



Crl.O.P.No.29373 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 20.01.2023	Orders pronounced on 23.02.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.29373 of 2022

and

Crl.M.P.Nos.17970 and 17972 of 2022

K.Mohan

... Petitioner

Vs.

1. State represented by
The Inspector of Police
Central Crime Branch
Team XII, Egmore
Chennai – 600 008.

2. M.Karunakaran

... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C. praying to call for the records in connection with the case in C.C.No.103 of 2008 on the file of learned Judicial Magistrate No.I, Poonamallee and quash the same as against the petitioner alone.



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For Petitioner : Mr.K.Madhan
For Respondent-1 : Mr.S.Santhosh
Government Advocate (Crl. Side)
For Respondent-2 : No appearance

ORDER

This petition is filed for quashing the case in C.C.No.103 of 2008 on the file of the learned Judicial Magistrate No.I, Poonamallee, as against the petitioner alone.

2. Learned counsel for petitioner submitted that the petitioner is 5th accused in C.C.No.103 of 2008. The case was registered for the offences under Sections 465, 466, 467, 469 r/w.471, 420 r/w.120-B and r/w.109 IPC. First accused is the owner of the property. Second accused is his wife. Third accused is the brother-in-law of the first accused. The case of the prosecution is that the second respondent/defacto complainant purchased the property from first accused on 03.05.2002 for a valid consideration. Thereafter, on 15.07.2007, A1, A3 and A4 trespassed into the property with deadly weapons. Second respondent, on enquiry, came to know that after selling the property to him, first accused created two documents, in respect



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of the property already sold to second respondent, in favour of his wife/A2 and brother-in-law/A3. A2 and A3 had executed general power of attorney in favour of A4. A5 and A6 stood as witnesses in the documents executed between A1 to A4. He further submitted that A1 to A3 have already filed a case in Crl.O.P.No.11477 of 2015 and it was allowed on 06.05.2022. When the proceedings in C.C.No.103 of 2008 is quashed against the main accused, namely A1 to A3, there is no possibility of proceeding further in the case and getting conviction against the petitioner. Thus, learned counsel for the petitioner prays for quashing all the proceedings against him. In support of his claim, he produced the copy of the order dated 06.05.2022 in Crl.O.P.No.11477 of 2015.

3. Though second respondent was served with notice, there is no appearance for second respondent either through person or through advocate.

4. Heard learned counsel for petitioner and learned Government Advocate (Crl. Side) for first respondent.



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5. Considered the rival submissions and perused the records.

6. As narrated above, this case was registered against the accused for the offences under Sections 465, 466, 467, 469 r/w. 471, 420 r/w.120-B and r/w.109 IPC. This Court in Crl.O.P.No.11477 of 2015, relying on the judgment reported in **(2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another) and 2018 (7) SCC 581 (Sheila Sebastian ..vs.. R.Jawaharaj and another)**, while dealing with the case where the property was sold by a vendor to a buyer, then to the second buyer, considered the question whether an offence of cheating committed against the first buyer, held that the offence of cheating may have been committed against the second buyer and that the second buyer can claim that the vendor had cheated him/her, but the second buyer cannot be shown as accused. The relevant portion of the judgment in **(2009) 8 SCC 751 (Mohammed Ibrahim and Others ..vs.. State of Bihar and another) (cited supra)** is extracted hereunder for reference:-



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“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.”

7. Thus, finding that the ingredients of Section 415 IPC are not made out and there is no committing of forgery for the purpose of cheating and using the genuine document as a forged document, this Court quashed the proceedings against the petitioners therein. When the proceedings against the main accused in C.C.No.103 of 2008 is quashed, the continuance of proceedings against the petitioner, who is only an attester, would serve no purpose and there is no possibility of getting conviction in this case in the trial Court.



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8. In this view of the matter, this Criminal Original Petition is allowed and the proceedings against this petitioner/A5 is quashed. Consequently, connected Miscellaneous Petitions are closed.

23.02.2023

mra

Index :Yes/No

Internet:Yes

Speaking Order : Yes

To

1. The Inspector of Police
Central Crime Branch
Team XII, Egmore
Chennai – 600 008.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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order in
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23.02.2023