



Crl.O.P(MD).No.16975 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD)No.16975 of 2021

and

Crl.MP(MD)No.9182 of 2021

1.Shanmugam

2.Vijayanandh

3.PL.Aavichi

... Petitioners / Accused Nos.2 to 4

Vs.

1.The State represented by

The Sub-Inspector of Police,

District Crime Branch Police Station,

Sivagangai.

... 1st Respondent / Complainant

2.Ganesapandian

... 2nd Respondent / Defacto

Complainant

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in C.C.No.103 of 2021 on the file of the learned Judicial Magistrate No.II, Sivagangai and quash the same as illegal against the petitioners.

For Petitioners

: Mr.VR.Shanmuganathan

For R1

: Mr.R.M.Anbunithi

Additional Public Prosecutor

For R2

: Mr.C.Venkatesh Kumar

for M/s.Ajmal Associates



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ORDER

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This criminal original petition has been filed to quash the impugned charge sheet in C.C.No.103 of 2021 on the file of the learned Judicial Magistrate No.II, Sivagangai.

2.The case of the prosecution is that the defacto complainant is the power agent of one Krishanan in respect of property comprised in S.No. 157/6 to an extent of 88 cents situated at O.Siruvayal Group, Karaikudi Taluk, Sivagangai District. The above said Krishnan, filed a suit in O.S.No.23 of 2002 before the Subordinate Judge, Devakottai. In that suit, an order of attachment was passed in the year 2004 as against one Kumarappan namely, A1. However, without considering the same, A1 sold the above said attachment property to the first petitioner, A2. In turn, he sold the same to the second petitioner, A3. In turn, he sold the same to the third petitioner, A4, in the year 2008. When the same was questioned by the defacto complainant and his family members, all the accused are said to have abused them in filthy language and also threatened them with dire consequences. Thereby, the defacto complainant sent a complaint to the Superintendent of Police, Sivagangai and the same was forwarded to the respondent police. Thereafter, case was registered in



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Crime No.10 of 2020 for the offences punishable under Sections 423, 465, 468, 420, 120(B), 294(b) and 506(1) of IPC. After completion of investigation, the respondent police filed final report before the learned Judicial Magistrate No.II, Sivagangai and the same was taken on file in C.C.No.103 of 2021. Aggrieved by the same, present petition has been filed by the petitioners.

3.The learned counsel appearing for the petitioners submitted that the land in dispute originally belonged to one Athmanathan and his brother Kumarappan and they were in absolute possession and enjoyment over the property. The said kumarappan borrowed a loan of Rs.1,20,000/- from one Krishnan and thereafter, he failed to repay the same. Thereby, the above said Krishnan filed a suit in O.S.No.23 of 2004 before the learned Subordinate Judge, Devakottai for recovery of money. During pendency of the suit, he filed I.A.No.89 of 2004 for attachment and the same was allowed on 02.04.2004. Subsequently, *ex-parte* decree was also passed. However, the said Krishnan has not taken any steps to execute the attachment till date. After a lapse of 16 years, i.e., on 27.01.2020, the defacto complainant approached the District Registrar, Muthipattinam, Karaikudi for cancellation of documents. After



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conducting detailed enquiry, on 18.05.2020, the District Registrar, Muthipattinam, Karaikudi has rejected the claim of the defacto complainant stating that there was no specific direction for the Registration Department in the order passed in O.S.No.23 of 2004. Thereafter, he approached the Revenue Divisional Office, Karaikudi for cancellation of Patta. That claim was also rejected by the Revenue Divisional Office, Karaikudi. The alleged sale deeds in the year 2008. After a lapse of 12 years, he disputed the above said sale deeds. It is barred by limitation under Section 468 of Cr.P.C., It is purely a civil dispute. Now, the patta stands in the name of the third petitioner. The defacto complainant lodged various complaints before various forums. Hence, the third petitioner also filed a suit in O.S.No.27 of 2020 before the learned Additional District Munsif, Karaikudi for the relief of declaration and consequential injunction and the same is pending. However, the defacto complainant given a criminal colour to the civil dispute.

4.The learned counsel appearing for the petitioners further submitted that the petitioners herein are all *bona fied* purchasers and they have not aware about the order of attachment dated 22.04.2004.



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However, sale of property under attachment is not a illegal sale as per Section 64 of Civil Procedure Code. To support his contention, he relies upon the judgment of this Court in ***K.D.P.Properties Privated Limited*** reported in ***2013 (2) CTC 714*** wherein, it has held that *sale of subject property pending the order of attachment is void only as against the claims enforceable under the order of said attachment and not in respect of other claims*. Therefore, the sale of the property, which is under attachment cannot be said as illegal. Accordingly, he prayed to quash the proceedings against the petitioners.

5. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioners after knowing very well about the order of attachment, purchased the disputed property. The above said Kumarappan (A1) sold the property to the first petitioner (A2) on 09.06.2008. In turn, after a period of 43 days, he sold the property to the second petitioner (A3) on 23.07.2008. In turn, after a period of 6 days, he sold the property to the third petitioner (A4) on 29.07.2008. When there is order of attachment, within a period of 50 days, three sale deeds were executed and it creates suspicious. Accordingly, he prayed for dismissal of this petition.



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6. The learned counsel appearing for the second respondent submitted that the disputed property was registered in the name of the above said Krishnan vide D.No.6/2004 as per the order of attachment and the order of stay by the Sub Court, Devakottai and the above said Krishnan was in possession and enjoyment of the property. The above said Krishnan had executed General Power of Attorney in favour of the defacto complainant on 03.03.2020. In such circumstances, when he obtained Encumbrance Certificate in respect of disputed property for the purpose of getting loan from the Bank, he came to know that with an intention to grab the above said property, all the accused colluded together, created the forged sale deeds. It was also admitted by Kumarrappan (A1) by his affidavit dated 06.03.2020 attested by the Notary Public. The allegations against the accused are that they fabricated the documents to suppress the Court attachment dated 22.04.2004 and registration in favour of the Krishnan vide D.No.6/2004; They fraudulently executed three sale deeds in favour of A2, A3 & A4 (A1 to A2, A2 to A3, A3 to A4) and A5 to A11 were stood as witnesses; They abused the defacto complainant & his family members and threatened them with dire consequence. Hence, there is specific



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allegation against the petitioners. Accordingly, he prayed for dismissal of this petition.

7. Heard the learned counsel appearing for the petitioners, learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

8. On perusal of records, it shows that it is purely a civil dispute. Already, civil suit in O.S.No.27 of 2020 on the file of the learned Additional District Munsif, Karaikudi filed by the third petitioner is pending. Hence, this Court is inclined to allow this petition.

9. Accordingly, the impugned proceedings in C.C.No.103 of 2021 on the file of the learned Judicial Magistrate No.II, Sivagangai, is hereby set aside and the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

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NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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A.A.NAKKIRAN, J.

dss

To

- 1.The Judicial Magistrate No.II,
Sivagangai.
2. The Sub-Inspector of Police,
District Crime Branch Police Station,
Sivagangai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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