

Balathandayutham Vs. State of Kerala

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Court : Kerala

Decided On : Nov-26-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Balathandayutham

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE 26TH DAY OF NOVEMBER 2014 5TH AGRAHAYANA, 1936 CrI.MC.No. 800 of 2011 ()
----- CRIME NO.22/2010 OF POZHIOOR POLICE STATION.
PETITIONER(S)/ACCUSED 1 & 2:: ----- 1.
BALATHANDAYUTHAM, S/O.SANTHANA GOPALA CHEITTIAR, 2/3 MAJID STREET, PERUNDURAI TALUK, ERODE DISTRICT.

2. M.CHINNAY SWAMY, S/O.P.C.MARAPPAN, DOOR NO.518, KUNNATHODRE ROAD, PERUNDURAI TALUK, ERODE DISTRICT. BY ADVS.SRI.M.SREEKUMAR SRI.K.JAYAKUMAR (SR.).
RESPONDENT(S)/STATE:: ----- 1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. *2 SRISHNAMOORTHY, S/O SANDANAGOPALA CHETTIAR, DOOR NO.3, MAJID STREET, PERUNDURAI TALUK, ERODE DISTRICT. *
ADDITIONAL SECOND RESPONDENT IS IMPEADED AS PER

ORDER

DATED 07/04/2011 IN CRL.M.A NO.2005/2011. R2 BY ADVS. SRI.GEORGE THOMAS (MEVADA)(SR.) SRI.MANU GEORGE KURUVILLA R1 BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/11/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 800 of 2011 () APPENDIX PETITIONER'S ANNEXURES :- ANNEXURE I : CERTIFIED COPY OF THE FIR IN CRIME NO.22/2010 OF POZHIOOR POLICE STATION DATED 19/11/2010. ANNEXURE II : TRUE COPY OF THE

JUDGMENT

IN A.S NO.343/2006 DATED 28/08/2006 OF THE HIGH COURT OF MADRAS. ANNEXURE III : TRUE COPY OF THE DECREE IN A.S NO.343/2006 DATED 28/08/2006 OF THE HIGH COURT OF MADRAS. ANNEXURE IV : TRUE COPY OF THE PLAINT IN O.S NO.228/2007 FILED BEFORE THE 1ST ADDITIONAL DISTRICT COURT, ERODE. ANNEXURE V : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S NO.228/2007. ANNEXURE VI : TRUE COPY OF THE REPORT FILED BY INSPECTOR OF POLICE, PERUNDURAI BEFORE THE SUPERINTENDENT OF POLICE. ANNEXURE VI(A) : TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE VI. ANNEXURE VII : TRUE COPY OF THE DOCUMENT NO.3842/91 OF SRO, KUNNATHUKAL. ANNEXURE VIII : TRUE COPY OF THE DOCUMENT NO.3846/91 OF SRO KUNNATHUKAL. ANNEXURE VIII(A) : TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE VIII. ANNEXURE IX : TRUE COPY OF THE POWER OF ATTORNEY EXECUTED IN FAVOUR OF THE 1ST ACCUSED DATED 13/11/91. ANNEXURE IX(A) : TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE IX. ANNEXURE X : TRUE COPY OF THE DOCUMENT NO.1292/05 OF SRO, KULATHOOR. ANNEXURE X(A) : TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE X. ANNEXURE XI : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.368 DATED 29/11/2010. CrI.MC.No. 800 of 2011 () -2- ANNEXURE XII : TRUE COPY OF THE

ORDER

IN CMP NO.3285/2010 DATED 23-4-2010 OF the JUDICIAL FIRST CLASS MAGISTRATE COURT - III, NEYYATTINKARA. ANNEXURE XIII : TRUE COPY OF THE ENGLISH TRANSLATION OF PROOF AFFIDAVIT FILED BY THE PLAINTIFF IN OS NO.228/2007. ANNEXURE XIV : TRUE COPY OF THE

JUDGMENT

REPORTED IN 2011 (1) CTC (CURRENT TAMILNADU CASE) OF HIGH COURT OF MADRAS. RESPONDENT'S ANNEXURES : NIL. //TRUE COPY// P.A TO JUDGE amk A.HARIPRASAD, J.

----- Crl.M.C No.800 of 2011
----- Dated this the 26th day of November, 2014.

ORDER

Petitioners are accused 1 and 2 in Crime No.22/2010 of Pozhiyoor Police Station registered under Sections 420 and 465 r/w Section 34 I.P.C.

2. Gist of allegations in Annexure I F.I.R is as follows : Defacto complainant is a permanent resident in Tamil Nadu. It is alleged in the F.I.R that defacto complainant's brother Balathandayutham (first petitioner herein) created false documents in respect of their mother's property by using a Power of Attorney on 08-07-2005 and the same was registered at S.R.O Kulathoor, in the State of Kerala, purporting to assign properties to the second petitioner. On the same day, another sale deed in respect of 5 cents of land was also executed by the first petitioner. But the property situated in Karode Village is in the possession of one John Rose from 1988 onwards and he is the absolute owner of the property. In order to defeat the defacto Crl.M.C No.800 of 2011 2 complainant and his siblings, the first petitioner created the false documents.

3. Heard Sri.Jayakumar.K, learned Senior Counsel for the petitioners and Sri.George Thomas, learned Senior Counsel for the 2nd respondent and also Sri.K.K.Rajeev, learned Public Prosecutor for the 1st respondent.

4. Learned Senior Counsel for the petitioners submitted that the prosecution is an abuse of the process of court. According to him, Annexure I F.I.R is vexatious,

malafide and based on no materials. Allegations in the F.I.S that the sale deed in question was fraudulently created on the strength of a forged Power of Attorney and that the first petitioner had no authority to transfer the properties are incorrect. It is also submitted that the defacto complainant has filed a suit as O.S No.228/2007 before the 1st Additional District Court, Erode. It is the common case that the entire issues relating to the alleged creation of CrI.M.C No.800 of 2011 3 fraudulent documents are subject matters in the litigation.

5. Learned Senior Counsel for the second respondent contended that filing of the civil suit cannot be a reason for quashing the complaint. In the counter affidavit filed by the second respondent, it has been stated that the deeds created are not legally sustainable. An addition of 5 cents of land, allegedly transferred in the year 2005, is the result of fraud played by the accused persons and it has no legal sanctity, according to the law of registration prevailing in the State of Tamil Nadu. However, the short question arising here for consideration is whether the prosecution is to be terminated finding that it is an abuse of the process of court. Learned Senior Counsel for the second respondent contended that the matter is at an initial stage of investigation and the binding precedents are to the effect that an F.I.R cannot be quashed lightly. There cannot be any dispute regarding this proportion of law. CrI.M.C No.800 of 2011 4 6. Learned Senior Counsel for the second respondent argued on the basis of M.Krishnan v. Vijay Singh and Another ((2001) 8 SCC645 that the Apex court has clearly held that mere pendency of a civil suit between the parties cannot be a ground for quashing the criminal proceedings against the accused. The Supreme Court further observed that if permitted, such practice would be an easy way out for the accused to avoid a criminal proceedings. Learned Senior Counsel for the petitioners contended that the fact situations in that case are totally different from that of this case. In that case, after launching a criminal prosecution, the accused himself filed a suit and then contended that the entire matters are pending in a competent civil court. In that context, the Supreme Court held that the complaint against the accused, who filed a suit later cannot be quashed under Section 482 Cr.P.C.

7. Learned Senior Counsel for the second respondent CrI.M.C No.800 of 2011 5 relied on A.J.K.Fernandez v. Central Bureau of Investigation (2009 KHC5724 to

argue a proposition that even if it is presumed that civil suits might have some bearing on some of the factual controversy in the prosecution, the question of forgery could not be decided without taking appropriate evidence in criminal prosecution. There cannot be any dispute to this proposition too. But, the question in the factual settings of this case is whether the prosecution is legally allowable 8. Learned Senior Counsel also relied on a decision in *Achamma Chacko v. Government of Kerala and Other* (2007 (2) KLT68(C.No.91), wherein a Division Bench of this Court held that even if some of the offences mentioned in the F.I.R might not have been made out as per the allegations, but when it appeared that the said allegations would constitute some of the offences mentioned in the F.I.R or some other offences with which the petitioners could be ultimately sent for trial by the CrI.M.C No.800 of 2011 6 Investigating agency, it would not be a case for quashing F.I.R. It is trite that the principles in dealing with inherent power under Section 482 Cr.P.C have been vividly stated by the Supreme Court in *State of Haryana and Others v. Bhajan Lal and Others* (1992 Supp.(1) SCC335. That decision has been subsequently followed and restated by the Apex Court in many other decisions. On a reading of Section 482 Cr.P.C, it is clear that the inherent power can be used only to prevent an abuse of the process of court or otherwise to secure the ends of justice.

9. Learned Senior Counsel for the petitioners submitted that the challenge raised by the defacto complainant in this case is regarding a document executed by mother of the defacto complainant and the first petitioner in the year 1991. It is borne out from the pleadings that later she cancelled the document and she said to have executed a will in favour of her children. Those questions are directly involved in the suit, pending between the CrI.M.C No.800 of 2011 7 parties to this proceedings and others, in a competent civil court. I am of the view that without going into the merit of the matters involved in the suit, the petition can be disposed of, because the ultimate result of the suit will have a direct bearing on the allegations raised in the private complaint. The allegation in this complaint is that documents had been forged by the accused persons. This question is directly involved in the civil case. If there happens a finding in the suit that the document under challenge is a fabricated document, certainly the defacto complainant will get a right to move the criminal machinery for prosecution or even the court itself

can initiate action by invoking power under Section 340 Cr.P.C. That apart, learned Senior Counsel contended that after filing the suit, they approached Police in Tamil Nadu with two complaints and both of them were referred on finding that it was a civil dispute. Thereafter, they, with the same set of allegations, approached the Crl.M.C No.800 of 2011 8 Judicial First Class Magistrate Court -II, Neyyattinkara. That complaint was also dismissed finding that it is a civil dispute. In the light of these facts, I am of the view that continuance of prosecution is an abuse of the process of court. However, it is made clear that this will not deprive the defacto complainant of his right to approach the court after culmination of the suit, if law permits. In the result, the petition is allowed. Annexure A F.I.R in Crime No.22/2010 of Pozhiyoor Police Station is hereby quashed. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, JUDGE.
amk //True copy// P.A to Judge

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