IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.3001 of 2019

C.Venni .. Petitioner

Vs.

1.Tmt.Kavitharani
Sub Registrar, (District Registrar Cadre)
Sub Registrar office,
Villivakkam, Chennai-600 080.

2.N.Gopishankar ..Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.6217 of 2018 pending before the X Metropolitan Magistrate Court, Egmore and quash the same.

For Petitioner : Mr.M.Liagat Ali

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

For R2 : No appearance

O R D E R

The petitioner herein, who is the 1st accused in the complaint lodged by the Sub Registrar (District Registrar Cadre), Sub Registrar office, Villivakkam, Chennai, for the alleged offences under Section 27, punishable under Section 64 of the Indian Stamp Act, 1899.

2. The short facts leading to lodge the complaint is that the petitioner herein, who is the purchaser of 1980 sq.ft. of land with building measuring 250 sq.ft. in Plot No.10, at New No.2/1, 1st cross street, High Court colony, Villivakkam, Chennai-49, had registered an agreement of sale with the 2nd accused / Gopishankar for a value of Rs.1,10,00,000/-. Thereafter, while registering the sale deed on 30.03.2012, the sale consideration of the said property has been shown as Rs.18,81,000/- (alleged undervalued). The true value should

have been Rs.1,10,00,000/- and for the purpose of evading stamp duty they have shown it as Rs.18,81,000/-. The prosecution has been launched after causing notice dated 28.09.2015 calling upon the petitioner to pay the deficit stamp duty (Rs.91,190/-) and revenue loss assessed is Rs.7,29,520/- totally Rs.8,20,710/-. The notice also cautioned, if he fails to pay the revenue loss and the deficit stamp duty within 15 days, the prosecution will be launched against her under Sections 27 and 64 of the Indian Stamp Act. Since there was no positive response from the petitioner herein, a private complaint has been filed and the learned Magistrate X Metropolitan Magistrate, Egmore has caused to the petitioner herein taking the complaint in C.C.No.6217 of 2018.

3. The learned counsel for the petitioner would submit that any criminal prosecution, which is punishable with fine alone can be launched only within a period of 6 months under Section 468 of Cr.P.C., whereas, the complaint filed on 02.08.2018 and was taken on file by the learned Magistrate on 16.08.2018 beyond the period of limitation, hence it has to be quashed.

4. Per contra the learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner entered into a sale agreement dated 22.02.2012 in respect of the subject property for Rs.1,10,00,000/- and executed a registered agreement, but when the sale deed came to be registered the value of the property was shown as Rs.18,81,000/- only. When the market value of the property admittedly as per their own record is Rs.1,10,00,000/- while registering the sale deed, the value has been shown as only Rs.18,81,000/- with an intention to evade stamp duty and therefore, after causing due notice the criminal prosecution has been lodged.

5. However, the learned Government Advocate (Crl.Side) fairly conceded that there is a delay in launching the prosecution and it is due to the fact that the petitioner herein has challenged the notice demanding the deficit stamp duty and revenue loss by preferring writ petition No.33218 of 2017 on the file of the High Court of Madras and the same is pending. When there is a reasonable cause for delay in filing the private complaint, the delay can be condoned.

6. On hearing the learned counsels and perusing the records, this Court find that the fundamental averments and the allegations against the petitioner herein is that she has evaded stamp duty and statutory action under Section 47-A (3) of the Indian Stamp Act, initiated by the complainant. However same is now the subject matter of the writ petition No.33218 of 2017

pending before the High Court. Thus as on date the issue whether there is undervaluation or not is the subject matter seized by the High Court.

7. The substantive provision and charging provision under the Indian Stamp Act are Sections 27 and 64 read as below:

> "27. Facts affecting duty to be set forth in instrument:-
>
> The consideration (if any) [and the market value] and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.
>
> 64. Penalty for omission to comply with provisions of Section 27:-
>
> Any person who, with intent to defraud the Government,-
>
> (a) executes any instrument in which all the facts and circumstances required by section 27 to to be set forth in such instrument are not fully and truly set forth; or
>
> (b) being employed or concerned in or about the preparation of any instrument neglects or omits fully and truly to set forth therein all such fact and circumstances; or
>
> (c ) does any other act calculated to deprive the Government of any duty or penalty under this Act,
>
> shall be punishable with fine which may extend to five thousand rupees."

8. From the combined reading of these two sections and on reading of the facts, the circumstances affecting the chargeability of any instrument with duty will reach the finality only after the proceedings initiated under Section 47-A, (if it is warranted or contemplated). The said sections deal with instruments of conveyance etc., undervalued. Even before the said proceedings reaches finality, the cause of action to initiate criminal proceedings under Section 64 of the Act will be pre-matured. In this case admittedly there is a dispute regarding allegations of undervaluation and the same is seized by the High Court in writ petition No.33218 of 2017.

9. In the said circumstances, the criminal proceedings launched before ascertaining the question of fact whether there is an undervaluation of the property to deprive or deferred the State, prosecution cannot be launched under Section 64 of the

said Act. In the absence of the necessary ingredient, the present complaint which is under challenge has no leg to stand.

10. Hence, while allowing this Criminal Original Petition by quashing the complaint in C.C.No.6217 of 2018 on the file of the X Metropolitan Magistrate, Egmore, Chennai, this Court makes it clear that the right to launch the prosecution against the petitioner under Section 64 is left open and may be revived, provided the fact finding authority ultimately concludes that there is undervaluation in the sale deed dated 30.03.2012 executed in favour of the petitioner. The cause of action for launching prosecution under Section 64 of the Act will commence for reckoning limitation only on the final decision of the fact finding authority regarding valuation of the property.

11. In view of the aforesaid reason, this Criminal Original Petition is allowed and the proceedings in C.C.No.6217 of 2018 on the file of the X Metropolitan Magistrate, Egmore, Chennai is hereby quashed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl

To,

1. The X Metropolitan Magistrate Court, Egmore, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Liagat Ali, Advocate, S.R.No.34970

Crl.O.P.No.3001 of 2019

RSV(CO)
CT/28/06/2022