



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.O.P.(MD)No.7808 of 2021
and CrI.MP(MD)No.3985 of 2021

Antony Jabestin : Petitioner/Accused No.5
Vs.

1.The State rep. by
The Inspector of Police,
City Crime Branch,
Tirunelveli City.
(Crime No.4 of 2021) : 1st Respondent/Complainant

2.V.Venkatasalam : 2nd Respondent/Defacto complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in Crime No.4 of 2021 pending on the file of the Inspector of Police, City Crime Branch, Tirunelveli City and quash the same as against the petitioners.

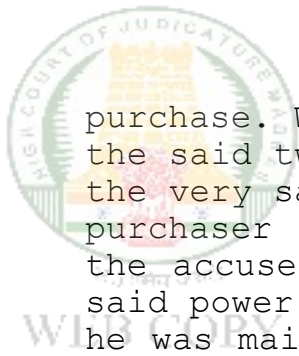
For Petitioner : Mr.R.Anand
For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

O R D E R

This petition is filed seeking to quash the the case in Crime No.4 of 2021 pending on the file of the Inspector of Police, City Crime Branch, Tirunelveli City.

2.The essential part of the case of the prosecution is as follows:-

On 26.06.1973, vide a registered sale deed in DOC. No. 1348 of 1973, one K.S.Sheik Mathar is said to have purchased a property measuring to the extent of 13 $\frac{3}{4}$ cents in Chidambara Nagar Colony in Survey No.823, Chathiram Pudhukulam Village, Tirunelveli District. The rough sketch in respect of the said property describes the said portion as Plot No.A2. Subsequently by dividing the said property into two as 7 $\frac{1}{2}$ cents and 6 cents, the said K.S.Sheik Mathar has sold the same through two sale deed Vide DOC.No.183/1989 and 184/1989 dated 07.09.1988 in which the second respondent was the purchaser of 7 $\frac{3}{4}$ cents and after the purchases, they have also obtained a joint patta vide patta No.1973 and as such they are said to be in possession of the said property right from the period of



purchase. When that being the status with regard to the ownership of the said two divisional property in Plot No.A2, the accused NO.1 i.e the very same K.S.Sheik Mathar with a view to cheat the above stated purchaser and to grab the said already sold property has appointed the accused No.2 by name S.Mohamed Abusali as his power agent. The said power of attorney has been registered by the accused No.1 as if he was maintaining the status of owner and as such he has made the said document registered on 16.06.2008. Thereupon, the said power agent on 17.09.2008, on the strength of the power deed, has sold the said property to one K. Muthukrishnan (A3) through DOC. No.1321 of 2008.

3.The first ground on which the learned counsel appearing for the petitioner would submit that with regard to preparation of committing crime through drafting a general power of attorney deed is concerned, it took place on 16th June 2008 and thereupon two transactions have been taken place in respect of the very same property. After 13 years only, the petitioner has purchased the property under the impression that the subject matter does not attach with any encumbrance. On seeing the period of delay from the date of general power of attorney deed and the date of purchases, it would be clear that the petitioner is a bonafide purchaser.

4. Another ground is that the petitioner is in possession of the said property and instead of filing a civil suit, the 2nd respondent has lodged a criminal complaint with the intention to grab the property with the help of law enforcing machinery. As far as the offences under Sections 418 and 420 are concerned, no ingredients mentioned in those provisions are attracted against the petitioner. In respect of the offences punishable under Sections 465, 467, 468 and 471 IPC are concerned, the subsequent registration of sale deed by the accused No.4 in favour of the petitioner cannot be termed as forged document and as such the petitioner cannot be held responsible for the said penal provisions. That apart, the original sale deed in respect of the said property was not entrusted to the second respondent by the first accused and the said sale deed has also been categorized as a pending document.

5.From the narration of facts, it is clear on record that to show that this petitioner is a bonafide purchaser for valid consideration, without notice for the above said issue. The learned counsel appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Md.Ibrahim and others Vs. State of Bihar and others (2009)8 SCC 751, which was followed in the case of Sheila Sebastian Vs. R.Jawaharaj and others in Manu/SC/0542/2018, dated 11.05.2018. Based upon this judgment, number of cases have been disposed of by this court. But at no stretch of imagination, it can be construed that the petitioner was actively involved in the forgery, which is alleged to have happened in 1998. This petitioner was not at all in the picture during the



that is much after the period of the alleged forgery of the document, being the bona fide purchaser for the value cannot be fastened to the criminal liability.

6.For all the reasons stated above, this court is of the considered view that this is a fittest case to quash the impugned proceedings.

7.Accordingly, this criminal original petition is allowed and the First Information Report in Crime No. 4 of 2021 pending on the file of the Inspector of Police, City Crime Branch, Tirunelveli City, is quashed in so far as the petitioner is concerned. Investigation may go on in respect of other accused persons. Consequently, connected miscellaneous petitio is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

Note : -In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

- 1.The Inspector of Police,
City Crime Branch,
Tirunelveli City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.7808 of 2021

and

Crl.MP (MD)No.3985 of 2021

22.10.2021

nsn (CO)

GC(18.02.2022) 3P 3C