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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.03.2022

Pronounced on :21.03.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.951 of 2019
and
Crl.M.P.No.631 of 2019

Paul Jayaseelan ..Petitioner

/versus/

1.State rep.by Sub Inspector of Police,
District Crime Branch,
Salem District,
Crime No.8/2014.

2.P.Ramachandran ..Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records in respect of the C.C.No.220 of 2018 on the file of the Judicial Magistrate VI, Salem and quash the same.

For Petitioner :Mr.R.Nalliyappan

For Respondents:Mr.S.Santhosh
Govt.Advocate(Crl.Side) for R1
No appearance for R2

O R D E R

This Criminal Original Petition has been filed to call for the records in respect of the C.C.No.220 of 2018 on the file of the Judicial Magistrate VI, Salem and quash the same.

2.In C.C.No.220 of 2018, pending on the file of Judicial Magistrate No:VI, Salem, the petitioner herein is arrayed as the 5^{th} accused.

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3.The gist of the final report in C.C.No.220 of 2018 against the petitioner and 4 others for offences under Section 120(B), 465 , 468, 420 and 506(i) IPC is that, Glide Gregory (A-1) and his son Glint (A-2) had 3 acres of land in Vellalapatti Village, near Omalur bearing S.Nos.44/2 and 50/3. They plotted the property and sold it to 20 persons prior to 2009. While so, they along with the real estate brokers Rajarathinam (A-3), Kandasamy (A-4) and Paul Jayaseelan (A-5), petitioner herein conspired to cheat the defacto complainant and pursuant to the said conspiracy, A-3 to A-5 enticed the defacto complainant that 3 acres of land owned by A-1 and A-2 is available for very cheap price and they can arrange for its purchase.

4.Believing the words of A-3 to A-5, the defacto complainant Mr.P.Ramachandran and his friend K.R.Balachandran went to Vellalapatti Village and inspected the property. A-3 to A-5 took them to A-1 and A-2 and negotiated with A-1 and A-2. They agreed to buy the land for a consideration of Rs.15 lakhs and on 03/03/2009 paid Rs.6,50,000/- as advance to A-1 and A-2 and entered into an agreement reducing the terms of the agreement in writing. In the said agreement, A-1 and A-2 as vendors and the defacto complainant (P.Ramachandran) and Usha Rani, W/o K.R.Balachandran as buyers affixed their signatures. A-3 to A-5 affixed their signatures as witnesses to the agreement. A-3 and A-4 received Rs.60,000/- as brokerage.

5.Knowing well that A-1 and A-2 were not the owners of the property on the date of agreement, the accused persons received Rs.6,50,000/- as part sale consideration and Rs.60,000/- as broker commission. With an intention to cheat, a false document prepared by A-5 in connivance with other accused, to make the defacto complainant believe that A-1 and A-2 are still the owners of the property and the title deed is in Punjab National Bank for the Small Industries loan availed and induced him to part away Rs.6,50,000/- towards part sale consideration and Rs.60,000/- as brokerage.

6.From the records, it appears that the defacto complainant approached the High Court for a direction to the respondent police to register his complaint alleging that his complaint dated 13/10/2012 not taken up for investigation. As directed by this Court in Crl.O.P.No.7243/2013 vide order dated 24/09/2013, the respondent police has registered First Information Report in Crime No.8/2014 and on completion of investigation, they filed the final report and the same was taken on file by the learned Judicial Magistrate-VI, Salem in C.C.No.220/2018.

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7.Attributing this petitioner conspired with other accused, prepared the sale agreement containing false claim of title over the property and signed in it as one of the witnesses, despite knowing that the executants A-1 and A-2 are not the owners of the property, which is the subject matter of the agreement. Further, it is attributed that due to his inducement the defacto complainant parted away Rs.6,50,000/-. When after knowing that A-1 and A-2 have already sold the property to various persons as housing plots and the accused persons have cheated him, the defacto complainant demanded his money, then the petitioner and others threatened him with dire consequence. .

8.The above said final report as against the petitioner herein (5th accused) is sought to be quashed on the ground that the petitioner is a lawyer by profession and he prepared the sale agreement in the course of his professional duty. His name did not find place in the FIR and added in the final report without any material against him. No ingredients for the offences under Sections 465 and 468 of IPC is made out against this petitioner. The complaint does not whisper about any threat by this petitioner or he dishonestly induced the defacto complainant to pay money and execute the alleged sale agreement dated 03/03/2009.

9.Per contra the learned Government Advocate (crl.side) appearing for the first respondent submitted that, the statement of the defacto complainant and other witnesses recorded during the course of investigation indicates that this petitioner as part of the conspiracy team along with other accused had actively participated in the transaction through out. He along with A-3 and A-4 has shown the property to the defacto complainant and falsely claimed it as the property of A-1 and A-2. He has not only with knowledge drafted the sale agreement with false claim of ownership with A-1 and A-2, he has also signed in that agreement as one of the witnesses along with other accused. Attesting a document as witness is not a professional function of a lawyer. His presence during the negotiation and preparation of the documents and threat to the defacto complainant, when he demanded his money back are the overt act found against this petitioner from the statements of witnesses and the documents relied by the prosecution.

10.If these statements are proved before the Court of law, this petitioner will be certainly convicted. Therefore, going by the guidelines laid by the Hon’ble Supreme Court in State of Haryana v. Bhajan Lal reported in (1992 Supp (1) SCC 335) and

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subsequent judgements following Bhajan Lal case, this is not a fit case to quash the final report, which has provided sufficient evidence to charge the accused for the offences mentioned.

11.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (crl.side) and documents relied by the prosecution in their final report perused. The Judgments of the Supreme Court regarding the limits and scope of the High Court in exercising its power under Section 482 of Cr.P.C is considered.

12.In this case, the plea of the petitioner is that he as an Advocate drafted the agreement and but for the drafting of the deed, he is no way connected to the alleged crime. However, on perusal of the agreement which he admits to have drafted, he has signed as witness and not as drafter of the document. That apart, the statement of witnesses implicate this petitioner for his active participation in the identification of the property, negotiation of the price and witness to the receipt of the sale consideration. Whether these evidence will sustain in trial and be proved beyond doubt and end in conviction is entirely a different question, which is not the test for entertaining the petition to quash.

13.The test is to be made that whether there is prima facie material to frame charge to try the person accused. In this case, the agreement dated 03/03/2009 in which the petitioner herein has signed as witness to the document and his own admission, he drafted the agreement, provides prima facie inference that he knows Rs.6,50,000/- paid by the defacto complainant to A-1 and A-2 for purchase of the property mentioned in the agreement and title deed mortgaged in the Punjab National Bank will be redeemed and sale deed will be thereafter executed.

14.The final report indicates, the property was already sold to several other persons and nothing remained with A-1 and A-2 to sell as on the date of agreement i.e.03/03/2009. The prosecution has recorded statements of 9 witnesses and they include the Sub-Registrar of Omalur, the Thasildar and the Village Administrative Officer to speak about the alienation of the property by A-1 and A-2 to various persons prior to 03/03/2009 agreement. The stamp vendor to speak about the fact that the 100 rupees stamp on which the agreement written was purchased from her on 29/02/2009 by Glide Gregory of Salem. The defacto complainant and others speak about the presence of this accused during the transaction and his participation.

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15.Therefore, though in the complaint the name of this petitioner is not mentioned, the investigation has revealed that this petitioner is a party to the conspiracy. He has not just drafted the suspected agreement but has also been a witness to the execution of the document and receipt of money. Hence, the petitioner is bound to face the trial. This is not a case which falls under the exceptions to quash the charge sheet without trial.

16.Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To:

1.The Judicial Magistrate VI, Salem.

2.-do Thro Chief Judicial Magistrate,
Salem.

3.The Sub Inspector of Police,
District Crime Branch,
Salem District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.19281

Crl.O.P.No.951 of 2019
and
Crl.M.P.No.631 of 2019

MT(CO)
CB(07/04/2022)

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