



Crl.O.P No.6308 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.01.2023**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.6308 of 2021

and

Crl.M.P.No.4183 of 2021

1.S.Sethumani

2.Iyyamani

... Petitioners/Accused 4 & 6

Vs.

1.State rep.by

Inspector of Police

District Crime Branch,

Tiruppur.

(Crime No.1/2021)

... 1st Respondent/Complainant

2.Sakthivel

...2nd respondent/ defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records and quash the complaint in FIR No.1/2021 pending on the file of the respondent police.

For Petitioners : Mr.N.Umapathi

For Respondent-1 : Mr.A.Gopinath,

Government Advocate (crl.side)

For Respondent-2 : Mr.S.Shanmugaveloyuthem Sr.Advocate
for B.Vasudevan



ORDER

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This Criminal Original Petition has been filed to quash the proceedings in FIR in Cr.No.1/2021 pending on the file of the first respondent police.

2.The petitioners are ranked as A4 and A6 in the FIR in Cr.No.1/2021 for the offences under Sections 34, 417, 420, 467, 468, 471 & 474 of the Indian Penal Code, 1860 and Sec.82(d) of the Registration Act, 1908.

3.The case of the prosecution relates to 21 Acres of land situated in three Survey Numbers 325/1, 327/1C2 & 329 respectively, situated at Jallipatti Village, Udumalaipettai. The *defacto* complainant has given a complaint by alleging that the subject property was originally belonged to one Ben Bright Singh and he had executed two power of attorney documents in favour of one Illango and Antony Domenic respectively. The said Antony Domenic has executed a sale deed in document No.5485/2001 in respect of an extent of 9.53 Acres in S.No.327/1A, an extent of 3.51 Acres in S.No.327/1C and 2.92 Acres in S.No.329 has been sold in favour of one Mohamed Rabi by virtue of a registered sale deed in Document No.6999/2007; the said Mohamed Rafik has sold the same in favour of the Natarajan in the year 2017 and thereafter, the second respondent's mother



Vasuki purchased the said property from Natarajan. An another extent of 3.01 Acres in Survey Number 323, an extent of 4.62 Acres in Survey Number 324 and an extent of 1.93 Acres in Survey Number 325/1 was purchased by one Vasanthi from Antony Dominic by virtue of a registered sale deed bearing Document No.5484/2001. An another extent of 6.56 Acres was purchased by one Bremba Lingam from the Antony Dominic in the capacity as power agent by virtue of a registered sale deed bearing No.5483/2001.

3.1.The grievance of the complainant is that A1 has impersonated the original owner Ben Bright Singh and executed a power of attorney in favour of A3; the other accused colluded with A1 and A3 and created various sale deeds in respect of the very same property. The petitioners / A4 & A6 had also purchased of a portion of the property from the third accused. Since the petitioners/A4 and A6 and other accused claimed counter title over the subject property by getting sale deeds from the power agent of a fake person, this complaint is given.

4.Heard the submissions made by the learned counsel on either sides and perused the materials available on record.

5.The learned counsel for the petitioners submitted that the petitioners/ A4 & A6 have got no criminal intention in purchasing the properties; they are



bonafide purchasers for values; they believed the title of A1 and the power possessed by A3; one Vasanthi had purchased the property from Antony Dominic have also filed a civil suit in respect of the subject property against A4 in OS.No.212/2019 before the learned Sub Judge, Udumalpet and the same is pending; A4 has also filed a suit against the said Vasanthi and the second respondents mother Vasuki has filed a suit in OS.No.149 of 2019 for claiming the relief of declaration and permanent injunction; A6/Iyyamani have also filed an yet another suit against the second respondent's mother Vasuki and another purchaser Vasanthi in OS.No.427 of 2019 on the file of the III Additional District Judge, Tarapuram; these suits have been filed in the year 2019 itself; the second respondent's mother is aware of the civil disputes revolving the subject property; still she has chosen to prefer a criminal complaint by implicating the petitioners as well; the petitioners at the worst could have been considered as witnesses; they could not have got any criminal intention hence no criminal liability can be fastened against them.

6.The learned Government Advocate (crl.side) appearing for the first respondent police submitted that a civil suit cannot be a bar for criminal action and only if the investigation is allowed to progress the criminal intention, possessed by the petitioners can come to light; hence, the FIR



cannot be quashed against these petitioners. In support of his contention, he cited the judgement of the Hon'ble Supreme Court held in the case of ***Kamaladevi Agarwal Vs. State of W.B.and others*** [reported in (2002) 1 Supreme Court Cases 555]

7. The learned counsel for the second respondent submitted that the petitioners cannot claim themselves to be the bonafide purchasers, because the encumbrance certificate in respect of the subject matter would show that the transactions between the original owner and the second respondent's mother and others; the petitioners and other purchasers are all relatives and they had criminal intention to cheat the purchasers who have purchased the property from the original owner and hence, they have been rightly implicated as accused in this case.

8.The two parties claimed title over one property by virtue of their respective sale deeds. There is no dispute as to the ownership of Ben Bright Singh over the subject property. The claim of the second respondent is that while she had purchased the property from the rightful power agents of the original owner, the petitioners and other accused have purchased the property from A-3, who have got the power from A1 who impersonated the original owner Ben Bright Singh.



9.It is strange to note that in the FIR the name of the first accused is shown as Ben Bright Singh. After having alleged that the first accused had impersonated the original owner 'Ben Bright Singh', it would have been appropriate, if the prosecution had made certain preliminary investigation in order to know the real name of the first accused and implicated the first accused with his real name instead of a fake name. Normally in these type of cases the original name of the accused will be shown; it is not known whether A1 was the real owner Ben Bright Singh.

10.Whatever may be the contentions of the second respondent and the petitioners, the fact remains that there are two parallel sale deeds executed from one source person by name Ben Bright Singh. Since the petitioners have got their sale deed from A3, it is difficult to fasten criminal liability upon them because the petitioners could have been victims of someones criminal thought.

11.The learned counsel for the petitioners submitted that before purchasing the property in the year 2019, he had taken the encumbrance certificate and the encumbrance certificate did not show about any other previous transactions and hence, they are bona fide purchasers, purchased the property.



11. The learned counsel for the second respondent submitted that the encumbrance certificate taken for the very same property dated 3.1.2021 and 4.1.2021 and 19.02.2021 would very well show the previous transactions in respect of the subject property and hence, the petitioners cannot be the bona fide purchasers. At this point the learned government advocate pointed out that the property particulars for obtaining encumbrance certificate in the year 2019 by the petitioners is seen to be containing different Survey number and that is the reason why the previous encumbrances did not reflect the earlier sale transactions.

13. On perusal of the records, it is seen that the petitioners did not obtain any encumbrances in respect of survey number 325/1. Had he done so the sale deed of defacto complainant's mother would have been reflected. The first petitioner has purchased the property on 30/07/2018 and the said property is seen to be situated in Survey Number 325/1. The second petitioner had purchased the property in Survey Number 327/1C2 on 26/2/2019. No doubt the encumbrance certificate produced by the petitioners relates to Survey Number 327/1C2 and not 325/1.

14. Whatever may be the case, the petitioners have also purchased the properties by paying valuable consideration and in the absence of any



apparent materials to show that the petitioners have also acted in connivance with A1 and A3 to defraud the original owner, it cannot be said that the petitioners had any criminal intention. But that can not be presumed without getting the entire facts behind the transaction. Only if a detailed investigation is allowed to go the truth can come to light. Since A4 and A6 claimed themselves as the innocent purchasers who have been misguided with the encumbrance certificate obtained for a different survey number, I feel that the first respondent police shall consider their statement during their investigation, before fixing the criminal intention on their part.

15.However, the first respondent police cannot be completely stopped from making any investigation in respect of the transaction that has been made in favour of A4 and A6 and to find out whether they have got any connivance with A1 and A3 to get sale deeds in their names. If the petitioners claim themselves as bonafide purchasers, they ought to have taken steps to verify encumbrance certificate before purchasing the property. Since both the parties have filed their respective civil suits, the bonafideness or the malafideness on the part of the claimants can only be the subject matter of the civil suit.



16. But the learned Government advocate pointed out that the pendency of the civil suit cannot be the only reason to quash the criminal proceedings. As it has been already pointed out during the course of the investigation if the petitioners are found to be innocent purchasers, the first respondent police shall drop the action against them. Because bonafide purchasers who have not meticulously verified the title, cannot be always considered as an accused. Since the complaint was registered as early as in the year 2019 and the investigation is still pending, I feel it is appropriate to direct the first respondent police to complete the investigation within a period of two months and file the final report.

With the above observation, this Criminal original petition stands **disposed** of. Consequently, the connected miscellaneous petition is closed.

02.01.2023

Index : Yes/No
Speaking Order : Yes / No
jrs



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R.N.MANJULA, J.,

jrs

- To
- 1.The Inspector of Police
District Crime Branch,
Tiruppur.
 - 2.The Public Prosecutor,
High Court of Madras,
Chennai.

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