BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE AA.NAKKIRAN

Crl.O.P.(MD)No.17975 of 2021 and
Crl.M.P(MD).No.9810 of 2021 and 9812 of 2021

Venkatesan ... Petitioner

Vs.

1. The State through its
The Inspector of Police,
District Crime Branch,
Thanjavur.
(Crime No.34 of 2012).

2.G.Annadurai ... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C, to call for the records relating to the impugned charge sheet in C.C.No.40 of 2014 pending on the file of the Judicial Magistrate No.III, Thanjavur and quash the same.

For Petitioners : Mr.C. Prabhu Rajadurai
For 1st respondent : Mr. K.Sanjai Gandhi
Government Advocate (Crl. side)
For 2nd respondent : Mr.Lakshmanan

ORDER

This Criminal Original Petition has been filed to call for the records relating to the impugned charge sheet in C.C.No.40 of 2014 on the file of the Judicial Magistrate No.III, Thanjavur and quash the same.

2. The case of the prosecution is that the petitioner was owner of the property bearing S.No.39/11-78 measuring about 34 acres in Palayapatti Village and the 2nd respondent had purchased the said properties in his name as well as in the name of his daughter and wife through the Power of Attorney of the petitioner on 19.08.2011. After such purchase, he applied for encumbrance certificate and came to know that the petitioner mortgaged the properties with Indian Overseas Bank and borrowed a sum of Rs.1,22,75,000/- on 23.07.2009. In such circumstances, the 2nd respondent has given a complaint and a case was registered in Crime No.34 of 2012 and thereafter, charge sheeted in C.C.No.40 of 2014 on the file of the Judicial Magistrate No.III, Thanjavur for the offences under Sections 406, 465, 467 and 420 IPC. Challenging the same, the petitioner herein has filed the present Criminal

Original Petition.

3. The learned counsel appearing for the petitioner submitted that 2nd respondent is a retired school teacher and his wife is working in BSNL and they were approached by the petitioner to sell the aforesaid lands at the rate of 2.25 Lakhs per acre and he has also paid for a sum of Rs.76.5 Lakhs and he obtained a power of attorney in the name of one A.Rajendran and his friend and subsequently, executed a sale deed in favour of his wife and daughter. He would further submit that the property is worth about Rupees Two Crores in the year 2009 and the same has been mortgaged for a sum of Rs.1,22,75,000/- in the same year and hence, it is unbelievable that the petitioner agreed to sell the property at the rate of Rs.76.5 Lakhs. He further contened that the 2nd respondent purchsed such a huge extent of property without even verifying whereabouts of the original deeds and Encumbrance Certificate is not acceptable one. Further, the 2nd respondent obtained Encumbrance Certificate in the year 2012 only, but, he sent a legal notice on 15.10.2011 stating that he came to know about the mortgage of property only when he applied for Encumbrance Certificate after the purchase.

The allegation of the 2nd respondent is entirely false. He further contended that in order to give a criminal colour to the civil dispute, the 2nd respondent herein has given a false complaint against the petitioner and also the civil suit filed by the petitioner in O.S.No.19 of 2014 is pending before the Principal District Judge, Thanjavur and prays for allowing this petition.

4. The learned Government Advocate (Crl. Side) appearing for the first respondent Police would submit that the petitioner herein has sold the property for a sum of Rs.76.5 Lakhs, by suppressing the fact that he mortgaged the properties with Indian Overseas Bank and borrowed a sum of Rs.1,22,75,000/-. He would further submit that at the initial stage of trial, the entire proceedings cannot be quashed on its threshold and he sought for dismissal of the quash petition.

5. The learned counsel appearing for the 2nd respondent submitted that suppressing the fact that the petitioner herein has mortgaged the property in the Bank, he has sold the the property to the 2nd respondent for a sum of Rs.76.5 Lakhs and thereby, cheated him and prays for

dismissal of this petition.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. On perusal of the entire records, it is seen that the petitioner sold the property to the 2nd respondent on 19.08.2011 for a sum of Rs. 76.5 Lakhs. Thereafter, he sent a legal notice on 15.10.2011 stating that he has suppressed the fact that the said property was mortaged with Indian Overseas Bank for a sum of Rs.1,22,75,000/-. But, as per the statement and proof of the 2nd respondent, he has obtained the Encumbrance Certificate only on 09.01.2012. The act of the petitioner shows that in order to give a criminal colour to the Civil dispute he has given a complaint as against the petitioner. Further, the contention that the 2nd respondent purchased the property for a huge sum of Rs.76.5 Lakhs without verifying the Encumbrance Certificate and whereabout of the original sale deeds is not acceptable one. As per Section 467 is concerned "Forgery of Valuable Security, Will etc., - Whoever forges a document which purports to be a valuable security or a will, or an

authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable ot fine". However, in this case there is no forgery in the document or deliver the property, money etc., The only contention of the 2nd respondent that the petitioner has suppressed the fact he has sold the mortgaged property to him and hence, the offence under Section 406 IPC would not be attracted.

8. As far as Section 420 IPC is concerned "whoever cheats and thereby dishonestly induces the person deceived to deliver 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." However, in this case, the petitioner sold the property to the 2nd respondent properly and handed over the same and hence there is no question for cheating or dishonest inducement to deliver the property and hence, the offence under Section 420 IPC would not be attracted.

9. Taking all these aspects into account, I am of the considered view that it is purely civil in nature and the charge sheet in C.C.No.40 of 2014 pending on the file of the Judicial Magistrate No.III, Thanjavur is liable to be quashed and accordingly, the same is quashed as against the petitioners.

10. In fine, this Criminal Original petition is allowed. Consequently, connected miscellaneous petitions are closed.

26.06.2024

Index: Yes/No
Internet: Yes/No
trp

To

1. Tthe Judicial Magistrate No.III, Thanjavur

2. The Inspector of Police,
District Crime Branch,
Thanjavur.

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

AA.NAKKIRAN,J

trp

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