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Crl.O.P No.16705 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.12.2022**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.16705 of 2021
and Crl.M.P. No.9121 of 2021

K.Sadig Jaffer

... Petitioner

Vs.

State rep. by its:

1. The Inspector of Police,
Central Crime Branch, CCB-I,
Veppery, Chennai.

2. Rahul Sangeerthiyan.J

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for all the records and quash all the proceedings in Crime No.113 of 2019 now pending investigation on the file of the first respondent.

For Petitioner : Ms.M.Karthika
for Mr.J.Daniel

For Respondent-1 : Mr. A.Gopinath
Govt. Advocate (Crl. Side)

R2 : Mr. Aswin Kumar



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ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.113 of 2019 now pending investigation on the file of the first respondent and quash the same.

2. The petitioner is the first accused. The second respondent / defacto complainant is running a construction business in the name and style of “V.R. Builders” and he is involved in constructing apartments in and around Chennai. The petitioner approached the defacto complainant for selling the Plot Nos. 50 and 51 bearing Survey No.204/1 situated at Rajas Garden, Vanagaram Village, Maduravoyal Taluk, Chennai. Subsequently, the defacto complainant had entered into a sale agreement with the petitioner / first accused for a sale consideration of Rs.1,65,00,000/-. After receiving a sum of Rs.75,00,000/- as an advance amount, the first accused had executed a power document in favour of the defacto complainant on 20.06.2016. The defacto complainant has also paid the balance sale consideration of Rs.25,00,000/- and Rs.65,00,000/- by way of bank cheque. When the second respondent verified the revenue records, he came to know that the first petitioner is not the patta holder of the subject property. After coming



to know that he was defrauded by the petitioner he had filed a complaint.

On the basis of which a case has been registered in Cr. No.113 of 2019 against A1 to A6 for the offences under Section 406, 420, 465, 467, 468, 471 & 120B IPC.

3. The learned counsel for the petitioner / first accused submitted that the petitioner had purchased the property on 06.04.2016 from the sixth accused who is the power of attorney for the fourth and fifth accused; the accused 4 and 5 are the sons of the original owner Gnanamurthy (A3); after verifying the original ownership and the settlement deed executed by Gnanamurthy in favour of his son on 09.04.2014, the petitioner had bonafidely purchased the property and hence there cannot be any criminal intention on his part; since the petitioner has not committed any impersonation or created any documents by falsification of records, no offence can be made out as against this petitioner.

4. The learned Government Advocate (Crl.side) submitted that the said Gnanamurthy who is the father of the accused 4 and 5 had acquired the property by family partition on 08.12.1987; thereafter he sold the same in



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the year 1988 to various persons through six registered sale deeds; after knowing well that he had sold away the properties, he once again executed a settlement deed in favour of his sons on 09.04.2014; the vendor of the petitioner had obtained power of attorney from persons who do not have valid title over the property; only if a detailed investigation is allowed to be done, the complicity of the petitioner can be revealed.

5. The one and only contention of the learned counsel for the petitioner is that he is a bonafide purchaser for valuable consideration and hence he cannot be roped in a criminal case. It is submitted that even if there is a dispute as to the title of the property that can only give a cause of action for a civil suit and the petitioner cannot be arrayed as an accused in a criminal case.

6. There is no dispute with regard to the fact that Gnanamurthy was the original owner of the subject property which he had obtained through a family partition on 08.12.1987. The said Gnanamurthy sold the property he had obtained through partition by virtue of various sale deeds. After passing his title, the said Gnanamurthy did not have any right to appoint a power of



attorney in respect of the very same property or to execute settlement deed in favour of his sons A-4 and A-5. The petitioner who claims himself as a bonafide purchaser could have verified the encumbrances before getting the sale deed executed in his favour. In that case he would have very well noticed the earlier sale deeds of the year 1988 executed by Gnanamurthy in favour of various persons. It is understandable if the owner of the property had executed any unregistered sale agreement in favour of third parties and subsequently sold the same by suppressing the agreement. But, here is a case where the original owner had sold the property by virtue of registered sale deeds, which cannot be concealed and it will be reflected in the encumbrance certificate.

7. The petitioner had purchased the property from the power agent appointed by the sons of the Gnanamurthy who themselves did not have any title over the property. So the conduct of the petitioner does not show that he did have any intention to acquire title by acting hand in glove with persons who had the intention to cheat the earlier purchasers. After coming to know about the defect in title, the first petitioner has not come forward to pay back the sale consideration he received from the defacto complainant. It



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is not brought on record that the petitioner had ever filed any suit against his vendor or the earlier owners, for having sold the property which they did not have any title. So the conduct of the petitioner contains elements of doubt which would prompt the first respondent police to continue the investigation of the case by impleading the petitioner also as one of the accused. Unless a detailed investigation is done, the involvement of the petitioner / first accused or his intention in getting a sale deed from the persons who do not have title would not come to light.

8. Even though the dispute with regard to title is a matter which is civil in nature, if the parties have wilfully deviated from the regular practice of verifying the title and taken the risk of getting documents in their favour that is also a ground to cause doubts about their conduct. Hence I do not feel that at the threshold stage itself the First Information Report should be quashed. Since the material available on record are sufficient enough to make out a prima facie case against the petitioner, I feel that investigation should be allowed to go on.



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9. In view of the above stated reasons, this Criminal Original Petition

is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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To:

1. The Inspector of Police,
Central Crime Branch, CCB-I,
Veppery, Chennai.

2. The Public Prosecutor,
Madras High Court.



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R.N.MANJULA, J.,

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