



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Cr1.O.P.(MD)No.17748 of 2018

WEB COPY

1.Mohamed Sulthan
2.Kulandaivelu
3.Tamilselvan

: Petitioners/A2 to A4

Vs.

1.State re. By
The Inspector of Police,
District Crime Branch,
Ramanathapuram District.
In Crime No.7 of 2008.

: R1/Complainant

2.Mohamed Ismail Sahib

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the charge sheet in CC No.97 of 2013 on the file of the Judicial Magistrate No.II, Ramanathapuram as against the petitioners.

For Petitioner	: Mr.N.Ananthapadmanabhan for M/s.APN Law Associates
For 1 st Respondent	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor
For 2 nd Respondent	: No appearance

O R D E R

This petition is filed seeking quashment of the case in CC No.97 of 2013 pending on the file of the Judicial Magistrate No.II, Ramanathapuram as against the petitioners.

2.The case of the prosecution in brief:-

The property in Survey No.436/1B measuring about 1.77 Acres was purchased by the father of the de-facto complainant by name Alipulla, on 12.04.1996 from one Bathurush Mahn and after purchase, patta was also transferred in the name of the father of the de-facto complainant. The first accused namely Noor Mohammed stating that the property belongs to one Pathavisal Ammal and by impersonation sold the property to the second accused by name Mohamed Sulthan. Later the first accused mortgaged the property to the fourth accused on 20.04.2007, which was also redeemed, on



29.05.2008. On the basis of the above forged sale deed, on 30.05.2008, it was sold to the 3rd petitioner in the sale deed, which was purchased by the father of the de-facto complainant. In the sale deed, which was purchased by the father of the de-facto complainant A1 namely Mohammed Ismail Sahib signed as a witness knowing fully well that the property was purchased by the de-facto complainant father and also knowing that the property does not belong to the above said Pathavisal Ammal. In order to grab the property, he signed as witness in the forged document also. When that was questioned by the de-facto complainant, the above said co-accused along with A1 criminally intimidated them. So with these allegations the 2nd respondent lodged the complaint, based upon which, a case in Crime No.7 of 2008 has been registered against 4 accused persons. After completing the investigation, the final report was filed making allegations against these accused persons and more particular, final report has been filed against these petitioners that they have committed the above said offences.

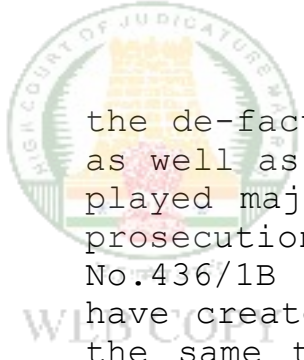
3. After filing of the final report, A1 namely filed Crl.OP(MD) No.18201 of 2015 and that came to be allowed by this court, dated 07.08.2017 by following the judgment of the Supreme Court in the case of **Mohammed Ibrahim and others State of Bihar and another [(2009) 3 SCC (Cri.) 929]** and also finding that none of the allegations mentioned in the final report and none of the ingredients of the offence attract as against A1. It appears that against which, no appeal has been preferred by the State or by the de-facto complainant.

4. Heard both sides. Even though the 2nd respondent has been served, none appears. Even in the earlier petition also, it appears that 2nd respondent did not appear.

5. The only point, which was urged by the learned counsel appearing for the petitioners at the time of argument is that all the allegations that have been made by the 2nd respondent were levelled only against A1 namely Noor Mohammed and so these petitioners are not involved in the above said occurrence and when the case has been quashed against A1, nothing survives to proceed against these petitioners. It is also contended that in the above said criminal original petition, the entire proceedings has been quashed. But however, the trial is pending as against these petitioners.

6. On reading of the above said order shows that the proceedings have been quashed only against A1 and not against these petitioners.

<https://hcservices.hcourtsgov.in/hcservices/> 7. Now whatever it may be, the technical contention among all the accused has to be taken into consideration. As mentioned by

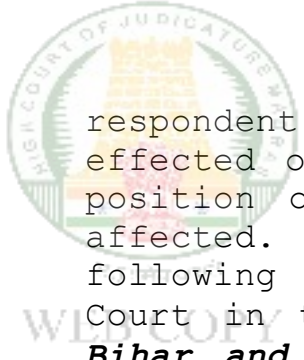


the de-facto complainant namely the 2nd respondent in his complaint as well as in the final report, it is seen that A1 alleged to have played major portion in the whole transaction. According to the prosecution, A1 having full knowledge that the property in Survey No.436/1B did not belong to the one Pathivisal Ammal alleged to have created forged deed by impersonating the true owner and sold the same to A2, who is the son, on 19.11.2004. So this is the disputed document. During the course of investigation, it is seen that the above said originally document was not secured and only the Xerox copy of the document obtained and produced as Document No.3 in the list of evidence under section 156(3) Cr.P.C along with charge sheet. The alleged role that has been allegedly played by A1 has been negatived by this court in the above said criminal original petition. There is no evidence collected during the course of investigation to show that A1 also played a vital part in the above said transaction. After purchase, A1 mortgaged the property to the 3rd petitioner, who is A2 namely Tamil Selvan. Later that was redeemed by A1. The first petitioner/A2 later sold the very same property to A3 on 30.05.2008. So this is the back ground, which shows that A2 and A3 were not at all in the picture, when the alleged forged document was created by A1 in favour of the above said A4.

8.It is also seen that the Pathavisal Ammal was also not examined as a witness during the course of investigation. One Jafarullah Khan said to be the son of the above said Pathavisal Ammal. The said Pathavisal Ammal is stated to be died on 07.02.2008, much after the above said sale deed, dated 19.01.2004. The complaint was lodged on 05.08.2008 namely two days prior to the death of the said Pathavisal Ammal. The impersonation of above said Pathavisal Ammal was taken place after her death and before her funeral rites were preformed. The son of the above said Pathavisal Ammal also stated that the disputed property is survey No.436/1B did not belong to their family.

9.So coming back to the case of the prosecution, this fact was known to A1 and he has also signed as a witness in the document, which was purchased by the father of the de-facto complainant, which is dated 11.04.1996. So, no doubt that A1 played a vital role in the above said transaction. Since A1 has been discharged from the criminal prosecution, the subsequent purchaser and the mortgagee should not be directed to undergo ordinal trial. When the charge against A1 was technically quashed, nothing going to be served by directing the petitioners to undergo the trial process.

10.From the records, it is also seen that every efforts have been made by this court to serve on the 2nd respondent, but finding that knowing about the pendency of the proceedings, the 2nd respondent did not choose to appear and contest the matter. Moreover, it is also a basic law that forged document will not create any document of title or right to any one. The 2nd



respondent informed that the subsequent sale deeds that have been effected over the property and claim right. This is the settled position of law. So in no way, the 2nd respondent might have affected. Since the case has been quashed as against A1 by following the dictum, that has been laid by the Hon'ble Supreme Court in the case of **Mohammed Ibrahim and others Vs. State of Bihar and another (2009) 3 SCC 929**, it need not be reproduced herein also.

11. For all the reasons stated above, this criminal original petition is **allowed** and the impugned charge sheet in CC No.97 of 2013 on the file of the Judicial Magistrate No.II, Ramanathapuram is hereby quashed against these petitioners.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

er

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 Judicial Magistrate No.II,
Ramanathapuram.

2. Do Through The Chief Judicial Magistrate,
Ramanathapuram.

3. The Inspector of Police,
District Crime Branch,
Ramanathapuram District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP (MD) No.17748 of 2018
29.11.2021