BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.03.2021
Delivered On : 08.04.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.10544 of 2017
and
Crl.M.P.(MD)Nos.7225 & 7226 of 2017

Vimala ... Petitioner/Accused No 2

Vs.

1.The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.
Cr No. 3/2011. ...1st Respondent/Complainant

2. Athoimoola Meenakshi ...2nd Respondents/defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to Call for the records in C.C.No. 11 of 2017 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases Tirunelveli and quash the same as against the Petitioner.

For Petitioner : Mr.T.A.Ebenezer
For Respondent 1 : Mr.M.Ganesan
Government Advocate (crl.side)
For Respondent 2 : Mr.R.Anand

ORDER

This petition has been filed seeking for quashment of the charge sheet in C.C.No. 11 of 2017 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli.

2.The case of the prosecution before the trial Court is that the petitioner is arrayed as accused before the trial Court by the first respondent on the following grounds:

The deceased Ponnusamy is the first accused, the second accused is the petitioner herein and the third accused is the husband of this petitioner. Both the first and third accused expired. The first accused, namely, Ponnusamy sold a plot in Plot No.21 measuring 6.07 cents in Survey No.142/2 in V.M.Chathiram, on 09.09.1983 to one

Adhimoolameenakshi, who is shown as witness No.1. So, after selling the property, the first accused does not have any title over the property, but, with an intention to cheat the defacto complainant, the first accused sold the property to this petitioner on 17.05.2004 in conspiracy, all the accused joined together and created false document the third accused signed as the witness in the document and they also by using forged document sold the same to one Samuvel on 16.04.2009. So, all the accused cheated the defacto complainant to the tune of Rs.1,50,000/- and caused loss and so, all the accused are liable to be punished for offences under Sections 120B, 420, 465, 467, 468 and 471 of I.P.C.

3.Based upon the complaint given by the defacto complainant, the first respondent registered a case in Crime No.3 of 2011 under Sections 120B, 420, 465, 467, 468 and 471 of I.P.C., collected materials, recorded statements of witnesses and filed the final report as stated above. Challenging the final report, the second accused before the trial Court has filed this present petition, mainly on the ground that it is purely a civil dispute and she never indulged in conspiracy in cheating with the first and third accused and she was a *bona fide* purchaser for a value, without notice, sale made by the first accused in favour of the defacto complainant. None of the allegations mentioned in the final report are attracted against her.

4.Heard both sides.

5.Simultaneously, criminal and civil proceedings are going on between the parties regarding the dispute. Even though the case of the petitioner before the civil Court and as well as at the time of investigation and filing of this petition to the effect that she is a *bona fide* purchaser for value without notice and she never indulged in any such illegal activities, but, after the loss of civil litigation, she proposed to file an undertaking affidavit to the effect that she has knowledge about the title of the defacto complainant and so, she may be relived from the criminal case. But, the defacto complainant, who is the second respondent herein, did not accept this undertaking and according to her, the pain and suffering that has been undergone by the defacto complainant in making the criminal prosecution and filing the civil suit and fighting the same upto the High Court, must be taken into account and for no reason, she had been made to suffer mentally, financially, because of this litigation and purchases made by the petitioner from the first accused. So, according to the defacto complainant, there is no *bona fideness* on the part of the petitioner. Now, *ipso* has any genuine intention, she would have expressed the same, even at the earliest point of time before the litigation started. So, this conduct on the part of the petitioner, is with her undertaking, now, will not cure her criminal act that has been committed. According to the defacto complainant, this is not a fit case to quash the final report, and it must continue to his logical conclusion.

6.Now, coming to the allegation against the petitioner to see whether the offence are attracted, the offence is under Section 120B I.P.C. According to the prosecution, all the three accused conspired together and to cheat the defacto complainant. They entered into a conspiracy. No doubt, there can be no direct evidence to show the conspiracy. But, the fact remains that the petitioner purchased the property on 17.05.2004, that is, after about 20 years from the date of the earlier sale deed in favour of the defacto complainant by the first accused. Before the civil Court and as well as before this Court, a contention was raised that even before the purchase, the petitioner made a publication in the daily newspaper expressing her willingness to purchase and invited objection from the objectors. So, also the first accused made a publication in the newpapers stating that his original version of purchase deed was lost. According to her, only after these steps, she purchased the property. But, this has been doubted by the civil Court in O.S.No.307 of 2011, which was instituted by the defacto complainant before the Principal Sub Court, Tirunelveli, which was affirmed by the First Appellate Court in A.S.No.45 of 2015 by the Principal District Judge, Tirunelveli and in S.A.(MD)No.316 of 2020 by this Court.

7.A perusal of the document shows that she contested the suit by filing written statement stating that she was a *bona fide* purchaser, without notice and the suit was decreed in favour of the defacto complainant. The Appeal was filed by the second defendant (Samuvel), who was the subsequent purchaser from this petitioner. The second appeal was also filed by the subsequent purchaser. So, according to her, even though her case of *bona fide* purchase for value has been negatived by the civil Court, that will not mean that she entered into conspiracy. From the facts narrated above and as from the materials collected by the Investigating Officer, it is seen that no materials are available to show that this petitioner has also conspired with the first accused, to cheat the defacto complaiant. A failure on the part of this petitioner to take encumbrance certificate before purchase, has been greatly commented by the civil Court. If at all, only a civil liability will arise, in such an event certainly, not a criminal offence. The other offences alleged are under Sections 420, 465, 467, 468 and 471 of I.P.C. The parties would straight away rely upon the judgments of Hon'ble Supreme Court reported in 2009(8)SCC 751 (Mohammed Ibrahim and others vs. State of Bihar and another). So, in that case, the first accused without having title over the property, sold the same to the second accused on that ground criminal proceedings were initiated. A contention was raised by the accused that it is a purely of civil in nature, which did not contain any criminal activities and also contended that the disputed land was allotted to him in a family arrangement.

8.The Hon'ble Supreme Court has noted that there is a rising trend in making complaint, which was involved purely a civil dispute, but, at the same time, it has been observed that in some cases, there will be overlapping of civil and criminal activities. When the ingredients of the criminal offence are also involved in civil disputes, both must be persued.

9.Keeping this in mind, the next question which arises for consideration, is whether even if the allegation mentioned in the final report on its face value is accepted, whether the ingredients are attracted for offences under Sections 463, 464, 467 and 471 I.P.C. It has been elaborately discussed in the judgment. According to the petitioner, to make out an offence under Section 465 I.P.C., intention to defraud must be proved. But, according to her, at the time of purchase, she did not know that the first accused had already sold the property to the defacto complainant. So, there was no dishonest or fraudulent intention on her part. The ingredients of Section 464 I.P.C are extracted hereunder:

> *10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:*
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> *10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
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> *10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.*
>
> *10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*
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> *11. In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.*

10.So, these ingredients if at all will be attracted only against the deceased first accused, because, he knew that he had already executed a sale deed infavour of the defacto complaint in respect of that property. But, the ingredients to this Section will not be attracted against this petitioner. No material was collected or it is not also a case of the defacto complainant that only this petitioner induced the first accused to execute this false sale deed. So, offence under Section 464 I.P.C. is not attracted against this petitioner. So, the offence under Sections 465, 467, 468 and 471 I.P.C will not be attracted against this petitioner.

11.The next offence is under Section 420 I.P.C. The ingredients of offence under Section 420 I.P.C has been explained by the Hon'ble Supreme Court, is extracted here under:

> *"13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or*
>
> *(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."*

12.It is also relevant to extract the observations of the Hon'ble Supreme Court in paragraph No.14, which are extracted hereunder:

> *14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything*

which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

13.So, on a reading of this observation of the Hon'ble Supreme Court, it is clearly seen that if at all, the offence will be made out only against the deceased first accused and certainly not against this petitioner, who is the purchaser. As I mentioned earlier, no materials are available to allege that this petitioner conspired with the first accused and third accused to commit the act of forgery etc. So, as rightly pointed out by the learned counsel for the petitioner that she is also a victim of crime cannot be brushed aside.

14.The contention on the part of the defacto complainat that to show her bonafide, she did not make any complaint against the first accused, though may be acceptable, mere inaction on the part of the petitioner against the first accused will not lead to an inference that she induced the first accused to execute the sale deed in her favour. She also sold the property, in turn, to one Samuvel, who is the subsequent purchaser. As I mentioned earlier, only Samuvel filed an Appeal suit in A.S.No.45 of 2015 before the Principal District Judge, Tirunelveli and further filed a second appeal in S.A.(MD)No.316 of 2020 before this Court, not only this petitioner, but, also Samuvel was also affected by the transaction and that is why, it appears that he pursued the matter till the Second Appeal. So, the contention on the part of the defacto complainat that allegations mentioned in the final report are attracted against this petitioner and the criminal case must be permitted to pursued to the logical conclusion cannot be accepted and it will be an abuse of process of the Court. Since the first accused is no more, the charge against him is also abated. So, nothing survives for logical conclusion against this petitioner.

15.In the light of the above said finding, I am of the considered view that the final report filed against this petitioner is liable to be quashed and accordingly, the same is quashed. This Criminal Original Petition is allowed and the charge sheet in C.C.No. 11 of 2017 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases Tirunelveli, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Special Judicial Magistrate,
Special Court for Land Grabbing Cases,
Tirunelveli

2.The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.

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

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-15565[F] dated 09/04/2021)

Crl.O.P.(MD)No.10544 of 2017
08.04.2021

ES(CO)
KB(10.05.2021) 7P 5C