IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.12.2022

Pronounced on: 12.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE SUNDER MOHAN

Crl.O.P.No.25702 of 2018
and Crl.M.P.No.14659 of 2018

S.Prem Kumar ... Petitioner

Versus

1.The State Rep. By
The Inspector of Police,
T-10 Thirumullaivoyal Police Station,
Chennai.
(Cr.No.802 of 2018).

2.The Assistant Commissioner of Police,
Ambattur Police District,
Avadi Range,
Chennai.

3.E.Umakanth ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records culminating in Crime No.802 of 2018 registered by the 1st Respondent Police and now pending on the file of the 2nd Respondent Police, quash the same.

For Petitioner : Mr.Arun Anbumani

For Respondent : Mr.S.Balaji
Govt. Advocate for R1 and R2

Mr.K.Sakthivel for R3

O R D E R

The above petition has been filed by the 5th accused in Cr.No.802 of 2018 pending on the file of the first respondent praying for quashing of the FIR lodged for the offences under Sections 406, 420, 465, 468 and 471 IPC and Section 3(1)(f) and 3(1)(9) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015.

2.The allegations in the FIR are that the defacto complainant is the owner of 1.43 acres of land comprised in S.Nos.341 an 342/1 in Ayyapakkam village, Villivakkam Panchayat Union, Ambattur Taluk, Tiruvallur District. The 3rd respondent/defacto complainant and his parents were cultivating the said lands. They were working in the Firm called RR Brick Works belonging to the first and the second accused. The first two accused approached the complainant and requested to permit them to take the top soil from the said lands for the purpose of brick kiln business. The defacto complainant believing the words of the first and second accused namely Mr.Babu and Mr.Raja entered into an Agreement of Sale on 29.09.1994, and received an advance of Rs.10,000/-. The 3rd respondent also handed over the original title deeds of the said land to those two persons. After the work of removing the top soil was over, the defacto complainant/3rd respondent requested the two accused to hand over the original documents and possession of land. However, the first two accused made the defacto complainant believe that the documents would not be misused. The third respondent/defacto complainant came to know subsequently that the property in question was sought to be developed as plots and approached the above said two accused and they gave evasive answers. Thereafter, he had applied for encumbrance certificate and found to his shock that the wives of the first two accused (i.e.) A3 and A4 had fraudulently created documents to make it appear that they had purchased the property in the year 1998. Thereafter, the third and fourth accused had fraudulently sold the lands to the petitioner herein in the year 2001. In the said sale deed, it is shown that the earlier sale deed in 1998 was registered on the file of Sub Registrars' Office Ambattur and the document number was shown as 919 of 1998. When the defacto complainant applied for said document it showed that the names of third parties and it did not pertain to the land belonging to the defacto complainant. Therefore, the defacto complainant had filed a complaint and the FIR stating that the fifth accused/petitioner has mentioned a bogus document and hence the transaction is fraudulent.

3.The learned counsel for the petitioner/5th accused in the FIR would submit that the allegations in the FIR would show that they were mainly as against the first four accused. The only grievance against the 5th accused is that in the sale deed executed in his favour a bogus document was mentioned. He would submit that the sale deed inadvertently mentioned that the earlier sale deed was registered in Sub Registrars' Office Ambattur but in fact, it was registered in the Sub Registrars' Office Konnur. A typographical/clerical error had crept in the sale deed. It does not mean that it is a bogus document. In any case, it is not the case of the defacto complainant that the signatures of the vendors and the purchasers were forged in the sale deed executed in favour of the petitioner. It is also not their case that no such documents was registered. Hence, the learned counsel submitted there are absolutely no allegations as against the 5th accused/ petitioner and the allegations are inherently improbable. The FIR in so far as the 5th accused/petitioner is concerned does not disclose any offence and hence is an abuse of process of law.

4.The learned Government Advocate (Crl.Side) submitted that a reading of the FIR would show that the first four accused cheated the defacto complainant and executed a fabricated document to make it appear that the defacto complainant executed sale deed in favour of the accused Nos.3 and 4. The further allegation is that the complainant was misled and his property was grabbed and it constitutes an offence under the Scheduled Caste and Scheduled Tribes and Prevention of Atrocities Act. The learned Government Advocate (Crl.Side) also filed a Counter of the second respondent, in which, he had stated that the thumb impression found in the 1998 sale deed in favour of the third and fourth accused herein and the admitted signatures of the defacto complainant were sent for comparison to the expert. The expert opined that the admitted thumb impressions and the disputed thumb impression were identical. The Assistant Commissioner has further stated that in view of the stay granted by this Court, further investigation would not be conducted.

5.The learned counsel for the defacto complainant / second respondent submitted that it is the case of conspiracy and it is not as if the fifth accused/petitioner is an innocent purchaser. The petitioner is doing the business of real estate and therefore, he is aware of the fabrication of documents committed by the other accused and he had purchased the property to gain wrongfully. The learned counsel would further submit that the name of the stamp vendor in the stamp papers in the 2011 sale deed by which the petitioner/5th accused purchased the property, is not found in the list of approved stamp vendors in the State which creates a doubt. Further in the sale deed, a document No.919 of 1998 is mentioned which does not pertain to the disputed property which would show that there is a fabrication of records. Only an investigation would unearth the conspiracy and hence, prayed for dismissal of the quash petition.

6. We have heard the learned counsels on either side and learned

Government (Crl.Side) and perused the FIR and other documents filed on either side.

7.The allegations in the FIR is that the first two accused were employers of the defacto complainant; they wanted the property only for the purpose of taking the top soil in the land and based on the said promise, the third respondent received an advance of Rs.10,000/- and handed over original documents to the first two accused. Primafacie, though there is no necessity for a person to hand over the original document, when a property is sought for the limited purpose of removing the top soil, the same has to be investigated. The fact, which is revealed from the counter filed by the second respondent herein is that the finger prints of defacto complainant found in the sale deed of the year 1998 by which the third and fourth accused bought the property and his admitted finger prints are identical.

8.However, this Court would not render a finding as to the other allegations made against the first four accused as they are not before this Court. As stated earlier, the allegations of cheating is made only as against the first four accused. The fifth accused, namely, the petitioner herein is sought to be arrayed as accused since he had allegedly entered into a conspiracy with other accused and grabbed the property. Further, the sale deed which was executed by third and fourth accused in favour of the fifth accused, namely, the petitioner, there is an averment which states that the previous document bearing Registration No.919 of 1998 was registered on the file of Sub Registrars' Office Ambattur and this document does not pertain to the land in question. We find that the said error is a typographical error. The actual document was registered on the file of Sub Registrars' Office Konnur and the document registered on the file of Sub Registrars' Office Konnur pertains to the property in question. Subsequently, it appears that the 5th accused/petitioner had rectified that error also by virtue of rectification deed which was executed in the year 2016. Therefore, merely because the office of the Sub-Registrar is wrongly mentioned in the document, it cannot be called as a fabricated document. That apart, it is not the case of the defacto complainant that the signatures in the said sale deed of either the vendors or the purchasers are forged. The vendors, namely, the third and fourth accused and the purchaser, namely, the fifth accused and both of them admitted to the execution of sale deed. Therefore, it cannot be the case of forged document. Sale deed in the year 2001 was registered as Document No.7089 of 2011. It is not the case of the defacto complainant that the stamp papers are fake. Hence, the submission that since the stamp vendor's name is not found in the approved list and hence it is a fabricated document cannot be countenanced. Further the list furnished is of the year 2019. The sale deed was executed in 2011. At best it can be a case of third and fourth accused falsely claiming title over the said property and executing the sale deed in favour of the fifth accused/petitioner. In any event, if a false claim of title has been made the victim is only the fifth accused/petitioner, and the the defacto complainant cannot maintain a complaint. The main allegation of the defacto complainant is that he did not execute the sale in favour of the third and fourth accused. This has to be established only as against the first four accused. In any case, those allegations made against the first four accused cannot be used to implicate the fifth accused/petitioner who purchased the property nearly 13 years after the alleged sale deed executed by A3 and A4 in favour of the defacto complainant.

9.Therefore, we find that the FIR in so far as the fifth accused/ petitioner in Crime No.802 of 2018 is an abuse of process of law and it is liable to be quashed. Hence, the FIR in respect of the petitioner herein is quashed. The second respondent is directed to conduct the investigation in Crime No.802 of 2018 which would continue as against A1 and A4 on the file of the respondent and file the final report within a period of eight weeks from the date of receipt of a copy of this order.

10. For the foregoing reasons, Criminal original petition is allowed.

Consequently, connected miscellaneous petition is closed.

12.12.2022

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

dk/skn

To

1.The Assistant Commissioner of Police,
Ambattur Police District,
Avadi Range,
Chennai.

2.The Inspector of Police,
T-10 Thirumullaivoyal Police Station,
Chennai.

3.The Public Prosecutor,
High Court of Madras,
Chennai – 104.

SUNDER MOHAN, J.

dk/skn

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