



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2022

PRONOUNCED ON : 12.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.27367 OF 2016

AND

CRL.M.P.NOS.13930 & 13931 OF 2016

Kaviraj

... Petitioner/2nd accused

Vs.

1.State Represented by,
The Inspector of Police,
District Crime Branch,
Thiruvarur District.

... Respondent/Complainant

2.Thamaraiselvam

... Respondent/De-facto
complainant

PRAYER:

Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the charge sheet filed in C.C.No.165 of 2014 on the file of the Judicial Magistrate Court, No.1, at Mannargudi, Thiruvarur District.

For Petitioner	: Mr.P.SesubalanRaja
For Respondent	: Mr.R.Murthi
No.1	Government Advocate (Crl.side)
For Respondent	: Ms.G.Vrindha Ramesh
No.2	Legal aid counsel

ORDER

This Criminal Original Petition is filed to call for the records and quash the charge sheet filed in C.C.No.165 of 2014, on the file of the Judicial Magistrate Court, No.1, Mannargudi, Thiruvarur District.



2. The second respondent/defacto complainant gave a complaint against the petitioner and three others.

3. The petitioner is the second accused in the case out of four accused. It is alleged in the complaint that the second respondent and the accused 1, 2 and 3 are close relatives. The first accused's mother Jayalakshmi owns 1 acre and 77 cents, in S.No.293/7, in Santhamanikam Village. The second respondent had taken lease of this property and was enjoying the property as a lease holder for the past eight years. Jayalakshmi and the first accused informed him that they wanted to sell the property and if the second respondent is interested, he can buy the property. Accordingly, the second respondent agreed to buy the property, sale consideration was fixed and receipt chit was executed between the second respondent and Jayalakshmi. Jayalakshmi executed a Power of Attorney in favour of Sabapathy on 22.02.2006 and left to Chennai. On 03.04.2006, Sabapathy, the Power Agent of Jayalakshmi, sold the property to the second respondent. The second respondent is now enjoying the property as its owner. The petitioner/second accused attempted to purchase the property and having failed in his attempt, with the help of the accused 3 and 4 got a sale deed executed on 04.09.2006 in respect of the suit property.

4. After selling the property to the second respondent, Jayalakshmi cannot sell the suit property to the second accused and she is now dead. All the accused colluded together in creating the sale deed in favour of the petitioner/second accused, therefore, this complaint was given. On the basis of this complaint, a case in Crime No.540 of 2008, under Sections 406 & 420 IPC registered against the accused on 29.07.2008.

5. After the completion of the investigation, the first respondent filed the final report against the accused for the aforesaid offences. Challenging the final report, this petition is filed for quashing.

6. The learned counsel for the petitioner submitted that he is a bonafide purchaser for value. At the time of purchasing the property, the original sale deed i.e., prior title deed of the property was handed over to him by Jayalakshmi. He is not aware of the sale in favour of the second respondent. This is purely a civil case. There is no criminal offence, especially offences under Section 406 and 420 IPC are made out. Thus, he prayed for quashing the proceedings in C.C.No.165 of 2014.

7. In response, the learned counsel for the respondents, especially the second respondent, submitted that the sale in favour of the second respondent is a registered sale and it was



registered on 03.04.2006. The petitioner knew pretty well that the second respondent had already purchased the property. Despite having knowledge about the purchase, he in connivance with Jayalakshmi, the first accused and the other accused had deliberately purchased the property on 04.09.2006, only with a view to cheat the second respondent. The petitioner filed a suit in O.S.No.133 of 2006, on the file of the District Munsif Court, Manargudi, for the relief of permanent injunction on the basis of the sale deed. While so, the second respondent filed a suit in O.S. No.74 of 2008, for the reliefs of declaration of title and injunction, alternatively for declaration and possession; to declare the sale deed dated 04.09.2006 in favour of the petitioner as null and void and for other reliefs.

8. Both suits were tried jointly and the trial Court dismissed both suits. Both the petitioner and the second respondent filed appeals in A.S.No.46 of 2011 and A.S.No.12 of 2012 respectively. The first appellate Court confirmed the dismissal of the suit filed by the petitioner. Reversed the judgment in O.S.No.74 of 2008 and allowed the appeal in A.S.No.46 of 2011. It is submitted by the learned counsel for the second respondent that it is now established that the second respondent is the title holder and in possession of the property in dispute. Thus, he prayed for dismissal of the quash petition.

9. The learned Government Advocate appearing for the first respondent also submitted that there are prima facie materials available to frame charges against the petitioner and proceed with trial.

10. Considered the rival submissions and perused the records.

11. From the narration of the facts, it is clear that the property in S.No.293/7 to the extent of one acre and 77 cents, in Santhamanikam Village, Mannargudi Taluk, originally belong to Jayalakshmi, the mother of the first accused. The said Jayalakshmi sold the property to the second respondent through her power agent Sababathy on 03.04.2006 through a registered sale deed. Subsequently, it appears that Jayalakshmi had again given power in favour of one Rengasamy and through him executed a sale deed in respect of the same property in favour of the petitioner on 04.09.2006. Thus, there are two registered sales in respect of the same property. The registered sale deed would be reflected in the encumbrance certificate. Anyone who wants to purchase any immovable property is expected, as a first measure, to obtain the encumbrance certificate to find out as to whether there is any encumbrance in the property. It is not known as to whether the petitioner verified for knowing any



encumbrance in the suit property by applying encumbrance certificate.

12. Be that as it may, as already narrated, the petitioner filed O.S. No.133 of 2006 and the second respondent filed O.S.No.74 of 2008 for the reliefs mentioned above. Ultimately, the suit filed by the petitioner came to be dismissed and the suit filed by the second respondent was decreed by the first appellate Court. It is claimed by the second respondent that the petitioner, A1 and A3 belong to the same community and in fact, they are relatives. It is also claimed that the sale in favour of the petitioner was executed in connivance amongst the accused. The first accused Rajappa had attested the power of attorney deed dated 22.02.2006 and the sale deed dated 04.09.2006. It shows that he attested the sale deed dated 04.09.2006 after knowing that there was already power of attorney deed dated 22.02.2006 was executed and in force. The materials produced before the Court prima facie establishes that the petitioner had purchased the property which was already sold to the second respondent.

13. During the course of submissions, it is submitted by the learned counsel for the petitioner that the sale deed dated 03.04.2006 in favour of the defacto complainant was executed with the help of the daughter in law of Jayalakshmi by impersonation. More specifically, the power of attorney deed was secured from Jayalakshmi by impersonating her and the sale deed was executed in favour of the defacto complainant. The perusal of the general power of attorney deed, dated 22.02.2006, in favour of Sabapathy who had executed the sale deed to the defacto complainant on 03.04.2006, shows that Jayalakshmi has signed in the power of attorney deed dated 22.02.2006, whereas in the power of attorney deed, dated 04.09.2006, Jayalakshmi had only affixed her left hand thumb impression. She has not signed the power of attorney deed dated 04.09.2006. It certainly creates a doubt as to whether Jayalakshmi had signed in the general power of attorney deed, dated 22.02.2006. This aspect has to be necessarily investigated by the respondent police by making further investigation of the case. Therefore, the first respondent is directed to make further investigation with regard to the circumstances under which the general power of attorney deed dated 22.02.2006 and 04.09.2006 had come into existence and whether both the general power of attorney deeds had been executed by Jayalakshmi etc., and file further investigation report before the learned Judicial Magistrate - I Mannargudi, Thiruvarur District. On such filing of further investigation report, the learned Judicial Magistrate - I Mannargudi, Thiruvarur District is directed to dispose of the case on merits and in accordance with law.



14. With these observations this criminal original petition is disposed of. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sli

To

1. The Judicial Magistrate Court, No.1,
Mannargudi, Thiruvarur District.
2. The Inspector of Police,
District Crime Branch,
Thiruvarur District.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.27367 of 2016

SS (CO)
PM/12/05/2022