there since then and to substantiate the said plea has filed the above Form-I and also the ration card of the defacto complainant, however, curiously, the petitioner has not filed the planning permission before this Court.

23. Further, on the question of delay, it is to be pointed out that it is the case of the defacto complainant that the 2nd respondent, when came to Chennai in the year 2017, was inclined to put up additional construction in the property by availing loan and only in the aftermath of the said action, it came to light that the petitioner had defrauded his brother, viz., the 2nd respondent and his father, viz., the defacto complainant, who acted as the general power of attorney to the 2nd respondent and had made the defacto complainant the victim of a fraudulent transaction. Though the petitioner claims that the 2nd respondent had come many times between 1999, after the sale deed was executed and 2017, when it came to light that the alleged sale deed had been obtained by fraud, however, no materials whatsoever has been placed by the petitioner to show that the 2nd respondent had, in fact, come to Chennai many times during the said period.

24. Be that as it may. Even for the sake of argument if it is to be accepted that the 2nd respondent had come to Chennai many times between 1999 and 2017, it is to be pointed out that no situation arose to doubt that a fraud had been perpetrated both on the defacto complainant and the 2nd respondent. It is the case of the defacto complainant that he had believed that his signature was taken by the petitioner only for the purpose of obtaining loan for further construction. The petitioner, being the son of the defacto complainant, there arose no necessity for the defacto complainant to doubt the action of his son/the petitioner. In such a backdrop, the complaint of the defacto complainant cannot be merely thrown out on the ground of delay, as it is the case of the defacto complainant that immediately on coming to know of the fraud committed by the petitioner, the defacto complainant had set the criminal machinery in motion by filing the present complaint. Further, one other fact that stares on the face of record is the fact that initially CSR No.894/17 was registered, as the investigating agency felt that the matter pertained to a family dispute and summons were issued to the opposite party in the complaint, however as the petitioner/opposite party did not turn up to the summons and presented himself before the investigating agency, Crl. O.P. No.1583/2018 was filed, which resulted in this Court directing registration of FIR. Therefore, it cannot be claimed by the petitioner that for some ulterior motive, the investigating agency has registered the case.

25. Further, it is to be pointed out that the mere fact that in the sale deed it is shown that the land is a vacant land by itself would not be a ground to hold that the case projected by the defacto complainant is fraud for the simple reason that no document has been filed to the effect to show that the defacto complainant was residing elsewhere prior to 2002 when

the petitioner is alleged to have put up construction. Mere filing copy of the Form-I alleged to have been filed before the Perunkalathur Panchayat would not by itself absolve the petitioner, more so, when it is the case of the defacto complainant that on a query by the defacto complainant as to the nature of transaction being performed during the execution of the sale deed, the petitioner is alleged to have stated that it pertains to obtaining loan and that the persons, who are shown as witnesses are alleged to have been sureties. Further, it is to be pointed out that the Form-I, which is alleged to have been filed by the petitioner before the Perunkalathur Panchayat does not even contain the seal of the said panchayat so as to enable this Court to give any weightage to the said document. Mere placing of a document in the typed set of papers would not suffice to hold that the said document had in fact been placed before the concerned authority. Further it is to be pointed that the ration card of the defacto complainant pertaining to the years 2005-2009 has been filed to show the address of the defacto complainant as the property that is alleged to have been purchased by the petitioner. However, no material whatsoever is placed before this Court to discredit the stand of the defacto complainant that he was, in fact, residing in the said address even prior to 1999, the year in which the land is alleged to have been sold to the petitioner.

26. It is also further to be pointed out that mere filing of copies of property tax receipt and patta would not suffice to hold that the sale deed had been executed in a proper manner, without any fraud being perpetrated. Further, it is the case of the petitioner that he had put up construction in the said land in the year 2002 by obtaining necessary planning permission; yet the property tax receipt pertains only to the period 2016-2017 and the patta is bereft of the date on which it was issued. Further, as pointed out above, the planning permission is also not placed before this Court and the petitioner has also not adhered to the summons issued by the investigating agency to find out the truth in the complaint by presenting himself before the investigating agency.

27. Further, the power of attorney executed by the 2nd respondent in favour of the defacto complainant had been filed for adjudication and order passed on 5.10.1999. Within a month thereafter, the sale deed has been registered in favour of the petitioner. It is the case of the petitioner that the 2nd respondent had frequented to Chennai from Australia and that being the case, if really the petitioner had intention of purchasing the property from his brother, he could have done so at the time when his brother had come over to Chennai. However, curiously, the happening has been otherwise, as within a period of one month from the adjudication of the general power of

attorney, the sale deed has been executed, which creates a grave doubt into the genuineness and authenticity of the transaction, in view of the complaint filed by the defacto complainant. This Court, though is not expressing any opinion as to the veracity of the said transaction, but prudent warrants that such a course of act on the part of the petitioner also cannot be brushed aside and only a detailed investigation alone would give a quietus to the issue on hand by finding out the actual happening surrounding the execution of the sale deed.

28. Above all, as pointed out above, the petitioner and the 2nd respondent are the sons of the defacto complainant and for a father, both his sons are like his two eyes and, therefore, no necessity arose for the defacto complainant, who is the father, to treat one eye different from the other. Further, the lamentings of the defacto complainant are writ large in the complaint, which inspires the confidence of this Court and the same, by no stretch of imagination, could be said to be a tutored one or one, prepared by some other person to which the defacto complainant has furnished his name.

29. It is also to be pointed out that though the petitioner has claimed that the civil dispute is given a criminal colour by filing the present complaint. However, it is the specific case of the defacto complainant that he has been cheated by the petitioner into executing the sale deed on false premise that the said act is for the purpose of availing loan. Such being the case, the said fact cannot be brushed aside to come to a conclusion that it is a mere case of civil dispute, as without a proper investigation, more particularly into the acts of the petitioner and also the witnesses to the said instrument and all other associated materials, giving a finding one way or the other would not be in the interest of either party and to quash the FIR at the threshold, in the above-stated scenario, would be nothing but depriving the defacto complainant and also the 2nd respondent of their lawful right to have the matter investigated into.

30. The Hon'ble Supreme Court, in Bhajan Lal's case (supra) has enumerated the likely scenarios in which the High Court's, u/s 482 Cr.P.C., could interfere with the proceedings and the said decision has been followed in R.P.Kapur's case (supra) and it has been clearly held in the said decision that unless and until that the scenarios enumerated in the said decision arise, the High Courts, in exercise of its inherent jurisdiction u/s 482 Cr.P.C. shall not interfere with the complaint. In the case on hand, as pointed out above, there are very many angles to the issue, which requires a full fledged investigation to be conducted by the investigating agency to find the truth of the issue and it would be highly improper for this Court, at this

stage, to interfere with the said investigation as it would be nothing but depriving the complainant of his right to have the matter properly investigated, when there is a clear allegation of cheating and fraud having been perpetrated on the defacto complainant. There is not even a single scenario envisaged by the Hon'ble Supreme Court in the aforesaid decisions that would stand attracted to this case so as to enable this Court to even have a cursory idea of taking a different view. None of the parameters enumerated in the aforesaid decisions appear in this case warranting this Court to accede to the prayer as made by the petitioner.

31. In the aforesaid backdrop, this Court is of the considered view that the prayer in the present petition, at this point of time, cannot be granted, for the reasons aforesaid and, accordingly, this Court has no hesitation to dismiss the said petition. Accordingly, this criminal original petition is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

GLN

To
1. The Inspector of Police
   Peerkankaranai Police Station
   Kancheepuram District.

2. The Public Prosecutor
   High Court, Madras.

+1 CC to Mr.N. Anantha Padmanaban, advocate sr 45003.

CRL. O.P. NO. 25910 OF 2018

RLD(CO)
SP(17/09/2021)