BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).11423 of 2020

and Crl.M.P.(MD).Nos.5229 & 5231 of 2020

1.C.S.Palanivel
2.Thangaiyan ... Petitioners

Vs.

1.The Sub-Inspector of Police
Anti Land Grabbing Special Cell
Dindigul
Dindigul District
C.C.No.39/2019 in Crime No.88 of 2013.

2.S.Padmavathy
3.Kasthuri ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to quash the charge sheet and all proceedings against the petitioners now pending in C.C.No.39 of 2019 in Crime No.88 of 2013 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai.

For Petitioners : Mr.N.R.Elango
Senior Counsel
for Mr.N.Kumanan

For Respondents : Mr.M.Sakthi Kumar for R1
Government Advocate (Crl.Side)

Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates
for R2 & R3

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the proceedings in C.C.No.39 of 2019 on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai.

2. According to the petitioners, based on the complaint given by the respondents 2 & 3, the first respondent has registered a case in Crime No.88 of 2013 as against the petitioners and others. The first petitioner has been arrayed as 5th accused and the second petitioner has been arrayed as 6th accused in the above said case. After registration of the First Information Report, the first respondent has investigated the case and filed a final report and based on the final report, the learned Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, had taken cognizance of the case in C.C.No.39 of 2019 for the offences under Sections 465, 468, 471, 447 and 448 of IPC.

3.1. According to the prosecution case, the defacto complainants i.e., the respondents 2 & 3 are the owners of 6 cents of vacant site at Kodaikanal, and the same was inherited from their father K.P.Ramasamy. Since the petitioners trespassed into the property, they have filed a Suit before the Sub-Court, Palani and got permanent injunction. Despite the same, the petitioners trespassed and encroached the said property and attempted to grab the said land. Hence, they lodged a complaint.

3.2. The first petitioner had obtained a power of attorney deed from the third accused viz., Sobana Mani dated 11.09.2006 and based on the power deed, the fifth accused/first petitioner sold the property to the sixth accused/second petitioner on 27.02.2007. Therefore, the sixth accused/second petitioner is a bonafide purchaser for a valuable consideration and even according to the First Information Report and charge sheet no offences were made out as against the petitioners. In fact, the present complaint was preferred with a request to transfer the complaint from the Deputy Superintendent of Police to any other officer. But based on the transfer petition, this First Information Report has been registered. The defacto complainants themselves admitted that already Civil Suits preferred by both the parties were pending before the respective Civil Courts. The third accused had purchased the property from the first and second accused in the year 1996. The above said vendors derived the title from the partition deed in the year 1936, whereas the defacto complainants claiming possession and title from the exchange deed said to have been executed in the year 1970. Any how, the second petitioner/sixth accused purchased the property in the year 2007 i.e., on (27.02.2007) and from the date of sale itself, he has been in possession and enjoyment of the suit property and he also constructed a building in the disputed property, whereas, the defacto complainants said to have been taken possession only in the year 2011 i.e., on 14.10.2011.

3.3. These petitioners are not parties to the above said suit and they have no knowledge about the above said delivery given to the defacto complainants. Even if it is admitted that the possession was given to the defacto complainants, the date of possession is only on 14.10.2011, but the petitioners sale deed is on 27.02.2007. Therefore, much prior to the date of delivery, the petitioners were in possession and enjoyment of the suit property. Therefore, the question of trespass would not arise.

3.4. As far as, the offences under Sections **465, 467 and 471 of IPC** are concerned, the first petitioner is the power of attorney holder and he only conveyed the property on behalf of his principle and he has no intention to cheat anybody and he has not created any documents. As far as the second petitioner is concerned, he is a bonafide purchaser and he has not executed any false deed or created any false documents, thereby the offences under Sections **465, 468 & 471** would not attract. While the facts are being so, the false complaint has been lodged by the respondents 2 & 3 and the first respondent without conducting proper investigation, filed a final report and the same is now pending before the Special Court for Exclusive Trial of Land Grabbing Cases Madurai.

4. No counter was filed by the respondents.

5. The learned counsel appearing for the petitioners would contend that the respondents 2 & 3 have preferred a complaint before the first respondent and the first respondent has registered the First Information Report in Crime No.88 of the 2013 for the offence under Sections 465, 468, 471, 447 & 448 IPC, wherein the first petitioner has been arrayed as fifth accused and the second petitioner has been arrayed as sixth accused. Thereafter, the first respondent filed a final report without conducting proper investigation. In fact, the first petitioner, who was arrayed as fifth accused is the power of attorney of the third accused viz., Sobana Mani, has sold the property to the sixth accused and the petitioners have not involved in any offences as alleged in the First Information Report and the charge sheet. The sixth accused/second petitioner is a bonafide purchaser and he has no intention to cheat anybody and they have not created any false documents and thereby the offences mentioned in the First Information Report and charge sheet would not attract as against the petitioners. In fact, the sixth accused/second petitioner purchased the property in the year 2007. Though it is stated that civil disputes were pending between the parties, the above said pendency of the civil proceedings were not brought to the knowledge of these petitioners and therefore, the sixth accused is the bonafide purchaser for valuable consideration. Even according to the complaint and the final report, the defacto complainants had taken delivery of the property on 14.10.2011. But the date of purchase of the property by the sixth accused/second petitioner is much earlier to the date of alleged delivery. Therefore, the offences under Sections **447 and 448** of IPC would not attract. Further, in the delivery proceedings, these petitioners are not party.

6. The learned counsel appearing for the second respondent would contend that originally the property belongs to the father of the petitioners and the respondents 2 & 3 got the property through exchange deed in the year 1970 and thereby, the property belongs to the respondents 2 & 3, but, these petitioners along with other accused had created forged documents, in order to grab the property. The accused joint together and cheated the respondents 2 and 3 by creating forged documents. The respondents 2 & 3 taken delivery of the property on 14.10.2011 itself and therefore, the petitioners are trespassers. Further, all the accused joined together and created forged documents and the third accused executed a power of attorney in favaour of the fifth accused, who is the first petitioner herein. The first petitioner/5th accused in turn, executed a sale deed in favour of the sixth accused i.e., second petitioner herein in the year 2007. Those documents are sham and nominal and in order to grab the property only, they created forged documents and thereby they gave a complaint to the first respondent police and the first respondent registered a case in Crime No.88 of 2013. After elaborate investigation they filed a final report and the same was taken cognizance by the learned Magistrate, since the prima facie materials available as against all the accused. Even according to the petitioners, they purchased the property in the year 2007 i.e., (27.02.2007) but already in the year 1996 itself a civil suit is pending with regard to the property. Therefore, the sale of sixth accused is hit by the principle of *Lis*

Pendens. Thereafter, the said case was decreed in favour of the respondents 2 & 3 and as against the said judgment, the accused 1 & 2 preferred an appeal before the District Court, Dindugal and the same was also dismissed. Thereafter, the respondents 2 & 3 filed Execution Petition in E.P.No.09 of 2004 in OS.No.300 of 1996 on the file of the District Munsif Court, Kodaikanal and the same was also ordered in favour of these respondents. Thereafter, they took delivery of the property through Court on 14.10.2011. Therefore, the respondents 2 & 3 are the owners of the property, according to the decree of the Courts below. These petitioners are trespassers and they created false documents, thereby they have to face the trial.

7. This Court heard both sides and perused the records.

8. On perusal of the records, it is seen that there is a civil dispute pending between the parties from the year 1996. Already the suit in OS.No.300 of 1996 was filed by the father of the respondents 2 & 3 and the said suit was decreed in favour of the respondents 2 & 3. As against the above decree and judgment, an appeal was preferred by the accused 1 & 2 before the District Court, Dindugal and the same was also dismissed.

Thereafter, the respondents 2 & 3 filed Execution Petition in EP.No.09 of 2004 and the property was delivered to the respondents 2 & 3 on 14.10.2011. According to the accused 5 & 6/petitioners 1 & 2 herein ,the fifth accused has obtained power deed from the third accused in the year 11.09.2006. Based on the above said power deed, the first petitioner sold the property to the second petitioner on 27.02.2007.

9. It is an admitted fact that these petitioners are not parties to the above said suit filed by the respondents 2 & 3. In the EP proceedings also the petitioners are not parties. However, they purchased the property during pendency of the above said suit. Therefore, as per the principle of *lis pendens* they are bound by the final out come of the suit proceedings. However, the date of sale in the name of the sixth accused is on 27.02.2007 but, the delivery was given to the respondents 2 & 3 on 14.10.2011. Therefore, the question of trespass would not arise. Though the delivery was given to the respondents 2 & 3, according to the petitioners the second petitioner was in possession from the year 2007. In the delivery proceedings, the petitioners are not parties, thereby the question of trespass would not attract. If the petitioners had knowledge about the delivery of the property and they continue even after delivery, then only trespass would attract. But there is no records to show that these petitioners have knowledge about the above said delivery. Therefore, trespass under Section 447 & 448 of IPC would not attract.

10. As far as the offence under Section 463 of IPC is concerned, the petitioners have not committed any forgery even as per FIR and charge sheet. The term forgery is defined in Section 463 of IPC, which reads as follows:

> *" 463. Forgery —Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

11. Therefore, in order to attract the offence of forgery, a person has to create or make false documents. Making false documents has been defined in Section 464 of IPC, which reads as follows:

"464. Making a false document —A person is said to make a false document—

First — Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly— Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly — Who dishonestly or fraudulently causes any person to sign, seal execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration."

12. From bare reading of Section 464 of IPC, it would attract only when a person dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, constitute the offence. In this case none of the above said acts were done by the petitioners. Therefore, the offence under Section 465 of IPC would not attract, since the first petitioner is the power holder and the second petitioner is the purchaser of the property.

13. Section 468 of IPC reads as follows:

> *"468. Forgery for purpose of cheating — Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

14. Already this Court has decided in the previous para that in this case no forgery was proved and thereby Section 468 IPC which is dealing with committing forgery for purpose of cheating i.e., intending to create false documents for the purpose of forgery, would not attract.

15. In this case, there is no offence charged under Section 420 IPC and there is no ingredients to attract the Section 420. While so, without offence under Section 420 of IPC, the offence under Section 468 IPC would not attract.

16. Section 471 of IPC reads as follows:

> *"471. Using as genuine a forged document —Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document."*

17. Once the forgery is not established, the offence under Section 471 also would not attract.

18. In the case on hand, already in the previous para, decided that no forgery would attract and thereby Section 471 would not attract. In this case, learned counsel for the respondents 2 & 3 admitted that already they got civil decree and the petitioners have no title over the property, but these petitioners still continuing possession of the property. Though the respondents 2 and 3 admitted that the Court delivery was taken in the year 2011 itself, but the arguments advanced by the learned counsel appearing for the respondents is contra to the delivery given through Court. If the arguments of the respondents 2 & 3 are admitted it shows that actual delivery was not given and delivery was only symbolic delivery. The respondents are not in specific as to whether actual delivery was taken or not. Thereby, the above said pending proceedings in C.C.No.39 of 2019 is an abuse of process of law and the proceedings in C.C.No.39 of 2019 is liable to be quashed, as against these petitioners.

19. At this juncture, the learned counsel for the petitioners brought to the knowledge of this Court that at the time of filing of petition, the case was pending before the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai. Based on the judgment passed by the Hon'ble Supreme Court by quashing the Government Orders for the constitution of special cell and the Courts, all the cases have been transferred to the Judicial Magistrate Court. Hence, the present case is also transferred to jurisdictional Court.

P.DHANABAL., J.

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20. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.39 of 2019, previously pending on the file of the Special Court for Exclusive Trial of Land Grabbing Cases, Madurai, and now transferred to Jurisdictional Court is hereby quashed as against these petitioners. Consequently, connected Miscellaneous Petitions are closed.

27.09.2023

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Internet : Yes / No
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To

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