IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No. 22801 of 2015

R.Viswanathan,
S/o. Ramakrishnan ... Petitioner

Versus

1. State rep. by
Inspector of Police,
CCB, Egmore,
Chennai-600 008.
(Crime No. 685 of 2003
on the file of X Team)

2. Segh Salalludin,
S/o. Hameed Ibrahim ... Respondents
(2nd respondent impleaded as per order of this court dated 27/11/2015 made in MP.No.1/2015, in CRL OP.No.22801/2015)

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the charge sheet in C.C.No.48 of 2013 on the file of the II Metropolitan Magistrate Court, Periyamet, Chennai-3, the Special Court for the trial of Land Grabbing cases, since transferred and renumbered from the file of III Metropolitan Magistrate, George, Town, Chennai - 600 001 in C.C.No.8810 of 2005.

For Petitioner : Mr.N.A.Ravindran

For Respondents : Mr.C.E.Pratap,
Govt. Advocate (Crl. Side) for R1

No appearance for R2

ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.48 of 2013 on the file of II Metropolitan Magistrate Court, Periyamet, Chennai-3, the Special Court for the Trial of Land Grabbing Cases, since transferred and renumbered from the file of III Metropolitan Magistrate, George

Town, Chennai-1 for the offences under Sec.420, 465, 468 and 471 I.P.C. r/w 120(b) I.P.C.

2. Totally, there are two accused. The petitioner is arrayed as A2. He has been charged with for the offences under Sec.420, 465, 468 and 471 I.P.C. r/w 120(b) I.P.C.

3. The case of prosecution in brief is as follows :-

Properties in various survey numbers in Uthicipulli Village, Ramanathapuram District, originally belong to 2nd respondent/defacto complainant's father. By means of a family settlement, the properties have been allotted to the 2nd respondent and her sister Syed Ameena Beevi and others. Thereafter, the 2nd respondent executed a General Power of Attorney in favour of his elder sister Syed Ameena Beevi and assigned all his rights in her favour, apart from that, one T.S.Abu Ayub, who is 2nd respondent sister's son also have a share in the above property. Subsequently, the 2nd respondent came to understand that, one Seyed Ibrahim Sahib @ Miyanna, who was appointed as Manager by them said to have created a forged power of attorney in his favour, and registered the same in District Registrar Office, North Madras, using the forged Power of Attorney, he sold larger extent of properties to various persons. The petitioner has purchased some extent of land in Survey No. 37/2 in Uthicipulli Village by a registered Sale deed dated 07.10.2002 from him. Hence, a complaint has been given and based on that, F.I.R. was registered in Crime No. 685 of 2003 against the petitioner as well as alleged power of attorney Seyed Ibrahim @ Miyanna. After investigation, final report has been filed for the above said offence and the court below has taken cognizance of offence. Now, to quash the criminal proceedings, the present petition has been filed.

4. Mr. N.A.Ravindran, learned counsel appearing for petitioner would submit that, believing the words of A1, Power of Attorney, Seyed Ibrahim @ Miyanna,without knowing the fact that the power of attorney was a forged one, the petitioner purchased the property from him, he is a bonafide purchaser of the property for a valid consideration. The learned counsel would further submit that after purchase of property, sister of 2nd respondent claiming right over the same filed two suits seeking for declaration of title and also for injunction before the District Munsif Court, Rameswaram. The above suit has been filed by 2nd respondent's sister Ameena Beevi, and also on behalf of 2nd respondent as his power of attorney. Subsequently, the above suit has been settled between the parties and a compromise decree was also passed in the suit, wherein the property purchased by the petitioner in Survey No.37/2H1 has been allotted to his share. Apart from that, the plaintiff also

agreed to withdraw the present case pending in C.C.No. 48 of 2013 on the file of II Metropolitan Magistrate, Chennai. The above compromise decree is binding on the 2nd respondent/defacto complainant and he cannot launch the present complaint. The learned counsel would also submit that even on merit, absolutely there is no materials available on record to show that the petitioner has conspired with A1 and in furtherance of the conspiracy, he has purchased the property with an intention to cheat the defacto complainant. In absence of any such materials, charges against the petitioner cannot be maintained and the same is liable to be quashed.

5. Even though notice ordered to the 2nd respondent, despite all efforts, notice could not be served on him. Hence, substituted service was ordered and the substituted service was also effected and the name of 2nd respondent was printed in the cause list. However, when the matter is called, there is no representation on behalf of 2nd respondent.

6. The learned Government Advocate (Criminal Side) appearing for 1st respondent would vehemently content that, A1 created a forged power of attorney and based on that, he has sold the property in favour of petitioner. The petitioner fully aware of the fact that the power of attorney is forged one, and A1 and the petitioner/A2 entered into a conspiracy and in furtherance of the same, sale deed came to be executed in favour of petitioner. The materials available on record make out a prima facie case against the petitioner. So far as compromise decree is concerned, the compromise decree is entered between sister of 2nd respondent and the petitioner, which is not binding on the 2nd respondent. Hence, based on the compromise decree, the petitioner cannot claim any relief.

7. Heard and considered rival submissions made by learned counsel appearing for both sides and perused the records.

8. The charge against the petitioner is that, A1 created a forged power of attorney as if he is owner of the land and based on that power of attorney, the petitioner has purchased the property, thereby, both the accused cheated the original owner, the defacto complainant. However, from the perusal of records, it could be seen that the 2nd respondent claiming share in the disputed property, admittedly, the 2nd respondent executed a power of attorney in favour of his sister, one Seyed Ameena Beevi. The said Seyed Ameena Beevi filed a civil suit against the petitioner in O.S.No.105 of 2010 on her behalf and also on behalf of 2nd respondent as his power of attorney. Subsequently, the parties entered into a compromise, and compromise decree came to be passed on 10.01.2012, and the copy of compromise decree was also placed before this Court. On perusal of

compromise decree, it could be seen that the disputed property viz., Survey No.37/2H, has been allotted to petitioner's share. Apart from that, it is also agreed that, the criminal case pending against the petitioner will also be withdrawn by the defacto complainant and as the matter has been settled between the parties and the disputed property has been given in favour of petitioner, the above compromise decree is binding on the 2nd respondent and he cannot maintain a criminal case against the petitioner.

9. Apart from that, as rightly contended by the learned counsel appearing for petitioner, from the perusal of materials collected during investigation, absolutely nothing available to show that there is agreement between A1 and A2 to commit illegal act and both A1 and A2 have entered into a conspiracy and in furtherance of conspiracy, A1 created forged power of attorney, thereafter, cheated the 2nd respondent. The petitioner is a bonafide purchaser for a consideration. On merit also, I find no prima facie case made out against the petitioner. Considering those circumstances and contentions, this Court is of the view that the criminal proceedings is nothing, but only abuse of process of law. Hence, it is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.48 of 2013 on the file of II Metropolitan Magistrate Court, Chennai-1, (Special Court for trial of Land Grabbing Cases) is quashed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The II Metropolitan Magistrate Court,
   Periyamet, Chennai-3

2. The III Metropolitan Magistrate,
   George, Town, Chennai - 600 001

3. The Chief Metropolitan Magistrate,
   Egmore, Chennai

4. Inspector of Police,
   CCB, Egmore,
   Chennai-600 008.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C. Prabakaran, Advocate, S.R.No.2829

CRL.O.P.No. 22801 of 2015

PCH(CO)
CT 09/02/2022