

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.04.2022

Delivered on : 17.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.25069 of 2019

and

Crl.M.P.Nos.13374 & 13375 of 2019

1. P.Ramasamy

2. V.Selvaraj

3. R.Sivakumar

4. V.Muthukumar

5. R.Aun Sivakumar

6. R.Sarosini ... Petitioners/Accused 1 to 6

Vs.

V.Lawrance ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to C.C.No.92 of 2019 dated 03.12.2018 on the file of the learned Judicial Magistrate - II, Panruti and to quash the same.

For Petitioners : Mr.B.Senthil Murugan
for G.Sankaran

For Respondent : Mr.G.K.R.Pandian

O R D E R

This Petition had been filed to quash the case in C.C.No.92 of 2019 on the file of the learned Judicial Magistrate - II, Panruti dated 03.12.2018.

2. The learned Counsel for the Petitioners also invited the attention of this Court to the Investigation Officer had referred the Criminal complaint filed by the Petitioner.

2.1. The first Respondent in the Complaint preferred by the Petitioner/Lawrance had agreed to sell a plot in his lay out to the first Respondent and he had obtained the amount regarding the sale of the same and promised to execute the same to the first Respondent and received a sum of Rs.1,60,39,875/- on 24.09.2015 for sale of 1,06,932.5 Sq. ft. For the sale of plot Nos. 214 and 215 to the first Respondent and had promised to execute exchange deed in favour of the first Respondent for the property that was already sold to different party and had been delaying to execute the same due to this, there was a dispute between the first Respondent and the Complainant/Lawrance. On 24.09.2015, the Complainant had obtained life Certificate from Dr.Muthukumar who was serving as Doctor in the Government Hospital, Chidambaram and residing at Neyveli Township. Already the Complainant has executed the Power of Attorney deed infavour of the first Respondent/Ramasamy. If he had issued life certificate directly to first Respondent, the first Respondent will seek a Complaint to execute exchange deed for the property already sold for the house site in Site No.3. Only to avoid such exigency, he had sent the life certificate to the first Respondent through his Agent, Friend. Subsequently, he had visited Balaji Hospital at Chennai for cleaning his teeth and he returned on the same day to Trichy. Only to evade the first Respondent with an ulterior motive, he had filed this Criminal Complaint. On confronting the Complainant with the life certificate wherein original photo and signature is found the Complainant remain lying and he did not reply. In his statement recorded, he had submitted written statement based on the Complaint preferred by the Respondent/Complainant, the Inspector of Police, District Crime Branch had enquired him and the first Respondent, and thereby he left. The Respondent/Complainant had filed the Writ Petition No.31520 of 2015 directing the Registrar to hold enquiry regarding the Registration of the sale deed executed by the first Respondent based on the life certificate issued by Dr.Muthukumar. The Writ Petition was allowed with direction. As per the direction, the Sub Registrar, Kadampuliyur had conducted enquiry and stated that the documents are true and bona fide. The Sub-Registrar also recorded the statement of Dr.Muthukumar who had stated in his statement that he had issued life certificate on 24.09.2015 by 9.00 p.m., to the Respondent/Complainant directly in his house at Neyveli and in his presence, the Respondent/defacto complainant had signed the life certificate. Therefore, the Sub-Registrar, Kadampuliyur had found that the averments made against the first Respondent in the Complaint, as per the W.P.No.31520 of 2015, is not true and had recorded the finding. At that stage, the

Respondent/Complainant had preferred the Complaint to the Deputy Superintendent of Police on 01.11.2015, on the same set of facts. After receipt of the same from the first Respondent towards executing exchange deed infavour of the first Respondent for the Plot No.3 214 and 215 total extent of 1,6932.5 sq.ft for an amount of Rs.1,60,39,875/-, the Respondent/Complainant had executed the acknowledgment only to avoid execution of exchange deed, he had filed this Petition and also W.P.No.31520 of 2015 directing Sub Registrar, Kadampuliyur to conduct enquiry regarding sale executed by the first Respondent on the basis of the Power of Attorney deed executed by the Respondent/Complainant in favour of the first Respondent along with the life certificate issued by the Doctor, Government Hospital, Chidambaram. Also, the Respondent/Complainant had filed Crl.O.P.No.26052/2015 seeking direction to the District Crime Branch, Cuddalore to register the FIR and investigate the same. Based on the direction in Crl.O.P.No.26052 of 2015, the investigation was carried out and from the primary enquiry, it was found that the Respondent/Complainant has filed complaint only with an ulterior motive and there is no bona-fide truth in the complaint. Therefore, the Investigation Officer had issued closure report to the Superintendent of Police, Cuddalore regarding the same and to the Deputy Superintendent of Police, District Crime Branch.

2.2. The learned Counsel for the Petitioners also invited the attention of this Court to the copy of the Order in Crl.O.P.No.9202 of 2016 filed by R.Sivakumar against the Respondent/Complainant, this Court had allowed the said petition on 10.04.2018 and quashed the FIR in Cr.No.2 of 2016 on the file of the District Crime Branch, Cuddalore. Under those circumstances, the learned Counsel for the Petitioners sought to quash the complaint in C.C.No.92 of 2019 dated 03.12.2018 on the file of the learned Judicial Magistrate - II, Panruti.

2.3. The learned Counsel for the Petitioners also invited the attention of this Court to the Suit filed by the Second Respondent/Plaintiff in O.S.No.159 of 2018 wherein the Petitioners herein are the Defendants. The Suit was filed only for cancellation of sale deed dated 13.09.2015 executed by the first Respondent in favour of the Defendants 2 to 6. Already it was amended with an alternate prayer for refund of Rs.127587/-. For the same offence, the Respondent had preferred a private Complaint in Crl.O.P.No.410 of 2018 which was subsequently taken on file and taken cognizance by the learned Judicial Magistrate, Panruti.

4. The learned Counsel for the Respondent/Complainant submitted that the residence of the Complainant is at Neyveli. He came down to Balaji Dental Hospital, Teynampet, Chennai for

treatment along with his wife in his Car on 29.09.2020 and 30.09.2020. Taking undue advantage of the absence of the Respondent/Complainant at Neyveli, the Petitioners herein along with one Dr.Muthukumar/A-7 had fabricated life certificate as if the Respondent/Complainant had created the sale deed and executed the same. This vital aspect is considered that "place" where the life certificate issued and signed by the Doctor as "Chidambaram".

4.1. The learned Counsel for the Respondent submits that even though the Investigation Officer had closed the case and filed Referred Charge Sheet, on notice to the Respondent-2/Complainant, he had filed protest petition in CrI.M.P.No.4102 of 2018. After recording the sworn statement of the second Respondent and other witnesses, the learned Judicial Magistrate had taken cognisance of the same and had numbered the case as C.C.No.92 of 2019 on the file of the learned Judicial Magistrate, Panruti, Cuddalore District. Therefore, the learned Counsel for the Respondent submits that what had been stated by the learned Counsel for the Petitioners and had placed reliance on the CrI.O.P.No.9202 of 2016 will not hold good to this case. This Court exercising power under Section 482 of Cr.P.C., cannot go into the merits of the statement recorded by the Investigation Officer regarding the investigation carried out in Cr. No.2 of 2016 and therefore objects to quash the complaint.

5. In the light of the argument of the learned Counsel for the Petitioners that already, there is a suit for same cause of action and already the complaint filed by the second Respondent before the District Crime Branch wherein Referred Charge Sheet was filed. In the same Cr.No.2 of 2016 against one Sivakumar, who is arrayed as an Accused, had filed CrI.O.P.No.9202 of 2016, wherein this Court had quashed the FIR. Therefore, it is nothing but an abuse of process of Court.

5.1. The learned Government Advocate (CrI. Side) vehemently objected to quash the FIR stating that this Court exercising extraordinary power under Section 482 of Cr.P.C., cannot look into the statements of witnesses, which is a subject matter to be considered only during trial. Therefore, if this Petition is allowed and C.C.No.92 of 2019 on the file of the learned Judicial Magistrate - II, Panruti is quashed, it will result in miscarriage of justice.

5.2. On consideration of the rival submissions, the submissions of the learned Counsel for the Petitioners are found acceptable and on perusal of the typed set which is obtained as certified copies from the Court concerned.

5.3. As per the ratio laid down by the Hon'ble Supreme Court in State of Haryana Vs. Bajanlal, High Court exercising extraordinary power under Section 482 of Cr.P.C., shall not quash the FIR, charge sheet and criminal complaint, leniently or liberally and the powers shall be exercised sparingly and has issued guidelines for such discretion to the High Courts, one of the guidelines is, if materials furnished by the Petitioner or materials relied on by the Prosecution themselves, from those materials available to the High Court that it is nothing but an exercise to harass the Petitioner as well as abuse of process of Court. Also another condition is that if a dispute between the parties, the complainant and the Accused are all is civil in nature, it will be converted as criminal case with an ulterior motive to cause harassment to the Accused. Then also the Court can quash the FIR or Charge Sheet or criminal complaint. In this case, already the second Respondent had preferred a Complaint to the District Crime Branch which was enquired by the District Crime Branch and closed. When the FIR is pending, one of the Accused/Sivakumar had filed Criminal Original Petition in Crl.O.P.No.9202 of 2016 under Section 482 of Cr.P.C., wherein this Court had quashed the FIR against the Sivakumar, the second attempt be noted that the Investigation officer's detailed report as Referred Charge Sheet is available in the typed set wherein he had stated that the second Respondent/defacto Complainant had filed W.P.No.31520 of 2015 directing the Sub-Registrar, Kadampuliyur to conduct enquiry regarding the execution of sale deed by the Power of Attorney of the defacto Complainant/Accused-Ramasamy along with the life certificate which is a forged life certificate obtained from Dr.Muthu Kumar working in the Government Hospital, Chidamabaram. The Sub-Registrar, Kadampuliyur had conducted enquiry based on the direction issued by this Court in W.P.No.31520 of 2015 found out that there is no ground to believe the sale deed executed is false and forged. Therefore, the enquiry was closed as complaint was not a bona-fide complaint. The Investigation Officer had examined the very same witnesses and Sub-registrar that those facts the Investigation Officer confronted the Complainant and found out that there is no bona-fide fact to arrive at a conclusion that the first Respondent- Ramasamy had involved in fraud and forgery in executing the sale deed. The learned Single Judge had relied on those facts in quashing the FIR against one Sivakumar. The second Respondent/defacto Complainant had filed another Crl.O.P.No.26052 of 2015 before this Court to direct the District Crime Branch, Cuddalore to speed up the investigation and lay final report. Under those circumstances, the Investigation Officer arrived at a conclusion as Referred Charge Sheet and it has been recorded by the learned Judicial Magistrate - II, Panruti. When notice of the Referred Charge Sheet is served on the second Respondent/Complainant, he had filed protest Petition in Crl.O.P.No.4102 of 2018 wherein

the statement of the witnesses supporting the defacto complainant was relied and the same was accepted by the learned Judicial Magistrate and took cognisance of the offences under Sections 406, 420 of IPC and numbered as C.C.No.92 of 2019. Also for the same relief, the second Respondent had filed a Suit before the learned Principal District Judge in O.S.No.159 of 2018 seeking to cancel the sale deed alleged to have been executed by the Ramasamy who is arrayed as first Accused in C.C.No.92 of 2019. Under those circumstances, the guidelines issued by the Hon'ble Supreme Court in State of Haryana Vs. Bhajanlal squarely apply to the facts of this case and it is nothing but an abuse of process of Court. Hence, the case against the Petitioner is liable to be quashed.

In the result, this Criminal Original Petition is allowed. The case in C.C.No.92 of 2019 dated 03.12.2018 on the file of the learned Judicial Magistrate - II, Panruti is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Judicial Magistrate - II,
Panruti, Cuddalore.
2. The Chief Judicial Magistrate,
Cuddalore.
3. The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to Mr.G.K.R.Pandian, Advocate, S.R.No.36788

+1cc to M/s.G.Sankaran, Advocate, S.R.No.37117

CRL.O.P.No.25069 of 2019

SSI(CO)
UMA(13/07/2022)