

A.Valluvan. Vs. the State Rep.by Assistant Commissioner of Police

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Court : Chennai

Decided On : Apr-18-2012

Judge : M.M.Sundresh, J.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Section 420, 465, 468, 474, 120(B)

Appeal No. : C.R.L. O.P. NOS.587 And 604 OF 2012 Crl.O.P.No.587 of 2012

Appellant : A.Valluvan

Respondent : The State Rep.by Assistant Commissioner of Police

Advocate for Def. : Shri.P.Govindarajan, Adv

Advocate for Pet/Ap. : Shri.Abdu Kumar, Adv.

Judgement :

COMMON ORDER

1. Since the petitioners in both these applications have been arrayed as accused in the very same crime number, a common order is passed.

2. The petitioner in Crl.O.P.No.604 of 2012 is A-2 and the petitioner in Crl.O.P.No.587 of 2012 is arrayed as A-3 for the alleged offences under Sections 420, 465, 468, 474 r/w 120(B) IPC in Crime No.591 of 2011, on the file of the respondent police, seek bail.

3. In order to decide these applications, the factual background surrounding the case requires a proper narration.

4. Heard the learned counsels appearing for the petitioners and the learned counsel appearing for the Intervener as well as the learned Additional Public Prosecutor appearing for the respondents and perused the records produced. This Court infact heard the arguments of Shri.Gopinath, learned Senior Counsel appearing for the petitioner in CrI.O.P.No.604 of 2012 and the learned counsels appearing for the other parties including the intervening petitioner. Thereafter once again arguments have been made by another counsel, by name, Shri.Palaniappan on behalf of the petitioner in CrI.O.P.No.604 of 2012. However, at the instance of the learned counsel for the petitioner in CrI.O.P.No.604 of 2012, the matter has been adjourned from time to time. When the matter was taken up for hearing on 16.04.2012 all the learned counsels appearing for the parties, namely, Shri.Palaniappan for the petitioner in CrI.O.P.No.604 of 2012 and Shri.Abdu Kumar for the petitioner in CrI.O.P.No.587 of 2012 and Shri.P.Vasanth for the intervening petitioner and Shri.P.Govindarajan, learned Additional Public Prosecutor for the respondents submitted that considering the fact that the arguments have been heard at length on the earlier occasions, appropriate orders may be passed by this Court.

Facts in brief:

5. It is the case of the prosecution that a property situated in Saravana Mudali Street at T.Nagar, which is the commercial hub of the city of Chennai of an extent of 6200 sq.ft. with a building was purchased by Srimathi.Selva Saroja, mother of the defacto complainant from one Shri.Mahalingam vide registered sale deed dated 14.09.1988. The consideration for the sale was Rs.14,00,000/- at that relevant point of time. Thereafter Srimathi.Selva Saroja executed a Will in favour of the daughter of the defacto complainant Sri Vishnu Darshana on 19.08.1994. The Will was probated in accordance with law before the High Court in O.P.No.814 of 1998 in and by the order dated 03.12.1999 after the demise of Srimathi.Selva Saroja. Thereafter, Sri Vishnu Darshana executed a settlement deed in favour of her mother, who is the defacto complainant herein by way of a

settlement deed, on 04.03.2001.

6. It is the specific case of the defacto complainant that a Power of Attorney has been fabricated by A-1 Shri.Rajesh in his favour as if the same was executed by Shri.Mahalingam the original owner of the property in the year 2002. In the said Power Deed, the age of the original owner Shri.Mahalingam was mentioned as 74 years. It is pertinent to note even at the time of execution of the sale deed in favour of the defacto complainant's mother by Shri.Mahalingam his age was shown as 70 years as on 1998. Thereafter using the said Power of Attorney A-1 executed a registered lease deed in favour of A-2 who is the petitioner in Crl.O.P.No.604 of 2012 for a period of 20 years for a total consideration of Rs.5,00,000/-. Accordingly, the yearly rent would come to Rs.1,200/- and the monthly rent would be Rs.100/-, for a property which is situated in the heart of the city of Chennai with a huge extent of 6200 sq.ft. with a house. Further using the very same Power of Attorney A-1 executed another sale deed in the year 2006 in favour of A-3 for a sum of Rs.12,48,000/-. It is pertinent to note that even in the year 1998 the defacto complainant's mother purchased the property for a sum of Rs.14,00,000/-. It is also to be noted that the original owner Shri.Mahalingam died in the year 2005 and sale deed has been executed by A-1 representing the deceased person in the year 2006, after his death. It has been further alleged in the complaint that all the accused conspired together and created the fabricated documents. The petitioner in Crl.O.P.No.604 of 2012 is the wife of the ex-Union Minister and both the said person along with the petitioner in Crl.O.P.No.604 of 2012 using their clout and in connivance with the other accused created the bogus documents. This is the sum and substance of the case of the prosecution.

Submissions of the learned counsels appearing for the petitioners:

7. Shri.Palaniappan, learned counsel appearing for the petitioner in Crl.O.P.No.604 of 2012 would submit that the complaint would disclose a civic dispute. The petitioner is nothing but a lessee. The defacto complainant has initiated civil proceedings. The subsequent proceedings initiated by defacto complainant is pending consideration before the Honourable Court in C.S.No.458 of 2011. The petitioner is in possession and enjoyment of the property. The

encumbrance certificate would disclose that there was no encumbrance prior to the execution of the lease deed. The petitioner has been paying the property tax. There is a discrepancy in the sale deed executed in favour of defacto complainant's mother and the subsequent Will and Settlement Deed in favour of the defacto complainant to the documents executed in favour of the accused persons including the Power of Attorney and the lease deed. Therefore taking into consideration of the above said facts, the petitioner is entitled for anticipatory bail.

8. The learned counsel appearing for the petitioner in Crl.O.P.No.587 of 2012 would submit that the petitioner is a bonafide purchaser and taking note of the fact that there was a lessee, the petitioner had purchased the property for a lesser value. The encumbrance certificate does not disclose any encumbrance. The complaint would disclose a civil dispute. Therefore, the petitioner is entitled for anticipatory bail.

Submissions of the learned Additional Public Prosecutor and the Intervening Petitioner:

9. The learned counsels would submit that there is no dispute on the identity of the property. The boundaries and the extent in the sale deed in favour of the mother of the defacto complainant, the will and the settlement on the one hand and the documents fabricated by the accused persons on the other hand are the one and the same. There is no other property owned by the original owner Shri.Mahalingam. The daughter of the deceased Mahalingam has clearly stated about the said fact and that the age of the Shri.Mahalingam has also been shown as 74 years in the fabricated Power of Attorney whereas he was 70 years old at the time of execution of the sale deed in favour of the defacto complainant's mother in the year 1988. Even a perusal of the signature of the deceased Shri.Mahalingam would clearly establish the fraud committed by the petitioners. The custodial interrogation of the respondents is very much required. A property worth several crores has been sought to be taken away by the respondents in connivance with each other. The very fact that both the petitioners are relying on the very same encumbrance certificate itself would show their connivance with each other along with A-1.

10. A perusal of the consideration shown in the lease deed and the sale deed fabricated by the respondents would clearly show the complexity of the petitioners. The petitioners have also taken advantage of the absence of the defacto complainant who hails from a respectable industrial business family at Tirunelveli. The sale deed has been executed after the death of the original owner and the investigation is at the crucial stage. The custodial investigation of the petitioners is very much required. Therefore, these applications will have to be dismissed.

Discussions:

11. A perusal of the documents would show that there is no discrepancy in the boundaries and the extent. Therefore, it is clear that both the documents of the petitioners and the defacto complainant deal with the very same property. It appears that taking advantage of a small discrepancy, the petitioners along with A-1 have fabricated the documents. This Court has perused the entire documents. By a mere cursory look there is absolutely no similarity whatsoever between the signatures found in the documents relied upon by the defacto complainant and the petitioners. Infact the daughter of the deceased Mahalingam has also produced a specimen signature before the respondent. The said signature tallies with the sale deed executed by him in favour of the mother of the defacto complainant. However, it has got no semblance of similarity with the signature found in the documents said to have created by the petitioners. The deceased Mahalingam was 70 years old at the time of execution of the sale deed in favour of the defacto complainant's mother on 14.09.1988. The Power of Attorney said to have executed by him in favour of A-1 in the year 2002 refers to his age as 74 years. All the accused persons are absconding. The daughter of the deceased original owner Mahalingam also states that there was no other property owned by him except the disputed property and she totally supports the case of the prosecution.

12. The documents have been created taking advantage of the defacto complainant's absence as she was living 700 kilometres away from Chennai. At the time of execution of the alleged sale deed in favour of A-3, the original owner Shri.Mahalingam was no more. He died in the year 2005 whereas the sale deed has been created in favour of A-3 in the year 2006 using the fabricated Power of

Attorney. A perusal of the lease deed said to have been executed in favour of the petitioner/A-2 in Crl.O.P.No.604 of 2012 would show that the monthly rent has been fixed at Rs.100/-. Even this amount has not been paid per month as a lumpsum of Rs.5,00,000/- has been fixed for the rental for a period of 20 years. There is no reason why the petitioner has paid the statutory dues for the property on her own. Admittedly she has not seen the owner at all.

13. The learned Additional Public Prosecutor would submit that it is not known as to whether A-1 exists or not. It is not in dispute that the property is situated in the heart of the city of Chennai. It is rather difficult to fix the present value of the said property which would certainly run to several crores. To fix the rental for such a property at Rs.100/- per month for a period of 20 years without any increase and advance payment is baffling. Similarly A-3 has purchased a very valuable property for a sale consideration of Rs.12,48,000/-. The said property was purchased by the defacto complainant's mother even in the year 1998 for a sum of Rs.14,00,000/-. It is everybody's common knowledge that the valuation of the property in the city has increased many folds. Therefore the contentions of the learned counsel for the respondents that the valuation has been fixed for a lesser amount taking note of the presence of A-2 as a lessee cannot be accepted, since there is no basis for the same.

14. Another factor to be seen is that the petitioner in Crl.O.P.No.604 of 2012 has filed an anticipatory bail application which was dismissed by the jurisdictional Court on 05.01.2012. Thereafter, the present application has been filed on the next day. Absolutely no reference has been made in the present application. This Court is concerned with the criminal action alleged to have been done by the accused persons. A mere pendency of the civil dispute or the earlier proceedings would not enure to the benefits of the petitioners for the purpose of granting anticipatory bail. It has been specifically averred by the respondents that the custodial interrogation is very much required as none of the accused has been secured so far. This Court is also constrained to record the fact that the offences pertaining to the property in the cities and towns are in escalation.

15. Therefore, taking into consideration of the above said facts, this Court is constrained to reject these applications filed, by confirming the orders passed by the Court below. Accordingly, these applications are dismissed.

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