BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.20460 of 2023
and
Crl.M.P.(MD) Nos.15992 of 2023

R.Vallikannan ...Petitioner

vs

1.The Inspector of Police,
Central Crime Branch,
Thirunelveli City Police,
Thirunelveli District.
Crime No.19 of 2023

2.S.Murugan ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to quash the FIR in Crime No.19 of 2023 pending on the file of the first respondent, the Inspector of Police, Central Crime Branch, Thirunelveli City.

For Petitioner : Mr.R.Balachanderan

For R1 : Mr.M.Veeranthiran
Government Advocate (Crl.side)

For R2 : Mr.C.Arulvadivel @ Sekar
Senior Counsel for

Mr.R.J.Karthick

O R D E R

The learned Counsel for the Petitioner submits that the Petitioner is arrayed as second accused in Crime No.19 of 2023. The first accused is the vendor of the Petitioner. The defacto Complainant/second Respondent claims title to the property and claims that the vendor of the Petitioner had forged and fabricated the Town Survey Extract and forged non traceable certificate issued by the Police. Therefore, the case was registered for the offences under Sections 465, 467, 468 and 471 IPC. Originally, the property belonged to one Subba Reddiar, grandfather of the defacto Complainant. The said Subba Reddiar had $1/12^{th}$ share in S.Nos.1084, 1085, 1087, 1096 and 1068/2, measuring an extent of 3.45 acres, out of which, he sold $1/24^{th}$ share to Sankaravel, father of the first accused.

2.The averments made in the written statement filed by the defacto Complainant in O.S.No.490 of 2022 mention about the share of the grandfather of the defacto Complainant, Subba Reddiar, wherein it is admitted that Subba Reddiar sold $1/24^{th}$ share out of 3.45 acres to

Sankaravel, father of Rajavel, who is arrayed as A1 in this case. The averments made in the written statement clearly state that the grandfather of the defacto Complainant sold $1/24^{th}$ of his share out of an extent of 3.45 acres. The second Respondent had suppressed the very same facts and preferred a complaint, as though the Petitioner herein colluding with A1, Rajavel committed the offence attracting Sections 465, 467, 468 and 471 IPC.

3.The learned Counsel for the Petitioner invited the attention of this Court to the sale deed executed in favour of A2 and A3. Also, he invited the attention of this Court to the details of the property conveyed. A1 had conveyed only 51.5 cents, which is 50% of his share. Therefore, there cannot be any forgery committed by A1. The conduct of A1 had not caused wrongful loss. What was rightly available only was conveyed. Therefore, the offences are not made out. The learned Counsel for the Petitioner also invited the attention of this Court to the earlier documents relied on by A1.

4.The learned Government Advocate (Crl.side), on instructions of the

Respondent Police, submitted that the Investigation Officer in this case will file a detailed status report. He would further submit that the Petitioner is alleged to have created non traceable certificate, as though it was issued by the Inspector of Police with seal. Therefore, he had indulged in forgery of a Government Official. He had indulged in cheating and fraud. There are similar cases pending against him. Therefore, the learned Government Advocate (Crl.side) vehemently objects to quash the FIR in Crime No.19 of 2023.

5.The learned Senior Counsel appearing for the second Respondent/*de-facto* Complainant submitted that the second Respondent's father had executed a partition deed, which was registered as Doc.No.2970 of 1962. After the demise of the second Respondent's father, the sister and mother of the second Respondent have given assignment deed in favour of the second Respondent. After the introduction of Land Ceiling Act, in the year 1972, the ancestral properties of the second Respondent were acquired by the Government and aggrieved by the same, a Writ Petition was filed and subsequently, Writ Appeal was also filed before this Court. Thereafter, the land was retained by the second Respondent.

6.The lands in S.Nos.1068/2, 1084, 1085, 1087 and 1096 of Kulavanigapuram Village were acquired by the Government of Tamil Nadu under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1972, which was resisted by the family of the second Respondent. The mother and sister of the second Respondent had also filed a Writ Petition in W.P.No.8793 of 2004. The Writ Petition was allowed and the land acquisition proceedings were set aside as per the order, dated 07.06.2011. Aggrieved by the same, the Government of Tamil Nadu went on Writ Appeal in W.A.No.628 of 2016. The Division Bench had dismissed the Writ Appeal and the lands were ordered to be returned to the Writ Petitioners therein, Vijaya and others.

7.While so, the Accused Nos.1 and 2 in this case had colluded together with an ulterior motive to grab the property belonging to the family of the second Respondent and created forged documents, as though the Inspector of Police had issued non traceable certificate, as though the original documents of the first Petitioner's father were lost for which, non traceable certificate had been obtained fraudulently. Instead of the

Inspector of Police using his signature and seal, the Accused 1 and 2 had obtained it as though the Inspector of Police had issued non traceable certificate. Misusing that document, as original document, the Petitioners 1 and 2 colluded together and had created further documents. It is the contention of the learned Senior Counsel for the second Respondent that the first Accused does not own any property within the local limits of Moolakaraipatti under the jurisdiction of Sub Registrar, Moolakaraipatti. While so, he had registered a sale deed in the office of the Sub Registrar, Moolakaraipatti. That shows the Accused Nos.1 and 2 had colluded together to grab the property and cause loss to the *de-facto* Complainant.

8.Further, the first and second Petitioners had forged the seal of the public official and signature and misused the relationship of the Sub Registrar, Moolakaraipatti under whose jurisdiction, A1 and A2 does not have any property and had registered the sale deed for a lesser amount. Patta also stands in the name of the second Respondent. With the connivance of the Sub Registrar, the Petitioner herein had registered the same. The same property was sold to the second Accused, R.Vallikannan and to Nambi. Again, A1 sold it to A2 to include I.No.3. R.Vallikannan, A2 and Nambi, A3 in the FIR in Cr.No.19 of 2023 are professionally real estate brokers.

9.The learned Senior Counsel for the second Respondent invited the attention of this Court to the non traceable certificate obtained by the Petitioner. The very same property was sold by A1. The property was sold for Rs.25,00,000/-. The sale deed was executed for the value of Rs. 1,53,51,400/-. The *de-facto* Complainant waited for four cases continuously to monitor the sale deed executed. Moolakaraipatti properties had been sold to many persons. The Sub Registrar who registered the document did not have jurisdiction to register the sale deed executed in the name of the Vallikannan. Therefore, it is a fraudulent deed. A1 has previous cases of similar nature pending against him. A3 is the Manager of the *de-facto* Complainant. A4 is the co-accused.

10.The learned Senior Counsel appearing for the second Respondent invited the attention of this Court to the properties that were sold in the year 1959, wherein, there are many properties under different schedules. The third Respondent is an attestor for the properties sold by the very same persons. The sale had been executed based on non traceable certificate created by the Petitioners 1 and 2 colluded together and as though, the Inspector of Police, Palayamkotti Crime Circle had issued non traceable certificate, which is nothing but a forged document. A1 and A2 had alleged to have sold 17 to 60 items of worth of Rs.26,00,000/- for a meagre amount. That shows the A1 and A2 attempted to grab the property and get enriched by their illegal act and causing loss to the *de-facto* Complainant. Therefore, the learned Senior Counsel for the second Respondent sought dismissal of this Petition.

Point for consideration:

Whether the FIR in Crime No.19 of 2023 pending on the file of the first Respondent is to be quashed?

11.It is the submission of the learned Counsel for the Petitioner that the Petitioner is arraigned as second accused in Crime No.19 of 2023. The first accused is the vendor of the second accused. His further submission that the *defacto* Complainant claims title to the property and had given a complaint that the vendor of the Petitioner had fabricated the Town Survey Extract and forged the Non Traceable Certificate, as though it was issued by the Police and misused the Non Traceable Certificate for creating further documents relating to immovable properties and thereby, creating forged documents is found acceptable, in the light of the statement of the first Respondent, who is alleged to have given the statement to the Investigation Officer that he/she had not signed it. The signature of the first Respondent, who is alleged to have issued the Non Traceable Certificate, was sent to forensic examination and a report had also been obtained by the Investigation Officer. Further, the accused in this case is alleged to have created false Government documents, as though the registers maintained with the Town Surveyor was obtained by the vendor of the Petitioner herein by covering the original register and creating empty blank space in order to fill it up according to the whims and fancies of the accused.

12.The submission of the learned Counsel for the Petitioner that the grandfather of the *defacto* Complainant had sold part of the properties to the father of the vendor of the Petitioner regarding his undivided share and also a suit is pending between them will not protect the Petitioner herein. It is the clear case of the *defacto* Complainant that throughout he was protecting the properties by agitating his right. When there had not been partition between the *defacto* Complainant's family and the father of the vendor, the contention of the Petitioner that the Petitioner is a *bona fide* purchaser for valuable consideration is questionable.

13.The contention of the learned Counsel for the *defacto* Complainant is that it is the other way round. The Petitioner herein is the instigator, who had indulged in real estate business instigating the vendor to execute the deeds in his favour. Therefore, it is for detailed investigation to be conducted by the District Crime Branch. When there is *prima facie* material that falsification of documents had been involved by the accused colluding together to grab the property of the *defacto* Complainant, the defense of the accused is that the civil suit is pending. Even otherwise, the share sold by the grandfather of the defacto Complainant to the father of the vendor is ½ of his share. In that ½ of the share, the vendor had sold only ½ share. Therefore, the submission that it is a valid sale deed will not hold good in the eyes of law. When the documents had been executed on the strength of the Non Traceable Certificate, as though the Non Traceable Certificate was issued by the first Respondent and a seal had been used, as though the first Respondent had issued the Non Traceable Certificate itself is a fraudulent act committed by the accused mentioned in Crime No.19 of 2023. Whether the Petitioner had committed the offence or the other accused had committed the offence or the vendor of the Petitioner had committed the offence is the subject matter of the investigation and the subject matter is to be proved in the trial before the Trial Court. Pending investigation, the Petitioner had filed this petition to quash the FIR.

14.The vehement objection of the *defacto* Complainant is that the buyer is not a *bona fide* purchaser. He is the real estate Broker indulging in such activities for his needs and there are previous cases of similar in nature against the Petitioner herein. The Petitioner cannot claim that he is a *bona fide* purchaser for valuable consideration. The submission of the learned Counsel for the Petitioner is that the averments in the written statement filed by the *defacto* Complainant in O.S.No.490 of 2022 mentioned about the share of the grandfather of the defacto Complainant, Subba Reddiar, wherein it is admitted that Subba Reddiar sold $1/24^{th}$ share out of 3.45 acres to Sankaravel, father of Rajavel, who is arraigned as first accused in this case. The averments in the written statement clearly stated that the grandfather of the defacto Complainant sold $1/24^{th}$ of his share out of an extent of 3.45 acres.

15.The submission of the learned Counsel for the Petitioner is that the sale deed executed by the accused 1 to A2 and A3, A1 had conveyed only 51.5 cents, which is 50% of the first accused's share. There cannot be a forgery committed by the first accused. The conduct of A1 had not caused loss. What was rightly available was conveyed. Therefore, the offences, which are not made out, are found unacceptable, as the typed set of papers of the *defacto* Complainant indicate that the sale deed executed in favour of the accused 2 and 3 was based on the Non Traceable Certificate. When the grandfather of the *defacto* Complainant had sold $1/24^{th}$ share, that sale deed is the parent deed for the first accused to rely on title. He ought to have used that deed to sell the shares of his father, Sankaravel, to the property, that is alleged to have been sold to A2 and A3. It is not sold. He had obtained Non Traceable Certificate, as though it was issued by the first Respondent based on the complaint of the Seller, A1. Also, he had obtained blank photostat copies of Town Survey Register hiding the details in the register with blank papers in order to fill it up according to his convenience. That fraudulent conduct was committed either by the Seller or by the accused. Therefore, the sale deed itself is the connected transactions or with criminal intent. When the first Respondent, who had given statement denies his/her signature and seal relied by the accused 1 and 2 for the transaction, when the defacto Complainant claims that throughout the previous litigations either the first accused or the second accused had not protected their properties, when the land acquisition proceedings were initiated by the Government and when the writ petitions were filed by the defacto complainant's mother and sisters to protect their title in the property and when the suit is pending for partition, until or otherwise, the properties between the sharers are decided in the final decree by metes and bounds. The sale executed by the accused 1 to A2 and A3 is too based on the Non Traceable Certificate, which is also not *bona fide*, which is alleged to be fraudulently created either by the first accused or by the second accused or by the third accused.

16.It is the contention of the learned Counsel for the *defacto* Complainant that the accused 2 and 3 are the professional land grabbers. They are facing similar cases indulging in land grabbing using fraudulent deeds. The contention of the learned Counsel for the Petitioner cannot at all be accepted. It is the contention of the learned Counsel for the Petitioner that the accused 1 to 3 does not have any property in Kulavanigapuram village. The properties in Moolakaraipatti had been sold to many persons. The Sub Registrar, who registered the document, did not have the jurisdiction to register the sale deed executed in the name of Vallikannu. Therefore, it is a fraudulent deed. The first accused has previous cases of similar in nature. The conduct of the accused 1 and 2 is that they have created forged documents, as though the first Respondent had issued the Non Traceable Certificate and the original documents of the Petitioner were lost, for which the Non Traceable Certificate had been obtained fraudulently. Misusing that Non Traceable Certificate, the original documents, the accused 1 and 2 colluded together and created further documents. The first accused does not own any property within the local limits of Moolakaraipatti under the jurisdiction of the Sub Registrar, Moolakaraipatti. The accused 1 and 2 had colluded and created forged seal of the public Officials and signature and misused the relationship of the Sub Registrar, Moolakaraipatti.

17.It is the contention of the learned Counsel for the second Respondent/*defacto* Complainant that the Sub Registrar also colluded with land grabbers. The accused 1 and 2 are alleged to have sold the property for

Rs.26,00,000/-, when the property is worth more than a Crore. It is nothing but grabbing the properties to enrich themselves by the illegal act causing loss to the *defacto* Complainant. The submission of the learned Counsel for the Petitioner that the *defacto* Complainant had not suffered any loss cannot be accepted at this stage. When the suit for partition is pending before the civil Court, until or otherwise the properties are divided by metes and bounds, the purchase of property by the land grabbers using forged documents creating fraudulent seals of the Revenue Officials as well as the Police Officials creates ulterior motive to enrich themselves at the cost of other persons property.

18.It is the submission of the learned Counsel for the second Respondent that the valuable properties worth more than Crores had been sold for the lesser value of Rs.25,00,000/-. These are to be gone into only during trial. The mere fact that the civil suit is pending between the first accused and the family of the second Respondent will not help the Petitioner to wriggle out of his criminal conduct in creating false documents and based on such false documents creating sale deeds. Therefore, the claim made by the learned Counsel for the Petitioner that the person/A2 is a *bona* *fide* purchaser for valuable consideration does not hold good. The vehement objection of the learned Counsel for the second Respondent is that Vallikannan himself is the land grabber. The *defacto* Complainant had been patiently watching the transactions involving four transactions and also, Vallikannan had been facing similar cases for similar offences. Therefore, the contention of the learned Counsel for the Petitioner that the Petitioner is a *bona fide* purchaser for valuable consideration is rejected.

19.As per the reported rulings of the Hon'ble Supreme Court where the civil right involves it should be adjudicated by the Civil Court and the same case involves criminal offences, for which the criminal case can be prosecuted. In the reported ruling of the Hon'ble Supreme Court in ***Swaroopa Rani vs. M.Hari Narayana*** reported in ***(2008) 5 SSC 765***, wherein it was stated that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.

20.In the facts of this case, the accused 1 to 3 are alleged to have enriched themselves by creating false documents and creating Government

Official seals for their selfish motive to create the documents based on the fraudulent Town Survey Register and the fraudulent non traceable certificate. When the origin of the transaction itself is fraudulent, then the subsequent transactions are also fraudulent. Therefore, the point for consideration is answered against the Petitioner and in favour of the Respondents. The FIR in Crime No.19 of 2023 pending on the file of the first respondent, the Inspector of Police, Central Crime Branch, Thirunelveli City cannot be quashed.

In the result, ***this Criminal Original Petition is dismissed***. The Investigation Officer is directed to proceed further with the investigation impartially. The Superintendent of Police, Tirunelveli is directed to nominate a Senior Officer in the cadre of Deputy Superintendent of Police or Additional Superintendent of Police to monitor the investigation on a regular basis and see to it that the investigation report is filed before the competent Court at the earliest, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Internet:Yes./No 13.03.2024

Index:Yes/No
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To

1.The Superintendant of Police, Tirunelveli

2.The Inspector of Police,
Central Crime Branch,
Thirunelveli City Police,
Thirunelveli District.

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

SATHI KUMAR SUKUMARA KURUP, J.

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CRL.O.P (MD) No.20460 of 2023

13.03.2024