BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.12903 of 2022
and
Crl.O.P.(MD).Nos.8180 & 8181 of 2022

1.Saravanan

2.Srinivasan

3.Kalaivani ... Petitioners

Vs.

1. State represented by
The Inspector of Police,
City Crime Branch Police Station,
Madurai City.
(Crime No.28 of 2020)

2.Balanamasivayan ... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C.No.2 of 2022 on the file of the learned Special Judicial Magistrate Exclusive Trial of Land Grabbing Cases, Madurai and quash the same as illegal as against the petitioners.

For Petitioners : Mr.J.Jeyakumaran

For R1 : Mr.P.Kottaichamy
Government Advocate (Crl. Side)

For R-2 : Mr.J.Karthikeyan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.2 of 2022 on the file of the learned Special Judicial Magistrate Exclusive Trial of Land Grabbing Cases, Madurai, as against these petitioners.

2. The case of the prosecution is that in order to cut and sell the seemaikaruvelam trees grown in the land of the second respondent worth about Rs.60,00,000/- the second respondent has contracted with one Bose by way of oral agreement for a sum of Rs.45,00,000/-. When the second respondent asked the said Bose to give some amount as an advance, the said Bose told him that he will supply construction materials worth about Rs.20,00,000/- as an advance and after cutting the Seemaikaruvelam tress, he will pay the remaining amount and the same was accepted by the second respondent. Thereafter, the said Bose for a period of two years had supplied construction materials worth about Rs.15 Lakhs to the second respondent. The second respondent had

demanded the said Bose to pay the remaining amount of Rs.5 Lakhs by way of cash. In the meanwhile, the said Bose had sold the seemaikaruvelam trees to one Sundar without the knowledge of the second respondent and received the amount from the said Sundar. When the said Sundar tried to cut the trees, the second respondent had obstructed him. Hence, the said Sundar has lodged a complaint against the second respondent and the said Bose before the Deputy Superintendent of Police. During enquiry, petitioner Nos.1 and 2, who are the money lenders, had lent the money to the said Sundar and hence, they demanded the second respondent to repay the amount of Rs. 15,00,000/-, for which, the second respondent sought time to repay the amount and at that time, in order to close the complaint, petitioner Nos.1 and 2 had demanded the second respondent to pay a sum of Rs.2 Lakhs as interest and the second respondent has paid the said amount and requested them a further period of six months to repay the principal amount and considering the said statement, the enquiry was closed. It is further alleged that in order to repay the principal amount, on 03.02.2017, the first petitioner by compelling the second respondent had executed a power of attorney in favour of him vide Document No. 244/2017 on the file of Sub Registrar Office, Tallakulam to an extent of 37 cents in Punja UDR Survey No.27/1J, Patta No.139. Since the second respondent told petitioner Nos.1 and 2 that he is going to lodge a complaint before the Police, petitioner Nos.1 and 2 had obtained signature of the second respondent in stamp paper, wherein, it has been stated that the second respondent borrowed Rs.15 Lakhs from the accused persons and with interest it has become Rs.25 Lakhs and after repaying the said amount, the Power of Attorney will be cancelled. Thereafter, on 01.05.2019, the accused persons trespassed into the house of the second respondent and attacked him and on 30.05.2019, petitioner Nos.1 and 2 by creating a forged life certificate of the second respondent with the help of the third petitioner and by using the Power of Attorney had sold the said property to one Jegankumar. Hence the complaint.

3. The learned counsel appearing for the petitioners submit that the entire allegations made against the petitioners are false and the second respondent executed a power of attorney in favour of the first petitioner on 03.02.2017 vide Document No.244/2017 on the file of Sub Registrar Office, Tallakulam in respect of an extent of 37 cents in Punja UDR Survey No.27/1J, Patta No.139. He further submits that the second respondent was having another 11 cents in the very same Survey No. 27/1J and on 13.01.2020 the second respondent executed a sale deed with regard to the 11 cents in favour of one S.Sangeetha and the said sale

deed was executed in Document No.144/2020, dated 13.01.2020. He further submits that in the said sale deed, the second respondent had specifically averred that already 37 cents in the very same survey No. 27/1J were alienated by way of power of attorney in favour of the first petitioner herein and the same was registered in Book No.1. For the very same property, the first petitioner had executed a sale deed in favour of his wife, viz, Kalaivani / the third petitioner herein and another person, viz., Jegankumar vide Document No.2284/2019 dated 30.05.2019. However, suppressing the above said materials, the 2nd respondent submitted a false complaint before the respondent Police on 21.03.2020 and the respondent Police without ascertaining the subsequent alienation by the second respondent, has registered a case against the petitioners. The malicious prosecution instituted by the second respondent against the petitioners is unsustainable and it squarely attracts the ratio laid down by the Apex Court in the decision in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426).*** Accordingly, he prays for allowing this petition.

4. The learned counsel appearing for the second respondent submits that when the second respondent was in hospital, the petitioners created a forged Life Certificate by affixing the photo of the second respondent and putting his signature. It clearly shows the forgery done

by the petitioners and thereby, the respondent Police registered a case against the petitioners. He further submits that all the points raised before this Court are triable issues, which cannot be canvassed before this Court and it can be canvassed only at the time of trial. Hence, he prayed for dismissal of this petition.

5. The learned Government Advocate (Criminal Side) appearing for the respondent Police submits that the documents which were relied upon by the learned counsel appearing for the second respondent were not produced before the respondent Police.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. Section 420 IPC relates to cheating and dishonestly inducing delivery of property. The said provision provides that whoever cheats and thereby dishonestly induces the person deceived to delivery 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.

8. Therefore, to attract the offence u/s 420 IPC, there should be an intention to cheat, viz., *mens rea* should be established to the effect that the person being implicated should be shown to have the intention to commit the offence.

9. Keeping the ingredients of the aforesaid section in mind, a perusal of the materials available on record reveals that with regard to certain disputes with regard to cutting of trees in the lands belonging to the 2nd respondent, the 2nd respondent is alleged to have executed a power of attorney in favour of the 1st petitioner with regard to lands to an extent of 37 cents, which has later been transferred to the name of the 3rd petitioner by the 1st petitioner on account of the fact that the amount, which has been promised to be paid by the 2nd respondent has not been paid.

10. Be that as it may. The allegation of the 2nd respondent is that

the 37 cents were cheated and transferred to the name of the 3rd petitioner and one Jegankumar by the 1st petitioner. However, to prove the aspect of cheating, no materials whatsoever has been placed to prove that the petitioners had intention to cheat the 2nd respondent. Even a bare perusal of the complaint reveals that the transaction between the petitioners and the 2nd respondent is purely civil in nature.

11. Further, the occurrence alleged, is said to have taken place in the year 2017 and the lands to the extent of 37 cents, which is the subject matter of the alleged cheating, a power of attorney was executed by the 2nd respondent in favour of the 1st petitioner on 3.2.2017 vide doc. No. 244/2017 and the said extent was transferred by the power of attorney holder, viz., the 1st petitioner in favour of the 3rd petitioner vide Doc. No. 2284/2019 on 30.5.2019. The balance extent of 11 cents in the whole piece of property in survey No.27/1J was sold by the 2nd respondent in favour of one S.Sangeetha vide Doc. No.144/2020 dated 13.01.2020.

12. It is the specific case of the petitioners that in the said Doc. No. 144/2020, the 2nd respondent had specifically averred that already 37

cents in the same survey No.27/1J was alienated by way of power of attorney in favour of the 1st petitioner. The said fact is not disputed by the 2nd respondent. When the 2nd respondent has made an admission in the registered document in and by which the 11 cents were sold to one S.Sangeetha on 13.01.2020, this Court is at a loss to understand as to how the claim of the 2nd respondent with regard to cheating against the petitioners in respect of the 37 cents could be maintained. Further, the aforesaid aspect does not find reflection in the complaint, which was given to the respondent police on 21.03.2020. The act of the 2nd respondent clearly shows that for reasons best known to the 2nd respondent, a civil dispute between the petitioners and the 2nd respondent is given a criminal flavour under the guise of cheating so as to prosecute the petitioners.

13. In the decision in ***State of Haryana – Vs – Bhajan Lal (1992 SCC (Crl.) 426)***, the Apex Court has delineated the circumstances under which the FIR could be quashed. The relevant portion of the said decision is quoted hereunder :-

> *"(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a*

non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. Clause (5) of the aforesaid decision squarely stands attracted to the case on hand. When the 2nd respondent, on his own admission in the deed executed in favour of S.Sangeetha on 13.01.2020, has averred that 37 cents in Survey No.27/1J were alienated by way of power of attorney in favour of the 1st petitioner, the allegations made in the complaint, which was given to the respondent police on 21.03.2020, resulting in the registration of the FIR are so absurd and inherently improbable that it could never form the basis for initiation of prosecution and the criminal proceeding is initiated with mala fide and ulterior motive for wreaking vengeance. Therefore, the ratio laid down in *Bhajan Lal's case* stand

squarely attracted and the offence u/s 420 IPC has not been made out.

15. Insofar as the offence u/s 465 and 471 relating to forgery are concerned, the execution of power of attorney is not disputed. The 2nd respondent alleges the petitioners 1 and 2 by creating forged life certificate have sold the property to the 3rd petitioner and Jegankumar. However, the property was sold in pursuance to the power of attorney executed by the 2nd respondent and such being the case, forgery as claimed by the 2nd respondent with regard to life certificate is not established. There should be materials, which prima facie show that an offence has been perpetrated, but herein, no material has been placed by the 2nd respondent to show the act of forgery. Once the offences u/s 465 and 471 are not established, necessarily the offences u/s 419 and 468 have to fail.

16. Insofar as the offence u/s 384 IPC and Section 4 of the Prohibition of Charging Exorbitant Interest Act are concerned, as aforesaid, no materials to establish a *prima facie* case with regard to the attraction of the said offence to the case on hand is made out by the 2nd respondent. No amount of allegation in the absence of any probable

material would be sufficient to make out the aforesaid offence. In the absence of any credible material, the prosecution initiated against the petitioners u/s 384 IPC and Section 4 of the Prohibition of Charging Exorbitant Interest Act are wholly unsustainable and the same cannot be sustained.

17. On a careful analysis of the entire materials available on record, coupled with the ratio laid down in *Bhajan Lal's case (supra)*, it clearly transpires that no case has been made out to by the respondents to continue the prosecution against the petitioners as allowing the continuation of prosecution is nothing but would be a travesty of justice meted out to the petitioners. If at all the 2nd respondent has any grievance, it has to be ventilated before the appropriate forum and not by means of a criminal prosecution, when no materials point out to commission of such offence. Therefore, applying the ratio laid down in *Bhajan Lal case* this Court is inclined to quash the proceedings initiated against the petitioners.

18. Accordingly, the Criminal Original Petition is allowed and the proceedings in C.C.No.2 of 2022 on the file of the learned Special

Judicial Magistrate, Exclusive Trial of Land Grabbing Cases, Madurai, is quashed insofar as the petitioners are concerned. Consequently, connected miscellaneous petitions are closed.

12.03.2024

NCC : Yes /No
Index : Yes/No
Internet : Yes/No
TSG/GLN

To

1.The Special Judicial Magistrate
Exclusive trial of Land Grabbing Cases
Madurai,

2.The Inspector of Police,
City Crime Branch Police Station,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court
Madurai.

M.DHANDAPANI. J.

tsg/GLN

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