



Crl.O.P.No.1436 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.1436 of 2022
and Crl.M.P.Nos.580 and 582 of 2022

Amutha

...Petitioner

-Vs-

1. The State represented by,
The Inspector of Police,
Central Crime Branch,
Team-XVIII,
Vepery, Chennai-600 007.

2. Kalyanasundaram

...Respondents

Prayer : Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, 1973, to call for the entire records pertaining to the CC.No.3756/2021 pending on the file of learned Metropolitan Magistrate No.II, Special Court for the Exclusive Trail of Land Grabbing Cases, Egmore, Chennai and Quash the same by allowing the Criminal Original Petition against the petitioner.

For Petitioner	: Mr.S.Saravanan
For R1	: Mr.A.Gopinath Government Advocate (Crl.side)
For R2	: No appearance



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in CC.No.3756 of 2021 pending on the file of learned Metropolitan Magistrate No.II, Special Court for the Exclusive Trial of Land Grabbing Cases, Egmore, Chennai.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the first respondent and perused the materials available on record. There is no representation on behalf of the second respondent.

3. The case of the prosecution is that the second respondent had purchased the Flat No.1/22, situated at Kiran Paradise, Kongu Nagar, Mugappair, Chennai-39 from one V.M.Chelladurai, through his Power Agent one Murali. Thereafter, he found that the said property was already purchased by one Karthick by availing loan. Thereafter, he committed default and the banker initiated SARFAESI proceedings as against the subject property. Suppressing the said sale, the subject property was sold out in favour of the petitioner. Hence, the complaint.



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4. On receipt of the complaint, the first respondent registered FIR in Crime No.154 of 2013, under Sections 468, 471, 474, 406, 420 read with 34 of IPC as against four accused. After completion of investigation, the first respondent filed a final report as against five accused, in which, the petitioner is arrayed as A3. She is the wife of second accused.

5. A perusal of records revealed that the first accused is a Builder and he had entered into a join venture agreement with the original owner of the property. Accordingly, he had constructed 15 flats, out of which he was allotted 8 flats. He had obtained a Power of Attorney and he has the power to deal with the property in respect of his share. Accordingly, he had sold out his share of 8 flats to various persons among which, Flat No.1/22 was sold out in favour of one V.M.Chelladurai on 06.02.2003 registered vide Document No.363 of 2003. The very same flat was also sold out by the first accused in favour of the second accused by the registered sale deed dated 06.03.2003 vide Document No.963 of 2003. In fact, the second accused availed loan by mortgaging the original title deed to purchase the said property. While availing loan, the petitioner, being the wife of the second accused, also stood as a co-applicant. Subsequently, they committed default in payment of loan and as such, the bank had initiated proceedings under the SARFAESI Act. Subsequently, the first purchaser viz.,



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V.M.Chelladurai had executed a Power of Attorney to the said Murali and in turn, the said Murali had executed a sale deed in favour of the defacto complainant. Thereafter, he found that there is a SARFAESI proceedings initiated as against the said property and lodged a complaint.

6. It is seen that the original flat was purchased by the said V.M.Chelladurai, on 06.02.2003. The very same property was also sold out in favour of the second accused on 06.03.2003. The second accused purchased the said flat by availing loan. In the said loan process, the banker verified the entire document and sanctioned loan. In the said loan application, the petitioner viz., the third accused was shown as a co-applicant along with the second accused. Thereafter, the second and third accused were in possession of the subject property. However, they had committed default and as such, the banker had initiated SARFAESI proceedings and also had taken possession of the subject property. Utilizing the said circumstances, on the strength of the sale deed executed in favour of V.M.Chelladurai, he had executed a Power of Attorney in favour of the said Murali, though he was not in possession of the property.

7. In fact, a perusal of the sale deed executed in favour of the second accused, it is very clear that it was executed only in respect of the undivided



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share ad-measuring 270 sq.ft alone. Subsequently, he entered into a construction agreement with the first accused and after completion of the entire construction, they occupied the flat. In fact, before registration of the sale deed, the second accused had entered into an agreement for sale with the first accused on 14.02.2003 itself. Therefore, the very same undivided share was sold out by the first accused in favour of the said V.M.Chelladurai as well as the second accused. Both seems to be bonafide purchasers. However, without taking any possession of the property, the said V.M.Chelladurai had executed a Power of Attorney in order to create further encumbrance and in turn, his power agent had executed a sale deed in favour of the defacto complainant. Insofar as the petitioner is concerned, except the relationship of wife of the second accused, she has nothing to do with the alleged occurrence. Therefore, no offence is made out as against the petitioner and she cannot be expected to go through the ordeal of trial.

8. In view of the above, the impugned proceedings cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, the proceedings in C.C.No.3756 of 2021 pending on the file of learned Metropolitan Magistrate No.II, Special Court for the Exclusive Trail of Land Grabbing Cases, Egmore, Chennai, is hereby quashed.



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Consequently, connected Miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Metropolitan Magistrate No.II,
Special Court for the Exclusive Trail of Land Grabbing Cases,
Egmore, Chennai.
2. The Inspector of Police,
Central Crime Branch,
Team-XVIII,
Vepery, Chennai-600 007.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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