



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.4716 of 2019

and

Crl.MP(MD)Nos.2886 and 2887 of 2019

I.Vemula Ramesh : Petitioner/6th Accused

Vs.

1.The State represented by its
The Inspector of Police,
Central Crime Branch,
Madurai.

(Crime No.65 of 2009)

: R1/Complainant

2.Tmt.M.Santha Lakshmi

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.230 of 2010 on the file of the Judicial Magistrate No.1, Madurai and quash the same.

For Petitioner : Mr.G.Gomathisankar

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

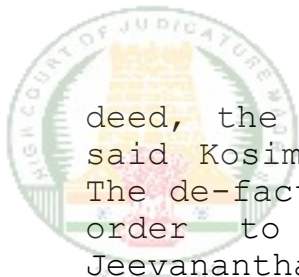
For 2nd Respondent : Mr.T.K.Gopalan

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.230 of 2010 on the file of the Judicial Magistrate No.1, Madurai and quash the same.

2.The case of the prosecution in brief:-

The petitioner is the 6th accused and on the basis of the complaint given by the de-facto complainant, a case in Crime No.65 of 2009 was registered for the offences under sections 417, 418, 465, 468, 471, 166 IPC r/w 120(B) IPC. After completing the formalities of investigation, final report was filed making the following allegations. The disputed property originally belonged to one Kosimin Jeevanantham and Kosimin. They executed a power of attorney in favour of one Muniasamy, who is the husband of the de-facto complainant. In pursuance of the above said power of attorney

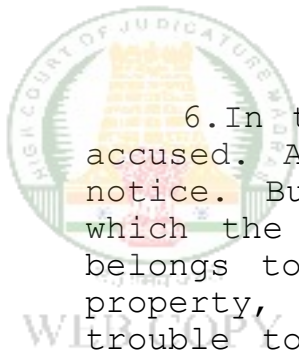


deed, the de-facto complainant purchased the properties. The above said Kosimin Jeevanantham received the entire sale consideration. The de-facto complainant was put in possession of the properties. In order to cheat the de-facto complainant, the said Kosimin Jeevanantham executed another sale deed in respect of 34 cents to the third accused and later, the third accused sold the properties to the 8th accused and 9th accused. The accused 4 to 6 were found to have been deleted from the final report.

3. Seeking quashment of the criminal proceedings, this petition has been filed mainly on the ground that Muniasamy, who is the husband of the de-facto complainant executed a sale agreement in favour of one Muthuramalingam and for the above said sale, the de-facto complainant has also received some amount and three months time was mentioned in the sale agreement. The above said Muthuramalingam did not comply the sale transaction within the time agreed. He executed another sale agreement in favour of one Ramuthai for 81 cents. The owner Jeevanantham executed a power of attorney deed in favour of Dhanasekar in respect of 34 cents. He also executed a sale deed in respect of 24 cents in favour of Nurul Hameed. The genuineness of the sale agreement, it can be decided only in the civil suit. Since the petitioner purchased the properties from one Dhanasekar under a registered sale deed, after verifying the document, it must be constructed as a bona fide purchase for valuable consideration. The petitioner is the resident of Andhra Pradesh.

4. Heard both sides.

5. The final report that was filed by the first respondent gives a clear picture on this issue. The first accused Muthuramalingam is doing real estate business. The 2nd accused namely Jeevanantham is the resident of Meenambal Nagar, Madurai. The 3rd accused Dhanasekar is the power of attorney of the 2nd accused. A4 to A6 are purchasers of the property from the Accused 1 and 3. As mentioned in the preamble portion, the properties in Survey Nos.23/2,23/6, 23/7B, 23/9A in Papa Kudi village was owned by the above said Kosimin and Jeevanantham and the second accused namely Jeevanantham executed a power of attorney in favour of the husband of the de-facto complainant called 'Muniasamy'. The above said Muniasamy in-turn sold the property to the de-facto complainant and she in-turn on 29/05/2006 and on 06/06/2006, the de-facto complainant M.Santha Lakshmi executed an unregistered sale agreement in favour of A1 for laying of the property into house plates. As per the agreement, the first accused did not perform his part of contract. So that agreement came to an end. So, the first accused got angry and he hatched a conspiracy with A2 and executed a power of attorney in favour of the 3rd accused. In pursuance of which, A4 to A6 purchased the property. These are the factual background.



6. In the above background, now let us see the case of the 6th accused. According to him, he is the bona fide purchase without notice. But the de-facto complainant itself took conspiracy, by which the first accused played a vital part and this petitioner belongs to Andhra Pradesh and noway connected to the village the property, which is situated. Only for the purpose of creating trouble to the de-facto complainant right over the property, the power of attorney as well the sale deeds have been executed.

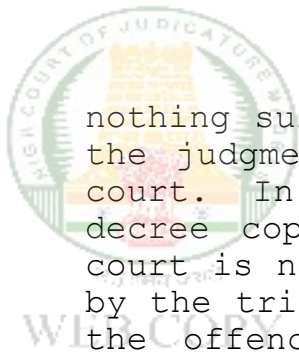
7. No doubt whether the power that was executed by the 2nd accused in favour of the first petitioner is not valid, in view of the earlier power of attorney deed executed by the second accused along with his brother in favour of the husband of the de-facto complainant. It also appears that in pursuance of the above said power of attorney, sold the property to the de-facto complainant. In such circumstances, making encumbrance upon the property by the second accused, prima facie is not valid under law. So on that ground, the learned counsel appearing for the petitioner would submit that it is purely a civil dispute between the de-facto complainant and the first accused in which he is noway involved.

8. Whether the petitioner collected the parent document and gone through the encumbrance certificate before purchasing the property is not clear on record. It is a matter for consideration before the trial court. So in the light of the above factual background, whether sections 417, 418, 465, 468, 471, 166 IPC are attracted or not is a matter for consideration.

9. No doubt in the facts and circumstances of this case, creation of false records and fabrication of the records may not be attracted against the petitioner, because he is only a subsequent purchaser. If at all he can be included only for the offence under section 120(B) IPC. Here also, there is a specific allegation that has been made in the final report. When the petitioner belongs to Andhra Pradesh, how he is interested in purchasing the property in a particular village, is also a matter for serious doubt, which was created by the de-facto complainant. Since this is a factual issue, this court cannot go in detail on this aspect.

10. In the light of the above said factual issue, whether the offences under sections 471 and 420 r/w 120B IPC are attracted against the petitioner is the only ground upon which the entire case rests. The suit, which was filed by the de-facto complainant in O.S No.445 of 2011 on the file of the 1st Additional Sub Court, Madurai also ended in favour of the de-facto complainant, by judgment, dated 20/03/2017, wherein all the six accused persons were shown as defendants. The suit is filed for declaration and for consequential permanent injunction. The date of presentation of the plaint in the above said suit is 24/04/2008. The present complaint came to be filed on 06/10/2009 during the pendency of the suit. So according

<https://hdservices.courts.gov.in/hdservices/>, the above said property of the second respondent,



nothing survives in this criminal proceedings to be carried on. But the judgment of the above said case is not made available to the court. In spite of a specific direction issued to the parties, only decree copies are available and not the judgment copy. So this court is not in a position to know that there is a specific finding by the trial court as to whether the petitioner is also involved in the offence of cheating along with the co-accused. Whether any appeal has been preferred over the above said judgment of the trial court is also not clear on record.

11.In view of the above facts, this petition is liable to be dismissed. Accordingly, it is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

- 1.The Judicial Magistrate No.1,
Madurai.
- 2.The Inspector of Police,
Central Crime Branch,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-16391[F] dated 04/04/2022)

+1 CC to M/s.T.K. GOPALAN, Advocate (SR-16525[F] dated 05/04/2022)

Crl.O.P. (MD)No.4716 of 2019

04/04/2022

RD(20.04.2022) 4P 6C