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Crl.O.P.No.8580 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.08.2024

Pronounced on :06.08.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.8580 of 2023
and
Crl.M.P.Nos.5457 & 5459 of 2023

K.Selvaraj

.. Petitioner/1st Accused

/versus/

1.State rep.by
Inspector of Police,
District Crime Branch,
Coimbatore District.
(Ref.Cr.No.5 of 2015)

..1st Respondent/Complainant

2.M.K.Somasundaram

.. 2nd Respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.237 of 2015 on the file of the learned Judicial Magistrate-I, Pollachi and quash the same as against this petitioner.



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For Petitioner :Mr.R.Vivekananthan
For R1 :Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)
For R2 :Mr.N.S.Sivakumar

ORDER

This criminal original petition under Section 482 Cr.P.C is filed to quash the prosecution in C.C.No.237 of 2015 on the file of Judicial Magistrate No.1, Pollachi.

2. In the above case, 6 persons were charged for offences punishable under Sections 420, 468, 471 and 120B of IPC. The petitioner herein is the first accused.

3. According to the petitioner, the allegations made against him as reflected in First Information Report, Final Report and Statements recorded under Section 161 Cr.P.C., *ex facie* do not constitute any offence, much less offences under Sections 420, 468, 471 and 120-B of IPC.



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4. Gist of the Final Report:

The allegation against this petitioner and others as found from the final report is that, Mr.Somasundaram and his daughter Pratheeba appointed this petitioner (Selvaraj) and one Sowdappan as their power agent on 19/07/2001 to deal with their ancestral property in S.No:726 and 727/2 of Kottur Village. The said power of attorney was cancelled by the principals on 24/02/2003 and was intimated to the Agent. Knowing about the cancellation of the Power of Attorney, the petitioner and Sowdappan created an ante-dated agreement for sale as dated 27/07/2001 in favour of one Chandran (A-2) and V.N.Natarajan (A-3) which was written in two Rs.10/- stamp papers dated 27/07/2001 bearing Nos: 8283 and 8284 sold by one Krishnasamy stamp vendor. In the said agreement Devaki (A-4) and Kavirasu (A-5) have signed as witnesses. Krishnasamy the stamp vendor fabricated the stamp paper, contrary to the entry made in his sale register to facilitate the other accused persons to create the ante-dated document. Hence, Krishnasamy, Stamp Vendor was arraigned as A-6. He later turned approver and taken as witness to prosecution.



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5. In the quash petition, it is canvassed that, before lodging the subject complaint, two suits were filed in respect of this property. First suit was for injunction by the purchasers Chandran(A-2) and Natarajan (A-3) in O.S.No.5/2006 on the file of Sub-Court, Pollachi, as against the defacto complainant, Somasundaram and his daughter, Pratheeba, to restrain them from creating encumbrance to the property. The second suit was by Somasundaram in O.S.No.87/2006 challenging the validity of the agreement for sale dated 27/07/2001 and the consequential sale deeds dated 09/07/2004. After contest, both the suits ended against the complainant Somasundaram. Thereafter, the defacto complainant referred Appeal Suits before the District Court, Coimbatore in A.S No: 55/ 2011 and A.S No: 57 of 2011. Both the Appeals were dismissed on 28/11/2012. Against the concurrent judgments, the defacto complainant had preferred Second Appeal before High Court and same is pending in S.A. Nos.944 and 945 of 2022.

6. Having failed to establish his right before the civil Courts, the defacto complainant has set the present prosecution in motion with



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oblique motive, based on the clerical error in the names entered in the stamp papers and the name found in the sales register maintained by the stamp vendor. The said error in names cannot even remotely show that the agreement dated 27/07/2001 is ante-dated.

7. The Learned Counsel for the defacto complainant submitted that, the stamp papers and the statement of the stamp vendor Krishnsamy were examined by the prosecution and found that the Sales Register maintained by the Stamp vendor indicates that these two stamp papers of value Rs.10/- sold to some other persons and these two stamp papers were purchased from the stamp vendor by the accused persons much after the cancellation of Power of Attorney. The stamp vendor on the request of the accused persons sold the old stamp paper ante dating it. This crime of fabricating document been done with the intention to cheat the defacto complainant. Therefore, the complaint as well as the material evidence collected during investigation discloses every ingredient to attract offences under Sections 120B, 420, 468 and 471 of IPC.



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8. The Learned Counsel for the defacto complainant further stated that after framing of charges, with intention to delay the trial, this peititoner and others filed petition to discharge. The said petition was dismissed by the trial Court. Thereafter this petition filed to drag the proceedings.

9. The learned Government Advocate (Criminal Side) states that, the issue in the civil suit was whether the unilateral cancellation of the Power of Attorney is valid and whether the cancellation was intimated to the Agent by the Principals before they executed the sale agreement with A-2 and A-3. Whereas the criminal complaint centres on the charge whether the sale agreements were written antedated using old stamp papers with criminal intention to deceive the defacto complainant and her daughter. Therefore, the dismissal of the civil suits and pending of the Second Appeals cannot be a reason to non prosecute the petitioner.



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10. Heard The learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) for the State/1st respondent and the lerned counsel appearing for the second respondent.

11. The case of the prosecution is specifically on the fabrication of the sale agreement dated 27/07/2001 which is alleged to have been created giving ante date with intention to cheat the defacto complainant. The prosecution heavily rely on the Sale Register of the Stamp Vendor kept in custody of the District Collector and the confession statement of the Stamp vendor who has turned approver.

12. In the view of this Court, the fabrication of document (i.e) stamp papers, which are the valuable security, necessarily an offence to be tried dehors of the outcome of the civil suit for declaration or injunction where the allegation of antedate of the disputed document not tested. Apparently what been tested before the Civil Court is the validity of unilateral cancellation of the power of attorney by the defacto



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complainant. Therefore, even if ultimately the HighCourt in the pending second appeal holds that the unilateral cancellation of the power of attorney is bad in law, it will not exonerate this petitioner who had created the sale agreement on the stamp papers, with antedate.

13. The petitioner though claims that he had no knowledge about the names of the purchaser, he had entered in the sale register, it is all matter for trial and same has to be established in the trial.

14. Since the facts of the case do not come under any of the 7 categories mentioned in *Bajan Lal case*, this Criminal Original Petition No:8580/2023 to quash the complaint C.C.No. 237 of 2015 on the file of Judicial Magistrate No.1, Pollachi stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

06.08.2024

Index:yes/no
Neutral Citation:yes/no
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To:

- 1.The Judicial Magistrate-I, Pollachi
- 2.The Inspector of Police, District Crime Branch,
Coimbatore District. (Ref.Cr.No.5 of 2015)
- 3.The Public Prosecutor, High Court,Madras.



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DR.G.JAYACHANDRAN,J.

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delivery order made in
Crl.O.P.No.8580 of 2023
and
Crl.M.P.Nos.5457 & 5459 of 2023

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