

Chelladurai Vs. 1.The State, Represented By

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Court : Chennai

Decided On : Aug-04-2015

Judge : R.Subbiah

Appellant : Chelladurai

Respondent : 1.The State, Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 04.08.2015 CORAM THE HONOURABLE MS.JUSTICE R.MALA CRL.O.P(MD)No.15046 of 2015 and M.P(MD)No.1 of 2015 Chelladurai ...Petitioner/Accused No.2 .versus 1.The State, represented by The Inspector of Police, Anti-Land Grabbing Special Cell, District Crime Branch, Trichy.

(Crime No.9 of 2014) ..1st Respondent/Complainant 2.Gopalan ..2nd Respondent/De-facto complainant PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying this Court to call for the records in Crime No.9 of 2014 on the file of the fiRs.respondent Police and quash the same insofar as the Petitioner is concerned.

!For Petitioner : M/s.A.V.Rajasekaran For Respondent-1 : Mr.K.Anbarasan Govt.Advocate(Crl.side) :

ORDER

Heard the learned counsel for the Petitioner and the learned Government Advocate(Crl.Side) appearing for the respondent-1/State and perused the records.

2.The Petitioner, who is A2 in Crime No.9 of 2014 has come forward with this application for quashing the same stating that he is a bona-fide purchaser for value from the power of attorney of the original owner Ananthanarayanan.

Furthermore, the purchaser Manjula has filed O.S.No.557 of 2010 for declaration that the sale deed, dated 10.10.2008 as null and void.

The learned counsel would submit that the properties originally belong to Ananthanarayanan.

He entered into a sale agreement with one Manjula on 6.10.2006.

On 12.10.2007, he executed a power of attorney in the name of the fiRs.accused/Ondimuthu.

But he cancelled the same on 27.12.2008.

He sold the same to Manjula on 16.10.2008.

A1 sold the property to A2, the Petitioner herein on 10.10.2008.

3.The case of the Petitioner is that he is a bona-fide purchaser for value.

Hence the FIR against him has to be quashed.

The power of attorney of Ananthanarayanan has given a complaint and on the basis of the same a case in has been registered on 01.04.2014 for the offences under Sections 465, 467, 468, 417, 120(b) and 506(II) IPC in Crime No.9 of 2014.The learned counsel for the Petitioner would submit that he is a bona-fide purchaser for value and hence prayed for setting aside the same.

3.Resisting the same, the learned Government Advocate(Crl.side) submits that the properties owned by one Ananthanarayanan.

He entered into a sale agreement on 6.10.2006 with one Manjula and that the said Manjula filed a suit in O.S.No.140 of 2007 for the relief of specific performance.

After that only,he cancelled the power of attorney executed in favour of the fiRs.accused on 27.12.2008 and executed a sale deed dated 16.10.2008 in favour of one Manjula and now the said Manjula is in possession of the property.

Having aware of the fact that power of attorney executed in favour of the fiRs.accused was revoked, he got sale deed from the fiRs.accused and therefore he colluded with A1 and fabricated the documents.

Hence the ingredients of the above section is prima facie made out and prayed for dismissal of the petition.

4.While deciding the facts for quashing the FIR, in AIR1992 Supreme Court 604(State of Haryana and others .versus Ch.Bajan Lal and others)it is stated that under what circumstances FIR has been lodged.

But here there is no ground for quashing the FIR.

The relevant passage from the above decision is extracted hereunder: "108.In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Vode which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1.Where the allegations made in the FiRs.Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make a case against the accused.

2. Where the allegations in the FiRs. Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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.

6. Where there is an express legal bar en-grafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with a 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.?

5. Considering the rival submissions made by both sides, it revealed that originally the suit property belong to one Ananthanarayanan, he entered into a sale agreement with one Manjula on 6.10.2006.

Then he executed a power of attorney in favour of the fiRs. accused on 12.10.2007 and then it was revoked and then the second accused, the Petitioner herein has purchased the same .Even though he is a bona-fide purchaser for value, he

purchased the same without noticing the encumbrance, it is the duty of the purchaser to verify the same whether there is any encumbrance on the property in question.

The revocation of the power of attorney would show the mala-fide intention to grab the property of a third party.

A1 and A2 colluded with each other and created documents and sold the property in question to the second accused on 10.10.2008.

6. In such circumstances, I am of the view that prima facie material is found for registration of FIR against the Petitioner.

In such circumstances applying the principle laid down in Bajanlal's case, cited supra, it is a fit case to register FIR against the second accused/Petitioner herein.

7. In view of the above, the Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous Petition is dismissed.

To 1. The Inspector of Police, Anti-Land Grabbing Special Cell, District Crime Branch, Trichy.

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

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