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Crl.O.P.No.7309 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.7309 of 2019

and

Crl.M.P.No.4026 of 2019

S.K.Sundrarajan

... Petitioner

Vs.

1.State

The Deputy Inspector of Police,
District Crime Branch,
Namakkal.
Cr.No.7 of 2015

2.Shri.V.K.Rajendran

... Respondents

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings in C.C.No.210 of 2018 on the file of Judicial Magistrate, Paramathyvelur, as against the petitioner.

For Petitioner : Mr.R.John Sathyan
For Mr.Ganesh & Ganesh

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



CrI.O.P.No.7309 of 2019

For R2 : Mr.S.Senthil

ORDER

It is a case of civil dispute has been given the criminal colour by the *de facto* complainant merely on the premise that the over writing in the sale agreement entered between the accused persons. The petitioner herein is the purchaser for value and he is arrayed as one of the accused in C.C.No.210 of 2018 pending on the file of the Judicial Magistrate, Paramathyvelur.

2. To put it precisely, the property held by A1 [Mohanraj] A2 [Leelavathi] A3 [Manickandavel], A4 [Vanajavadivu] and A5 [Rajavadivel] agreed to be sold by them to the petitioner herein/S.K.Sundarrajan vide sale agreement deed dated 26.05.2008 which is now being questioned by the *de facto* complainant that this document is an anti dated document to defeat his lawful right over the property which he purchased from the common vendor on 13.10.2011.

3. The learned counsel for the petitioner would submit that his vendor after entering into an agreement with him on 26.05.2008, later



CrI.O.P.No.7309 of 2019

duly executed the sale deed on 13.10.2011. While so, to defeat his lawful title over the property in collusion with the petitioner herein had created the ante dated agreement and had filed a frivolous petitions before the civil Court seeking injunction before the District Court, Namakkal and for a specific performance against his vendors as well as the subsequent purchaser (the *de facto* complainant herein) before the District Court, Namakkal in O.S.No.127 of 2012.

4. It is to be noted that, the *de facto* complainant is a party in both the Suits and have contested the Suits. While so, the complaint has been alleged as if the sale agreement dated 26.05.2008 is fabricated with anti dated document in connivance with the stamp vendor and the Advocate who has attested the documents as a Notary and Commissioner of Oaths.

5. The learned counsel for the petitioner would submit that the dispute regarding the validity of the sale deed executed in favour of the *de facto* complainant pending enforceable of agreement entered



CrI.O.P.No.7309 of 2019

earlier is the subject matter of the Suit and the dispute is purely civil in nature. Even if there is any adverse opinion obtained from the handwriting expert, the fact has to be tested by the Court competent which is none other than the civil Court where the specific performance Suit filed by the petitioner herein is pending.

6. However, the learned counsel for the *de facto* complainant would submit that the said Suit in O.S.No.127 of 2012 on the file of the District Court, Namakkal was dismissed for default on 18.11.2016 itself and the petitioner herein has filed a revision petition, but no order so far has been passed. The learned counsel for the *de facto* complainant heavily relied upon the opinion of the handwriting expert and the finding of the Secretary, Department of Law, Government of Tamil Nadu, wherein the competency of one Mr.Arumugam, Advocate attested the document dated 26.05.2008 as Notary and Commissioner of Oaths. When the record maintained by the Government for Commissioner of Oaths clearly indicates that the said Arumugam was appointed as Commissioner of Oaths only in the month of January 2010 whereas he



CrI.O.P.No.7309 of 2019

WEB COPY

has attested the document dated 28.05.2008 with seal showing him as a Commissioner of Oaths also. Further he also rely upon the handwriting expert's opinion which states that the entry in the Register maintained by the Stamp Vendor finds overwriting and the overwriting was done by the same person who has written the word 'S.K.Sundarrajan' and 'Velur'.

7. This Court perused the sale agreement, where the said Advocate Mr.M.Arumugam has notarised in the last page of the agreement in addition to the round seal meant for Notary, oval seal along with his name, “Advocate, Notary and Commissioner of Oaths” is mentioned. The said advocate has signed and with date as 26.05.2008. From the records, there is no doubt that the said Arumugam was not a Commissioner of Oaths on the said date. He was nominated as the Commissioner of Oaths only on 28.01.2010 as per the proceedings of the law department dated 26.09.2016. The very same proceedings also indicates that at the time of attesting the said document, the said Arumugam was a Notary appointed by the Government of Tamilnadu. In this proceedings, during the enquiry, the Enquiry Officer namely the learned Principal District Judge, has found that the Register maintained



CrI.O.P.No.7309 of 2019

WEB COPY

by the Notary at the relevant point of time, carry the details about the sale agreement dated 26.05.2008 and there is no manipulation to infer ante dated document sale agreement dated 26.05.2008. From the records, nothing can be inferred to say that the document is ante dated one and fabricated. At the most from the opinion of the handwriting expert. From the report of the Law Department, it can be inferred that the said Arumugam was not a Commissioner of Oaths on 26.05.2008. That inference will not lead to the consequential inference that the deed dated 28.05.2008 a fabricated ante dated document.

8. Similarly the opinion of the handwriting expert regarding the overwriting in the name S.K.Sundarrajan and Velur is not an inferential fact to doubt the date of its execution. The said overwriting is obviously seen in the register, but it does not indicate that the overwriting is intended to Manipulate the record or fabricate the facts regarding the sale of stamp to Mr.Sundarrajan on 26.05.2008. The entry in the register categorically proves that the stamp on which the disputed documents are typed was sold by the vendor on 26.05.2008. Therefore, these two



CrI.O.P.No.7309 of 2019

documents which is heavily relied upon by the *de facto* complainant does not carry the complaint anywhere to make out a *prima facie* case of fabrication of record or cheating. Any challenge to the title document executed in favour of the *de facto* complainant by its vendor has to be made before the appropriate forum namely the Civil Court the petitioner herein has already resorted to seek namely before the civil Court and same is pending. Therefore, the alleged discrepancies in these two documents which are heavily relied upon by the *de facto* complainant to prosecute the 6th respondent are only illusionary reasons for giving criminal colour to prosecute.

9. Therefore, this Court finds that this is a fit case to be quashed applying of the parameters laid by the Hon'ble Supreme Court in *Bajanlal* case. A pure civil dispute has been given the criminal colour to harass the petitioner, who had resorted to civil Court to establish his right as an agreement holder over the property.

10. Hence, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.



CrI.O.P.No.7309 of 2019

WEB COPY

The Complaint in C.C.No.210 of 2018 on the file of Judicial Magistrate,
Paramathyvelur is hereby quashed.

10.11.2022

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Index: Yes/No

Speaking Order/Non Speaking Order

To

1.The Judicial Magistrate, Paramathyvelur.

2.The Deputy Inspector of Police,
District Crime Branch,
Namakkal.

3.The Public Prosecutor,
High Court of Madras, Chennai.



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Crl.O.P.No.7309 of 2019

Dr.G.JAYACHANDRAN, J.

rpl

Crl.O.P.No.7309 of 2019

10.11.2022