



Crl.O.P.No.22806 of 2016
and Crl.M.P.No.10641 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

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and Crl.M.P.No.10641 of 2016

1.Ganesan
2.Vijaya

...Petitioners

-Vs-

1.State Rep by
The Inspector of Police,
Selayur Police Station,
Chennai
(Crime No.1825/2016)

2.Suresh Kumar

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.1825 of 2016 on the file of first respondent and quash the same.

For Petitioner : Mr.K.Rahul
for V.Karnan

For R1 : Mr.S.Balaji
Government Advocate (Crl.Side)



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For R2 : Not ready in notice

ORDER

The petition is to quash the FIR in Crime No.1825 of 2016 on the file of respondent police. The allegation in the FIR is that, the defacto complainant purchased an extent of 1800 Sq.Ft land together with building from the petitioners in the year 2011 for a total sale consideration of Rs 41,00,000/- (Rupees Forty One Lakhs only).He has obtained loan from HDFC bank for a sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) to pay the sale consideration. While so, on 18.06.2016 the PWD Authorities issued a notice stating that the land is classified as a water body and directed them to vacate the property. It is further alleged in the FIR that the petitioners cheated the defacto complainant knowing fully well, that the land was a water body. On the basis of such complaint, the FIR was registered for offences under Sections 465, 468, and 420 of IPC.

2.Though notice was sent to the second respondent, it was returned with a endorsement 'door locked'. In view of the order that this Court proposes to pass the presence of the second respondent may not be required.



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3.The learned counsel for the petitioner submitted, that the second petitioner purchased the property in the year 2006, from one Selvi. The said land was purchased by Selvi's mother in the year 1985 in the name of Selvi, from the legal heirs of one Vempuli through their power agents. The title of the land was hence traced from the year 1984. The learned counsel further submitted thereafter the second petitioner settled the property in favour of first petitioner on 07.10.2010. In the mean time, the second petitioner obtained planing permission from the executive officer Chembakkam, Town Panchayat. The property was thereafter sold to the defacto complainant. The learned counsel further submitted that the second respondent had purchased the property only after due verification of the title. In fact, he had obtained Bank Loan by mortgaging the said property even according to the allegations in the FIR. The petitioners were not aware that the land was classified as a water body and they had also purchased the property without knowing that it was a water body. They did not make any false representation to the defacto complainant.

4.Mr.S.Balaji, learned Government Advocate submitted that the submissions made by the learned counsel for the petitioners are factual in nature and only an



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investigation will reveal as to whether the petitioners were themselves innocent purchasers, who sold the property to the second respondent without knowing that it was classified as water body. The learned Government Advocate (Crl.Side) therefore submitted that unless an investigation is done, it cannot be ascertained as to whether the petitioners made false representation or they were also under the impression that the property was marketable.

5.I find that the allegation that the petitioners made a false representation to the defacto-complainant has to be investigated and this Court cannot render a finding that no false representation was made by the petitioners. Therefore, the FIR cannot be quashed merely on the *Ipsi dixit* of the petitioners that they were also Bonafide purchasers.

6.This Court finds that the FIR has been registered for the offences under Sections 465 and 468 of IPC also. If the execution of the Sale Deed is the only basis of alleging the offences of forgery, this Court is of the view that it is contrary to the Judgement of Hon'ble Apex Court in ***Mohammad Ibrahim and others v/s State*** reported in **(2009) 8 SCC 751**, wherein, the Hon'ble Apex Court held that



where the vendor executes a Sale Deed claiming title over the property, even if he has no little, it would not amount to execution of false document and forgery would not be made out. The relevant portions are extracted hereunder:

"17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 Section 471 of the Code are attracted."

7. However, if during investigation, if it is found that the petitioners have forged any other document, it is open for the Investigating Authority to proceed in accordance with law.

8. The first respondent is therefore directed to conduct the investigation to ascertain whether the petitioners had made a false representation to the second respondent while executing the Sale Deed or they were also Bonafide purchasers. It is needless to say that the respondent would conduct the investigation in a fair



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and impartial manner after giving notice to both the parties. The respondent is directed to file final report as expeditiously as possible and in any event, within a period of eight (8) weeks from the date of receipt of copy of this order.

9. Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

28.10.2022

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
dk

To

1. The Inspector of Police,
Selayur Police Station,
Chennai.
2. The Public Prosecutor
Madras High Court

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SUNDER MOHAN,J.

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