BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 26.02.2021
PRONOUNCED ON : 29.03.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN
Crl.O.P.(MD)No.14943 of 2017
and
Crl.MP(MD)Nos.9948 & 9949 of 2017

1.Rajikrishnan
2.K.Mehra Banu ... Petitioners/Accused Nos.6 & 7

Vs.

1.The Inspector of Police,
District Crime Branch (Anti Land Grabbing Special Cell),
Tirunelveli.
Crime No.75 of 2011. ... 1st Respondent/Complainant

2.K.P.Mayinkutty ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the Charge Sheet in C.C.No.20 of 2017 on the file of the Special Court for Land Grabbing Cases, Tirunelveli and quash the same as illegal in respect of the petitioners herein/Accused Nos.6 & 7.

For Petitioners	:	Mr.Siva Kumar for R.Murugan
For R1	:	Mr.R.Anandharaj Additional Public Prosecutor
For R2	:	Mrs.S.Praba for Mr.S.Gokulraj

ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.20 of 2017, on the file of the Special Court for Land Grabbing Cases, Tirunelveli.

2. The case of the prosecution before the Trial Court through the final report is as follows:-

The defacto complainant namely, Myinkutty and the following persons Michael Raj, Yusuf, Babu, Chandran and Rajagobalan became friends, when they were working in abroad. The first and the seventh accused are the husband and wife. They informed the above said persons that the landed property measuring an extent of 17 acres 96.5 cents are available for sale and they may purchase the property and share the profit. So, on 17.08.1993, the above said six persons purchased the properties. But, the first and the seventh accused conspired to grab the property and created a forged power of attorney deed. The forged power of attorney was registered as document No.63/1995, on the file of the Radhapuram Sub Registrar's Office. By utilizing the forged document with the collusion of the third accused, sold a portion of the property in S.No.1945. Similarly, another portion was sold to the fourth accused on 31.08.1995. In turn, the third accused, sold the property to the sixth accused on 31.08.2005 through the document No.3290/2005. Similarly, another portion was sold to the fifth and sixth accused on the very same day through document No.3289/2005, on the file of the Radhapuram Sub Registrar's Office. Accused Nos.5 & 6 know fully well that the property does not belong to their vendor.

3. Based upon the complaint given by the defacto complaint, the first respondent took up the investigation and collected the materials recorded the statement of witnesses, sent the disputed finger prints and signature to the forensic examination and after completing the investigation, the first respondent filed a charge sheet against all the seven accused persons making allegation that they have committed the offences punishable under Sections 420, 120 (b), 419, 465, 468 & 471 I.P.C. The seventh accused namely, Michael Raj, alleged to have played a vital role in the entire transaction had died, so, his name was deleted from the final report. He was originally arrayed as 8th accused. Similarly, another person by name, Sankaralingam could not be identified and so, his name was also deleted. So totally, six persons are now arrayed as accused before the Trial Court. The petitioners herein are arrayed as accused Nos. 6 & 7.

4. Seeking quashment of the final report, petitioners have filed this petition, mainly on the ground that they are the bonafide purchasers without knowing about the previous transactions concerning the property from the third and fourth accused herein and they were in no way connected with the other accused, at the time of alleged forgery and impersonation of the power of attorney deed by the first accused at the instigation of the seventh accused.

5. A simple ground, which has been taken by the petitioners is that the alleged forgery, took place in the year 1995 and the property was purchased by the third and the fourth accused from the first accused in the same year and after noticing the paper publication in Malayala Manorama dated 02.04.2005, they came to know that the disputed property was available for sale and hence, with good intention, they purchased the property.

6. Heard both sides.

7. As mentioned earlier, the first and seventh accused are alleged to be the kingpin in the entire transaction. Enough materials have been collected by the Investigating Officer, over the role played by the first and the seventh accused in creating,

forging and impersonating the disputed power of attorney deed, dated 10.04.1995, which was registered on the file of the Radhapuram Sub Registrar Officer in Document No.63/1995. Perusal of records shows that the Investigating Officer collected the disputed finger prints and the same were sent to the forensic examination. From the materials available on record, it is seen that the disputed power of attorney deed, does not contain the finger prints of the principal, namely, Michael Raj, Yusuf, Babu, Myinkutty, Chandran and Rajagobalan. So, prima facie, it is seen that the document is a forged one.

8. Based upon this document, the first accused sold a portion of the property, which was purchased by the defacto complainant and other persons, to the third and fourth accused herein, on 31.08.1995, through the separate sale deeds. As mentioned earlier, on 02.04.2005, the third and fourth accused gave an advertisement in Malayala Manorama stating that the property was available for sale. On 31.08.2005, the accused Nos. 5 & 6 who are the petitioners herein, purchased the property from the third and fourth accused through separate sale deeds. So, this question of fact shows that these petitioners were not at all in the picture when the alleged forged power of attorney, was created by the deceased/the seventh accused in the name of the first accused.

9. The materials collected by the Investigating Officer also do not disclose any involvement by these petitioners on the date of alleged power of attorney, dated 10.04.1995. After a long gap of 10 years, these petitioners came into the transaction by way of purchase. The only allegation that has been made by the Investigating Officer against these petitioners is that they had the knowledge about the imperfect title of the third and fourth accused. But, we find that they are permanent residents of Kayankulam Village in Aalapula District, whereas, these petitioners are residing in Sasthamangalam, Trivandrum. So, it is seen that they are not the residents of village of the third and fourth accused.

10. It is also seen that the the petitioners had filed a suit in O.S.No.94 of 2011 before the Sub Court, Valliyoor, for declaration of alleged power deed is null and void. Similarly, the defacto complainant along with the other accused persons have also filed a suit in O.S.No.97 of 2012 before the Principal District Munsif Court, Valliyoor, for declaration and injunction against the defacto complainant and others. The result of both the suits are not known. Even though, it is stated that the suit filed by the defacto complainant was dismissed for default.

11. But, whatever it may be, these petitioners were not shown as accused when the Inspector of Police, Crime Branch, Nagercoil submitted a report on 15.09.2015. But, later, these petitioners were included as accused by filing the supplementary charge sheet on 03.08.2017. So, according to the learned counsel for the second

respondent, pendency of a Civil Suit is not a bar for taking criminal proceedings.

12. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Yogendra Singh Jadon & Another in Crl.A.No.175 of 2020.** The case involved a dispute of granting of loan without any proper documents, when the father of the accused was the president of the concerned Bank. It was found that the accused is a beneficiary of their father, which indicated that the accused person had committed the offence under Section 420 and 120 (B) IPC. The Hon'ble Supreme Court, refused to quash the criminal proceedings after finding that the accused persons obtained a cash credit facility in knowledge that they will not repay the loan amount.

13. Per contra, it is the contention on the part of the petitioner is that as per the judgments of the Hon'ble Supreme Court reported in i) **State of Karnataka Vs. L.Muniswamy and Others (1977) AIR (SC) 1489** ii) **Inder Mohan Goswami and Another Vs. State of Uttaranchal and others (2007) 59 AIC 30**, the ingredients of the offence of conspiracy are not made out.

14. The judgment of the Hon'ble Supreme Court reported in the **Inder Mohan Goswami and Another Vs. State of Uttaranchal and others** (cited supra) elaborately discussed about the scope and ambit of Section 482 Cr.P.C, that is available to the High Court. Finally in para 38, the Hon'ble Supreme Court has observed that if the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted the same in entirety, if failed to make out the case, then as per the law lay down **Bajanlal case**, the First Information Report can be quashed in the light of the law set out by the Hon'ble Supreme Court, the facts of the present case must be discussed. As mentioned earlier, no material has been collected by the Investigating Officer except stating that these petitioners also know the imperfect title of forgery committed by the third and fourth accused. The sequence of event clearly disclose the fact that these petitioners did not actively participate in the alleged fabrication of false records. When their participation, during the relevant time, is completely absent, even if we take the case of the prosecution on it's face value, no offence is made out as against these petitioners.

15. Conspiracy is defined under Section 120 (A) IPC is as follows:-

*"**120-A.Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,-*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall by one or more parties to such agreement in pursuance thereof."

16. So, a reading of the above said provision in the light of the judgment of the Hon'ble Supreme Court in **Harilal Bhagavathi Vs. CBI 2003 SCC Cri 1121** will make it a point that there must be an agreement between the parties for doing an unlawful act.

17. It is also been pointed out that proving a conspiracy by direct evidence, is very difficult. So, the offence of conspiracy, can be proved only through circumstantial evidence. But, here, as mentioned earlier, these petitioners were not at all in the picture, when the alleged forgery of power of attorney deed took place. No materials has been collected by the Investigating Officer to the effect that, the act of forgery or imperfect title of the third and fourth accused were known to these petitioners.

18. So, I am of the considered view that continuation of the criminal proceedings against these petitioners will amount to abuse of the process of the Court. As rightly pointed out by the learned counsel for the petitioners, they are the victims of the crime alleged to have been committed by the first accused at the instigation of her husband, the deceased seventh accused. They should not be penalized twice. One in the form of loss title and another in the form of criminal prosecution.

19. So, I am of the considered view that this is a fit case, the power can be exercised by this Court under jurisdiction 482 Cr.P.C to quash the proceedings against these petitioners are concerned.

20. In the result, this petition is allowed. Case pending against these petitioners in C.C.No.20 of 2017, on the file of the Special Court for Land Grabbing Cases, Tirunelveli is quashed and the Trial Court may proceed with the case against the other accused are concerned without being influenced by any of the observations of this Court. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

dss

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 Special Court for Land Grabbing Cases,
Tirunelveli.

2.The Inspector of Police,
District Crime Branch (Anti Land Grabbing Special Cell),
Tirunelveli.

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

+1 CC to M/s.R.MURUGAN, Advocate (SR-14327[F] dated 30/03/2021)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-14426[F] dated 30/03/2021)

Crl.O.P.(MD)No.14943 of 2017
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