IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28415 of 2018
and
Crl.MP.No.16557 of 2018

R.Thayammal ...Petitioner/Accused 2

Vs.

1. The State
   Rep. by the Inspector of Police,
   Central Crime Branch,
   Salem City. ...1st Respondent/Complainant

2. A.Sukumar ...2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records on the file of the learned Judicial Magistrate No.I, salem in C.C.No.75 of 2018 and quash the same.

For Petitioner : Mr.A.Ilayaperumal
for Mr.S.B.Viswanathan

For Respondents
R1 : Mr.A.Damodaran
Additional Public Prosecutor
R2 : Mrs.M.Sneha

ORDER

The petitioner/A2 in C.C.No.75 of 2018 facing trial for the offence under Sections 420 and 120(B) IPC filed this quash petition.

2.The gist of the case is that the respondent police registered a case in Crime No.23 of 2008 against three persons, namely, Dr.V.Ranganathan/A1, R.Thayammal/A2/petitioner herein and Dr.V.R.Sanjeevi/A3. A1 is the husband and A3 is the son of the petitioner/A2. The second respondent/defacto complainant is in the real estate business in the name and style of E.S. Real Estate.During the year 2005, the petitioner along with her husband and son entered into a criminal conspiracy by producing the copies of documents relating to their land situated at Chettipalayam Village, Coimbatore suppressing the fact that the said lands are mortgaged with Canara Bank, Coimbatore and it is already under lis. Suppressing the same, they wanted the property to be disposed by making representation that the land is free from all encumbrances, thereby they committed the offence of conspiracy. In furtherance to the conspiracy, the petitioner and the other accused came to Salem on 03.12.2006, met the complainant in his office, represented that the land is free from all encumbrances and produced all the relevant documents. Thereafter, again came on 06.12.2006, received Rs.10,00,000/- and issued receipt. Again on 26.12.2006, the accused received another Rs.10,00,000/- and issued receipt. Since the petitioner and the other accused failed to dispose of the land or took any steps to sell the land, the defacto complainant demanded A1 to A3 to return the amount, for which the accused refused and further, they threatened the defacto complainant. Hence, the defacto complainant lodged a complaint. Initially, the respondent police was reluctant to take any action and hence, the defacto complainant filed a petition under Section 156(3) Cr.P.C., thereafter FIR registered. On conclusion of investigation, charge sheet filed listing witnesses. The Trial Court on perusal of the Charge sheet, finding prima facie case made out, taken the case on file.

3.The contention of the petitioner is that a civil case was given a criminal colour. Initially when the second respondent lodged a complaint, the Police refused to act on the complaint finding that it is civil in nature. Thereafter, the second respondent approached the learned Judicial Magistrate No.I, Salem, filed a petition under Section 156(3) Cr.P.C. in C.M.P.No.2416 of 2008 and on the orders of the learned Judicial Magistrate No.I, Salem dated 09.04.2008, the respondent police registered a case in Crime No.23 of 2008. The other accused in this case are the petitioner's husband and son, both of them passed away. It is submitted that the petitioner's husband Dr.V.Ranganathan owned a land to an extent of 7.2 acres in Chettipalayam Village, Coimbatore South Taluk. The said land was mortgaged with Canara Bank and the property is valued around Rs.2.50 Crores. The property was mortgaged for a meager sum and the loan was unable to be repaid by her son, for which attachment proceedings in DRT, Coimbatore was initiated for a due of Rs.1,07,73,089/-. Apart from this due, the petitioner's son Dr.V.R.Sanjeevi was to pay a sum of Rs.75 lakhs to third parties, Rs.15 lakhs to Land Development Bank Limited and Rs.3 lakhs to Punjab and Sind Bank. Though the loans were much less than the actual value of the property, since DRT proceedings was in advanced stage and the petitioner's husband was facing a difficult situation, a high valued property was to be brought to auction. Hence, the petitioner and her family sought the help of the second respondent, who is a real estate agent to find a prospective buyer who can have a one time settlement with the Bank waiving the interest, thereby, relieving the property of all its entanglement and sell the property for the market value.

Thereafter, they can settle the Bank, the third party dues and to get back with proportionate interest for the investments made by the defacto complainant. On this understanding, the defacto complainant paid Rs.10 lakhs on 06.12.2006 and another Rs.10 lakhs on 26.12.2006, thereafter failed to take any steps as promised. On the contrary on 12.01.2007, the second respondent/ defacto complainant filed a civil suit in O.S.No.133 of 2007 before the Principal District Munsif Court, Coimbatore, sought for an injunction restraining the petitioner and their men not to alienate the property.

4.It is further submitted that in the civil suit, the defacto complainant projected as though the sale consideration was fixed as Rs.84 lakhs, already he paid Rs.20 lakhs and the balance sale consideration of Rs.64 lakhs was to be paid for the property worth several crores. The petitioner's family had a total loan commitment of Rs.1.82 Crores, of which loan due for Canara Bank is Rs.1.07 Crores and the market value of the land was around Rs.2.50 Crores. In such circumstances, no person shall accept for the sale of such property to Rs.84 lakhs. Considering the plight of the petitioner, the Canara Bank agreed for one time settlement of Rs.40 lakhs and gave a letter to that effect on 06.03.2007. But the second respondent failed to come forward to help the petitioner, on the other hand the civil suit filed by the second respondent become an obstacle for the one time settlement. In the result, the petitioner was unable to avail the benefit of one time settlement, the Canara Bank withdrawn the one time settlement on 14.06.2007 and brought the property for public auction for Rs.1,74,77,500/-.Having no other option, the petitioner's family had to accept the same. After deducting the Canara Bank due of Rs.1,24,09,978/-, the Bank returned Rs.46,77,622/- to the petitioner, of which Rs.3 lakhs was paid to Punjab and Sind Bank, Rs.15.30 lakhs was paid to the Land Development Bank Limited and Rs.12 lakhs was paid to one Vivekanandan to save the dwelling house of the petitioner. The petitioner suffered a loss of Rs.1 Crore due to the suit filed by the second respondent on a false pretext, not only that, now the defacto complainant filed a false complaint against the petitioner on coming to know that she is a widow and she is at the advanced age of 80 years having lost her husband and son. It is further submitted that the petitioner had not committed any cheating, on the contrary it is the defacto complainant who took advantage of the distress sale, joined hands with the buyer of the property through DRT, thereby enriched himself and made the petitioner to sustain a loss of Rs.1 Crore. The written statement filed in O.S.No.133 of 2007 prove that there is no suppression or wrong representation. Further, the entire happening took place in the year 2007 and the defacto complaint lodged a complaint much later. It is further submitted that the petitioner at this advanced age of 80 years with serious ailments to undergo ordeal of trial is unwarranted. Hence, she prayed for quashing the complaint.

5.The learned counsel for the second respondent/defacto complainant submitted that the petitioner and her husband received a sum of Rs.20 lakhs in two installments on 06.12.2006 and 26.12.2006 with due receipt. They represented that the property is free from all encumbrances and made the defacto complainant to enter into an agreement for sale. Later, the defacto complainant on coming to know about the deceit played by the petitioner and other accused filed a civil suit to safe guard his interest in O.S.No.133 of 2007 before the Principal District Munsif Court, Coimbatore and obtained an order of injunction. Thereafter, the defacto complainant came to know that the petitioner was due to Canara Bank, other private financiers, DRT proceedings were pending and the property was finally brought under auction under DRT proceedings. Further, the petitioner received a sum of Rs.46,77,622/- after the auction of the property in DRT proceedings. Having received such amount, the petitioner could have paid back the defacto complainant a sum of Rs.20 lakhs received from him, despite the same, the petitioner failed to make payment to the defacto complainant and on the other hand enjoying the amount of Rs.20 lakhs which was received from the defacto complainant in the year 2006. After investigation, charge sheet filed listing nine witnesses and due to the pendency of this petition, the Trial Court is unable to proceed with the case. It is further submitted that the points raised by the petitioner are factual which are to be decided during trial. Hence, he prayed for dismissal of this petition.

6.The learned Additional Public Prosecutor appearing for the first respondent submitted that the FIR was registered on the directions of the learned Judicial Magistrate No.I, Salem in C.M.P.No.2416 of 2008 dated 09.04.2008, on completion of investigation charge sheet filed and the same was taken on file in C.C.No.75 of 2018 for the offence under Sections 420 and 120 (B) IPC against the petitioner and two others, namely, husband and son of the petitioner. He would submit that the husband and son of the petitioner are no more and the case against the petitioner is pending.He further submitted that the petitioner's contention are factual which have to be put to the witnesses during trial. Further, the defacto complainant disputes the contention of the petitioner and such disputed issues cannot be decided in a quash petition.

7.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the petitioner is the only surviving member of the family, her husband/A2 and son/A3 are no more. The petitioner's son availed a loan from Canara Bank for his business which ended in loss, for which A1/her husband's property was given as security. During this difficult period, they approached the second respondent/defacto complainant, for which, initially Rs.20 lakhs was paid, thereafter for some reason further payments were not made and the dues to the Canara Bank could not be paid and even the one time settlement which was initially offered by the Canara Bank could not be fulfilled. Had the petitioner taken this opportunity of one time settlement, they could have saved much more from the attached property. There is no dispute that the property was valued more than the loan amount and the dues. Despite the distress sale, it is fairly admitted by the petitioner that a sum of Rs.46,77,622/- was received and it had been used to settle the dues of Punjab and Sind Bank, Land Development Bank Limited and a private financier. The contention of the petitioner is that due to the civil suit filed by the defacto complainant in O.S.No.133 of 2007, the petitioner's family had to undergo the loss of more than Rs.1 Crore and was unable to comply with the one time settlement appears to be reasonable. Further the petitioner's contention is that the defacto complainant joined hand in glove with the auction purchaser of the property, thereby facilitating the auction purchaser to buy the property at a lesser rate sounds reasonable, but these facts are factual in nature which necessarily to be decided during trial and cannot be decided in a quash petition. In view of the same, this Court is inclined to dismiss this petition.

8.Further, considering the petitioner being a widow lost her husband and son, the petitioner is exempted from appearing before the Trial Court except on the hearings, i.e. to receive the copy under Section 207 Cr.P.C., for charge framing after evidence, answering the questionnaire under Section 313 Cr.P.C., to receive the judgment and on the dates, the Trial Court directs her appearance. It is needless to state that, affidavit to be filed by the petitioner that she will not dispute her identity, recording of evidence in her absence, she will be represented by her counsel and she will not be a reason for the delay.On such affidavit of undertaking, the personal appearance of the petitioner to be dispensed with.

9.In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   Central Crime Branch,
   Salem City.

2. The Judicial Magistrate No.I,
   Salem.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mrs.M.Sneha, Advocate, S.R.No.31060

Crl.O.P.No.28415 of 2018

CA(CO)
RGA(20/05/2022)