



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.19726 of 2021

and

Cr.M.P(MD)Nos.11078 & 11080 of 2021

A.Mariappan

... Petitioner/Accused No.1

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.9 of 2017)

... 1st Respondent/Complainant

2.Vignesh

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the case in C.C.No.460 of 2021 on the file of the Special Court for Land Grabbing Cases, Tirunelveli and quash the same as against the petitioner/Accused No.1.

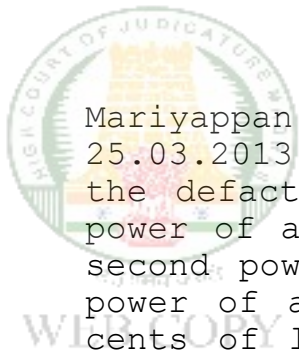
For Petitioner	: Mr.M.I.Subramanian Senior Counsel for Mr.R.Anand
For Respondents	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor for R.1

ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent.

2.Though the defacto complainant has been served and his name is also printed in the cause list, he has not chosen to enter appearance.

3.The petitioner is figuring as first accused in C.C.No.460 of 2021. Apart from him, there are three other accused in this case. The first accused alone has come before this Court and others have not come. The case of the prosecution is that the defacto complainant - Vignesh and his brother and father Sankaranarayanan
~~have executed a general power of attorney in favour of the petitioner -~~



Mariyappan on 20.02.2012. According to them, it was cancelled on 25.03.2013 and a fresh power was executed. The specific stand of the defacto complainant is that the property covered by the first power of attorney was a larger one and the property covered by the second power of attorney was a smaller extent. Based on the said power of attorney, dated 25.03.2013, the petitioner had sold 2.75 cents of land in favour of one Subramaniam, vide sale deed dated 15.07.2014. But, in the meanwhile, Thiru.Sankaranarayanan had passed away on 17.02.2014. However, the sale deed was registered as if all the three principals were very much alive. That led to the lodging of Crime No.9 of 2017 on the file of the District Crime Branch, Tirunelveli. The petitioner herein filed Crl.O.P(MD) No.10058 of 2019 seeking anticipatory bail. The said Criminal Original Petition was allowed on 17.07.2019 in the following terms:

"5. The learned Senior Counsel appearing for the petitioner states that even according to the First Information Report, based on the Power Deed dated 25.03.2013 only one transaction had taken place. No other transaction had taken place. The petitioner is willing for the same to be nullified. In fact the petitioner has already obtained reconveyance from Subramaniam in his favour. The petitioner is willing to execute a sale deed in favour of his remaining principals, namely, Vignesh and his brother.

6. The learned counsel appearing for the defacto complainant states that Vignesh and his brother would appear before the jurisdictional Sub Registrar on 31.07.2019 at about 11.00 a.m. On the said date, the petitioner Mariappan will execute a sale deed conveying the property sold to Subramaniam which is the subject matter of the First Information Report in favour of Vignesh and his brother."

4.The learned Senior Counsel informs the Court that the undertaking given before this Court was complied within letter and spirit. The petitioner had taken a deed of reconveyance from the said Subramaniam and subsequently, sold the same in favour of the defacto complainant. The petitioner had also executed a deed of relinquishment. In other words, whatever interest was sought to be conferred on the petitioner under the power deed no longer subsists and everything has now reverted back to the family of the defacto complainant. It is true that the power of attorney was erroneously acted upon under the impression that Sankaranarayanan was very much alive. Realising the error, the petitioner has completely undone all the mistakes. As on date, the defacto complainant has not suffered any wrongful loss. Because whatever wrong was apparently done, had also been undone. In fact, such an order was passed by me only in the presence of the defacto complainant. The defacto complainant has thus taken the benefit of the undertaking given by the



petitioner before this Court. Having taken the benefit, he cannot continue the prosecution against the petitioner. The Honourable Supreme Court reported in ***B.S.Joshi Vs State of Hariyana (AIR 2003 Supreme Court 1386)*** has held that where there has been a broad understanding arrived at between the complainant and the accused and the same has been given effect to, it would be unjust to allow the prosecution to continue. Though the said ratio was laid down in the context of the compromise between the parties, the same principle can be invoked in the present case also. I was curious to know as to why the defacto complainant had not given letter withdrawing the prosecution. The learned Senior Counsel informs the Court that apart from the petitioner, there are other accused and that the issue is yet to be fully resolved with them. For this reason, the complainant had not withdrawn the prosecution. Therefore, the impugned proceedings are quashed as far as the petitioner is concerned. The prosecution shall go on against the other three accused. The Criminal Original Petition is allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Special Court for Land Grabbing Cases,
Tirunelveli.
- 2.The Inspector of Police,
District Crime Branch,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD)No.19726 of 2021
and

Crl.M.P(MD)Nos.11078 & 11080 of 2021
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RS(01.03.2022) 3P-4C