T.Subbulakshmi Vs. State Rep. by Inspector of Police, Central Crime Branch, Team-xvi, Egmore and Others

T.Subbulakshmi Vs. State Rep. by Inspector of Police, Central Crime Branch, Team-xvi, Egmore and Others

SooperKanoon Citation : sooperkanoon.com/934086

Court : Chennai

Decided On : Sep-24-2012

Judge : A.Arumughaswamy

Appeal No. : Criminal Original Petition No.12468 of 2012

Appellant : T.Subbulakshmi

Respondent : State Rep. by Inspector of Police, Central Crime Branch, Team-xvi, Egmore and Others

Advocate for Pet/Ap. : For the Petitioner: R.Shanmugasundaram, S.C. for S.Sivasubramani and A.Gopinath, Advocates. For the Respondents: R1, S.Shunmugavelayutham, Public Prosecutor, R2, K.Kannan, R3, P.H.Manoj Pandian, Advocates.

Judgement :

(Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records relating to Crime No.233 of 2012 on the file of the first respondent police and quash the same.)

This Criminal Original Petition has been filed, praying to call for the records relating to Crime No.233 of 2012 on the file of the first respondent police and quash the same.

2. The brief facts narrated in the complaint which was registered as Crime No.233 of 2012 are as follows:

One Rajaiah, who claims to be the agreement holder is the complainant. He alleged in his complaint that on 8.9.2008, he entered into an agreement for sale with one Mr.S.Ravi in respect of the vacant building site to an extent of 12000 sq.ft. situated at Old No.189, New No.51, Sholinganallur village comprised in S.No.12/1 and 12/2 bearing Plot No.257, the Seashore Town and a sum of Rs.5 lakh was paid towards sale consideration. According to the complainant, the said S.Ravi claimed himself as the Power Agent of one Shri Chandresh M.Kampani, son of Late Mahendra Kumar N.Kampani and Late Smt.Malini Mahendra Kumar Naveen Chandra Kampani.

3. According to the complainant, the above said property was originally belonging to Late Mahendra Kumar N.Kampani and his wife Late Smt.Malini Mahendra Kumar N.Kampani who died on 7.2.1980 and 26.08.1997 respectively leaving behind their only son Shri Chandresh M.Kampani and two daughters as their legal heirs. The said S.Ravi represented to the complainant that the said Chandresh M.Kampani has authorized him to sell the above said property and on believing the representation of said S.Ravi, the complainant entered into the agreement of sale for a total consideration of Rs.30 lakhs.

4. It is further alleged in the complaint that after the sale agreement was executed, he applied for encumbrance certificate, the complainant came to know that the property was dealt with by others that Shri Late Mahendra Kumar N.Kampani and his wife Late Smt.Malini Mahendra Kumar N.Kampani had executed a General Power of Attorney in favour of one Mrs.Dhanalakshmi, wife of Mr.Mahalingam on 12.04.2007, who in turn executed the sale deed in favour of one Mrs.T.Subbulakshmi (the petitioner/accused No.2). According to the complainant, the said Mrs.Dhanalakshmi and others played fraud and forged and created the documents as if Mrs.Dhanalakshmi was the Power Agent of the original owners in respect of the properties, i.e., Plot No.277 and 297 by furnishing false particulars to the Sub Registrar Office, Trichy. Based on the agreement of sale, dated 12.4.2007, the said Mrs.T.Subbulakshmi and her daughters in collusion with the

said Dhanalakshmi claiming themselves as the owners, grabbed the above said property and started putting up construction. Due to this, the complainant is unable to get the property registered in his favour through Mr.S.Ravi.

5. Narrating all the above, the second respondent has lodged the complaint before the first respondent police against the petitioner herein and others. The said complaint has been registered in Crime No.233 of 2012 on the file of the first respondent/police for the offences under Sections 419, 467, 468, 471 r/w 120(b) IPC. 6. Pending investigation, the petitioner who has been arrayed as A2, came forward with the present petition for quashing the case registered in Crime No.233 of 2012 on the ground that the complainant had entered into an agreement with Ravi on 8.9.2008. In the above said agreement it was stated that the agreement will lapse within one year from the date of execution of agreement and as per the agreement it will lapse on 7.9.2009. After 2009, the complainant has not renewed the agreement. The complaint was given on 13.4.2012 and the case was registered on 23.4.2012. Either at the time of preferring the complaint or at the time of registration of the complaint the complainant had no locus-standi to prefer this complaint because the cause of action was over by 7.9.2009. The complainant has not produced any record to show that the agreement was renewed after 2009. Similarly the power of attorney holder has cancelled this agreement on 15.10.2010 before the Sub-Registrar, Neelangarai. This document was deliberately suppressed by the complainant while lodging the complaint. This clearly shows that the malafide intention of the complainant.

7. Pending disposal of the present criminal original petition, one Mr.Chandresh M Kampani S/o Mahendrakumar Navinchandra Kampani, who is the legal heir of the original owner of the property, came forward with a petition to implead him as third respondent in this petition. In the affidavit filed in support of the impleading petition, he has averred that he is the lawful owner of the property in question and he had appointed one S.Ravi as his lawful attorney to deal with the aforesaid property through a registered Deed of Power of Attorney dated 9.7.2007. On the same day he had entered into an Agreement of sale pertaining to the aforesaid property with the said S.Ravi with a condition that the deed of sale had to be registered within one year from the date of agreement to sell as per clause No.11

of the said agreement to sell. On 5.6.2012 he received a police notice dated 31.5.2012 from the Inspector of Police, Central Crime Branch, Team XVI, Greater Chennai Police, Egmore, Chennai requiring his presence on 6.6.2012 with the required documents. Since he was suffering from viral fever, he sent a telegram asked for three weeks time for his appearance. Subsequently, on 12.6.2012 the investigating team visited his office at Mumbai and collected the documents and served notice to appear for witness statement on 23.6.2012 and it was refixed for 29.6.2012 wherein he gave the witness statement. On 26.6.2012 he had applied for Encumbrance Certificate before the Sub-Registrar Office at Neelangarai. To his shock and surprise the entries revealed that as though his father had executed a Power of Attorney in favour of one Mrs.Dhanalakshmi through Document No.210/2007 dated 12.04.2007 in the Office of the Joint Sub Registrar, III, Thiruchirapalli. It was a forged one which was 10 years after the demise of his father. Subsequently, the said encumbrance certificate revealed that the said Mrs.Dhanalakshmi had sold the aforesaid property to Mrs.T.Subbulakshmi through sale deed dated 17.05.2007 in the office of the Sub-Registrar, Neelangarai. The said Subbulakshmi in turn executed a settlement deed dated 22.4.2008 in favour of her daugthter Mrs.Yuba T.Reichard in the office of the Sub-Registrar, Neelangarai. The said Dhanalakshmi along with the first respondent had colluded, conspired and forged his fathers signature, impersonated his father through third parties as the photo in the Power of Attorney dated 12.4.2007 and subsequently executed the sale deed dated 17.5.2007. The said Dhanalakshmi and Tamilarasi are hand in glove in committing the offences thereby grabbed his property. A complaint was lodged before the second respondent by one Rajaiah on 12.4.2012 and subsequently case was registered in Crime No.233/2012 on the file of the Central Crime Branch, Chennai. On 2.7.2012 he had lodged a police complaint with the Commissioner of Police Egmore, against Mrs.Dhanalakshmi and Mrs. Subbulakshmi for the offences committed by them. Presently, Subbulakshmi has filed this petition to quash the FIR on the ground that she is an innocent buyer which is devoid of truth. The genuineness of the transaction will come into light only when the investigation on the accused is completed. The second accused Tmt.Subbulakshmi had filed a petition for anticipatory bail in Crl.O.P.No.16763 of 2012 before this Court wherein the he has filed a petition to intervene the said bail application in M.P.No.1 of 2012 and the same is also pending.

8. This Court vide order dated 24.08.2012 made in M.P.No.2 of 2012 , allowed the impleading petition without prejudice to the counter filed by the respondent, on the ground that Mr.R.Shanmugasundaram, the learned senior counsel for the petitioner fairly conceded that he is prepared to demonstrate all the points at the time of enquiry and accordingly, he was impleaded as 3rd respondent.

9. Heard the learned Senior Counsel appearing for the petitioner, the learned Public Prosecutor appearing for R1, learned counsel appearing for R2 and the learned counsel appearing for R3 and perused the entire materials.

10. Learned senior counsel appearing for the petitioner has raised three grounds to quash the complaint as against the petitioner/second Accused. Firstly, he contended that the complaint does not disclose the involvement of the petitioner and contact with the complainant and the allegations made in the complaint do not prima facie constitute any offence against the petitioner. He would further contend that no original documents were produced either before the investigating agency or before the Court in order to find out the true facts regarding the ownership of the disputed property. Secondly, the learned senior counsel contended that as per the legal notice issued on 19.07.2010 will clearly indicate that there is a cloud overe the identity of the property of Plot No.277 and 297. In the notice the complainant wanted the petitioner to surrender the possession of the Plot No.277 will show they are not in possession of Plot No.297 has been proved. Hence he prays that the petition has to be dismissed. Thirdly, the learned senior counsel contended that the dispute involved between the parties is purely civil in nature, but giving criminal flavour to the dispute and lodging the complaint, cannot be entertained and investigated by the first respondent police as categorically held by the Hon'ble Supreme Court. As already the petitioner moved the civil Court by filing civil suits against the complainant and others and also obtained interim orders against them, without taking into consideration of the orders of the civil Court, the respondent police have proceeded with the investigation. Lastly, the learned senior counsel contended that the husband of the petitioner is a retired Additional Director General of Police and while he was in service, he supervised the investigation of

sensational matters wherein, high ranked politicians were involved and therefore, now the petitioner and their family members have been taken to task and they are being harassed under the guise of enquiry and therefore, he seeks appropriate relief. With these contentions, the learned senior counsel sought for quashment of the case registered in crime No.233 of 2012.

11. Opposing the petition, learned Public Prosecutor contended that since the allegations contained in the complaint would prima facie constitute the non-cognizable offences against the petitioner as she has also been involved in the alleged transactions, matter requires to be probed and accordingly, the first respondent police has rightly registered the case and proceeded with the investigation and therefore, at this stage, it is not appropriate to quash the proceedings.

12. As regards the first contention of the learned senior counsel, I am of the view that with regard to the ownership of the property in question, the person who is in title is essential and it can be appreciated from the facts of this case. From the perusal of the records, it is seen that after the death of senior Kampany, his son junior Kampani, alone deals with the property and he had appointed one S.Ravi as his lawful attorney to deal with the aforesaid property through a registered Deed of Power of Attorney dated 9.7.2007. On the same day he had entered into an Agreement of sale pertaining to the aforesaid property with the said S.Ravi with a condition that the deed of sale had to be registered within one year from the date of agreement to sell as per clause No.11 of the said agreement to sell. In turn he had executed power of attorney in favour of the present complainant. Whereas the case of the petitioner is she claims to be the wife of the DIG she claims title as per the power of attorney deed executed by senior Kampani in the year 2007 in favour of Mrs.Dhanalakshmi who in turn had executed a sale in favour of the petitioner.

13. The contention of the learned Public Prosecutor is that when once senior Kampani died in the year 1997, power of attorney said to have been executed by senior Kampani in favour of Mrs.Dhanalakshmi in the year 2007 is a forged one. Likewise the other documents which are relied on by the petitioner also equally false. The person claiming title has to be viewed as a bird's eye view. It is very

clear that there are parallel documents which were fortunately or unfortunately in the name of the senior Kampani who is not alive and whose son has been impleaded as 3rd Respondent/intervener. He supports the case of the prosecution. According to him his father ought not to have executed power of attorney in the year 2007 in favour of Mrs.Dhanalakshmi, whereas the complaint has been registered against so many accused. Now, we have to see what is the role played by all the accused. Once the senior Kampani died in the year 1997 the question of execution of power of attorney document by him in the year 2007 did not arise at all. The persons claiming title under the said document have to be necessarily investigated. Therefore, I am of the view that prima facie case has been made out against the petitioner. According to the learned Public Prosecutor, allegations fraudulent, forgery and fabrication of documents were made against the petitioner and others, the respondent/police has registered the case and investigating the matter and at this stage, this petition cannot be entertained.

14. The small Geological Tree will help to trace the title:-

Quash Petitioners documents: Title traced by the Complainant

Mr.MahendraKumar N.Kampani and Mrs. Malini Mahendra Kumar N.Kampani had jointly purchased the property in question from one Mr.M.Chokalingam Mudaliar

Mrs.MahendraKumar N.Kampani died on 07.02.1980

Mr.MahendraKumar N.Kampani died on 26.08.1997

Mr.MahendraKumar N.Kampani said to be executed GPA Doc.No.210/2007, Dt.12.04.2007 in favour of M.Dhanalakshmi.

ChandreshM.Kampani POA to S.Ravi Dt.09.07.2007 and sale agreement on 08.10.2008.

M.Dhanalakshmiexecuted sale deed Dt.17.05.2007 in favour of T.Subbulakshmi

Ravientered into sale agreement with M.Rajaiah Dt.08.09.2008.

T.Subbulakshmimade settlement document Dt.22.04.2008 in favour of Mrs.Yuba T.Richard.

Ravicancelled the sale agreement Dt.15.07.2010

15. As regards the second contention raised by the learned senior counsel for the petitioner that there is exchange of notices between the parties and at present, the said property has been handed over to M/s.Modern Builders and in the notices though it has been mentioned that the defacto complainant was calling upon the petitioner to hand over the possession of the plots 297 and 277, it appears that some fake attempt was made to create a doubt about the identity of the property and the matter requires investigation, all these things have to be established before the Court of law. Therefore, there is no force in this ground.

16. The third contention of the learned senior counsel for the petitioner is that the petitioner has filed civil suit and hence there is no need for the investigation by the police. As I have already mentioned earlier, the third respondent/intervener is the person who is established prima facie in title over the property in question. The case of the petitioner is she got title through the so called power of attorney executed by the senior Kampani in the year 2007. However, the senior Kampani died in the year 1997 and the same was registered by the Municipal Corporation of Greater of Mumbai. The contention of the petitioner that the husband of the petitioner is a retired Additional Director General of Police and while he was in service, he supervised the investigation of sensational matters wherein, high ranked politicians were involved and therefore, now the petitioner and their family members have been taken to task and they are being harassed under the guise of enquiry which is not correct. The complaint as well as the investigation reveals that the matter is required for investigation. Therefore, there is no such mala fide on the part of the investigating agency as contended by the petitioner. In such circumstances, this Court cannot stall the investigation and the investigation has to be proceeded with.

17. Lastly it is contended by the learned senior counsel for the petitioner that original document has not been produced and only copies have been produced. Hence, the petition has to be allowed.

18. The learned Public Prosecutor contended that now they produced certified copies of the documents issued by the Registration department and on that basis investigation is proceeded. Therefore, non production of the original documents will not clothe the quash petitioner to get shelter under this ground as she cannot get title under the forged document.

19. At this juncture, the learned senior counsel for the petitioner represents that she has filed application for anticipatory bail and her relatives are being harassed by the investigating agency under the guise of enquiry. This Court hopes that the respondent police would fairly conduct the investigation without harassing the persons involved in the crime. It is brought to the notice of this Court that the petitioner has filed petition for grant of anticipatory bail and the same was reserved for orders by this Court.

20. Accordingly, the respondent police is directed to proceed with the investigation and conclude the same in a fair manner, for which purpose, the petitioner and her family members shall not be harassed till the orders are passed by this Court in the petition filed by the petitioner for grant of anticipatory bail. The interim order of stay granted by this Court is hereby vacated.

21. With the above direction, this Criminal Original Petition is disposed of.