THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

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

Crl.O.P.No.536 of 2022 and
Crl.M.P.Nos.195 & 197 of 2022

1. T.Subbulakshmi
2. Yuba T.Reichard ... Petitioners

Vs.

1. State of TamilNadu
Rep. by Assistant Commissioner of Police,
Central Crime Branch (CCB),
Chennai-600 007.
(Crime No.154 of 2012).

2. Ankul Vij ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.2777 of 2021 on the file of the learned Special Metropolitan Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases-II, Chennai and quash the same.

For Petitioners : Mr.Manuraj

For Respondent 1 : Mr.L.Baskaran,
Government Advocate (Crl.Side)

For Respondent 2 : Mr.T.V.Vineeth Kumar

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2777 of 2021 on the file of the learned Special Metropolitan Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases-II, Chennai thereby taken cognizance for the offences punishable under Sections 419,420,467,468,471 r/w.Section 120B of IPC.

2. The case of the prosecution is that the 2nd respondent lodged a complaint alleging that his father-in-law had purchased Plot Nos.693 and 694 in VGP Golden Beach, Uthandi in the name of his brother-in-law and his wife respectively from VGP Housing Pvt., Ltd., by the registered sale deed dated 18.03.1981. Thereafter, they came to understand that the 2nd and 3rd accused impersonated the purchasers as if the owners of the property and executed power of attorney in favour of the 1st accused. In turn, the 1st accused executed a registered sale deed in favour of the 4th and 5th accused. In turn, they had executed power of attorney in favour of 6th accused. On the strength of the same, 6th accused executed a sale

deed in favour of 7th accused. Thereby, they conspired together in order to grab the properties owned by the Defacto-complainant's brother-in-law and his wife and impersonated them and also fabricated the documents and grabbed the property. Hence, the complaint.

3. On receipt of the said complaint, the 1st respondent registered FIR in Cr.No.154 of 2012 for the offences punishable under sections 420,465,467,468,471 r/w.120B of IPC. After completion of investigation final report was filed and taken cognizance in C.C.No.2777 of 2021 on the file of the learned Special Metropolitan Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases-II, Chennai for the offences punishable under sections 419,420,467,468,471 r/w 120(B) of IPC.

4. The learned counsel appearing for the petitioners submitted that these petitioners are arrayed as Accused Nos.4 and 5. They are innocent bonafide purchasers of the subject property. They purchased two Plots bearing Nos.693 and 694 in VGP Golden Beach, Uthandi Village through power of attorney of the original owners of the plots by

registered sale deed dated 20.06.2001 vide Document Nos.1584 and 1585 of 2001. In turn, the 1st petitioner had executed a power of attorney on 09.08.2005 vide document No.1592 of 2005 in favour of Accused No.6. Simultaneously, the 2nd petitioner also had executed a power of attorney in favour of the 6th accused on 13.09.2005 vide document No.517 of 2005. In turn, the 6th accused had executed a sale deed in favour of the 7th accused on 28.10.2005 vide document No.6230 of 2005.

5. He further submitted that the 7th accused has already been discharged by the learned trial court, since he is a bonafide purchaser of the subject property. The petitioners also stand in the same footing, since they are also bonafide purchasers of the subject property. In fact, now the 7th accused filed a suit for permanent injunction in O.S.No.487 of 2012 on the file of the Principal District Munsif Court at Alandur and the same has been decreed by its judgement and decree dated 09.04.2013 in his favour and as against the Defacto-complainant. Therefore, these petitioners are nothing to do with the crime alleged by the 2nd respondent.

6. The learned counsel for the 2nd respondent would submit that all the accused persons conspired together in order to grab the properties. The 2nd and 3rd accused impersonated the original owners of the property and executed power of attorney in favour of the 1st accused. In turn, the 1st accused had executed sale deed in favour of the petitioners herein. Therefore, they are all joined and conspired together to grab the properties. That apart, grounds raised by these petitioners can be considered only before the trial court and not under section 482 of Cr.P.C.

7. The learned Government Advocate(Criminal Side) submitted that there are totally seven accused. These petitioners are arrayed as 4th and 5th accused. Though, they are subsequent purchasers of the subject property, they conspired with the other accused persons in order to grab the subject properties and they created sale deeds in their favour. Subsequently, they had sold out the properties in favour of the 7th accused through their power agent i.e., the 6th accused. Therefore, there are specific allegations and materials available to bring the charges to

home. Hence, he prayed for dismissal of this quash petition.

8. On perusal of the records, it is seen that there are totally seven accused, in which these petitioners are arrayed as Accused Nos.4 and 5. The property comprised in S.No.2/2B1 bearing Plot Nos.693 and 694 admeasuring 4800 sq.ft., situated at V.G.P.Golden Beach, Uthandi Village was purchased by the 2nd respondent's brother-in-law and his wife by a registered sale deed dated 18.03.1981 vide document Nos.693 of 1981 and 694 of 1981. Both the house plots are vacant land. After the purchase of both plots, neither the 2nd respondent nor the purchasers are in possession of their subject plots. Since then, the 2nd respondent is continuously residing in New Delhi. Occasionally he came to the house plots. By utilizing the absence of the landlord, the Accused Nos.1 to 3 are conspired together to usurp the said property. The 2nd and 3rd accused had impersonated themselves as 2nd respondent's brother-in-law Mr.Sathiyapal Malhotra and his wife Mrs.Seema Malhotra, as if they are the plot owners and they had executed power of attorney in favour of the 1st accused for the said plots on 30.03.1999 and registered vide

Document No.327 of 1999. Thereafter, the 1st accused had marketed both the house plots for sale. The petitioners herein agreed to purchase both the house plots for valid sale consideration. Accordingly, the 1st petitioner had purchased the plot No.693 registered vide document No.1584 of 2001 on 20.06.2001. On the same day, the 2nd petitioner had also purchased another Plot No.694 vide document No.1585 of 2001. After a period of four years, from the date of their purchase, both had executed power of attorney separately in favour of 6th accused. The 1st petitioner executed power of attorney vide document No.1592 of 2005 on 09.08.2005. The 2nd petitioner had executed power of attorney in favour of the 6th accused on 13.09.2005 vide document No.517 of 2005. After a period of five years, the 6th accused, from the date of execution of power of attorney, executed sale deed in favour of the 7th accused. The 7th accused had purchased both the house plots for a valid sale consideration.

9. On perusal of the records revealed that the 7th accused filed a suit for permanent injunction as against the 2nd respondent and the

original purchasers in O.S.No.487 of 2012 on the file of the Principal District Munsif Court at Alandur. The said suit was decreed by the judgment and decree dated 09.04.2013. As against the said judgment and decree, no appeal has been filed by the 2nd respondent or the original owners of the properties. Therefore, the judgement and decree in the said suit became final and thereby the 2nd respondent and original owners of the property are restrained by means of permanent injunction in any manner disturbing the 7th accused peaceful possession and enjoyment of the subject properties. Therefore, these petitioners are nothing to do with the allegations. They are neither impersonated nor made any false representation. Now they have been charged for the offences under section 420 of IPC.

10. It is also relevant to extract the provision under Section 420 of IPC hereunder:

> *420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any*

part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. It is observed in the case of ***Md.Ibrahim &Ors Vs. State of Bihar &Anr*** reported in ***2009 (8) SCC 751***, as follows:

14. .... a person is said to have made a "false document", if
(i) he made or executed a document claiming to be someone else or authorised by someone else; or
(ii) he altered or tampered a document; or
(iii) he obtained a document by practicing deception, or from a person not in control of his senses.

Therefore, the offence under Section 420 of IPC is not at all made out as against the petitioners, since the petitioners neither made any dishonest nor any fraudulent representation.

12. Further, the 2[nd] respondent is neither the owner of the property nor the power holder. However, he lodged complaint on behalf of his brother-in-law and his wife. The 7[th] accused had purchased the subject properties on 28.10.2005. He lodged a complaint only on 21.03.2012. The Accused Nos.2 and 3 had executed Power of attorney even on 30.03.1999. Therefore, the complaint was lodged after a period of 13 years. There is no reason for the belated complaint. Admittedly, these petitioners are no way connected with Accused No.1 to 3. Therefore, in order to attract the offence under section 120(b) of IPC, there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act.

13. On perusal of statement recorded under section 161 of Cr.P.C, no one has spoken about the role played by the petitioners along with Accused No.1 to 3. The entire allegations only as against the Accused

No.1 to 3. Even according to the case of the prosecution, the 2nd and 3rd accused had impersonated themselves as Defacto-complainant's brother-in-law and wife and executed power of attorney in favour of the 1st accused. Therefore, the offences under section 120(b) of IPC is not at all attracted as against these petitioners. These petitioners are the bonafide purchasers and they had no knowledge about the impersonation committed by Accused No.2 and 3. They are bonafide over the subject properties and on verification of records through power of attorney i.e., Accused No.1, they had purchased the subject properties by registered sale deed. Therefore, there is no question of fabrication of any records, when the execution of a sale deed by a person, purporting to convey a property which is not of his, as his property, is not making a false document and therefore not forgery. Such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. In the case on hand, the 2nd respondent neither vendor nor a purchaser of the subject property. If any grievance, the petitioners are ought to have lodged complaint since they are bonafide purchaser of the subject property for valid sale consideration. Therefore, no malice can be attributed as against the petitioners. That apart, 7th accused was already discharged by the trial court since he is also a subsequent and bonafide purchaser of the subject properties.

14. In view of the above the impugned proceedings cannot be sustained as against these petitioners and it is liable to be quashed. Therefore, the proceedings in C.C.No.2777 of 2021 on the file of the learned Special Metropolitan Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases-II, Chennai is quashed only against these petitioners. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed. The trial court is directed to proceed with trial as against the Accused Nos.1 to 3 in the manner known to law.

29.11.2023

Internet: Yes
Index: Yes/No

Speaking/Non-speaking order
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To

1) The Special Metropolitan Magistrate,
Special Court for Exclusive Trial of
Land Grabbing Cases-II, Chennai

2) The Assistant Commissioner of Police,
Central Crime Branch (CCB),
Chennai-600 007.

3) The Public Prosecutor,
High Court Madras.

G.K.ILANTHIRAIYAN, J.

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