(2009) 08 MAD CK 0142

In the Madras High Court

Case No : Criminal O.P. No. 23710 of 2007 and M.P. No. 1 of 2007

P. Mohammed Hasan and Others APPELLANT

Vs

The Sub-Registrar RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 468
Stamp Act, 1899 — Section 27, 64

Citation : (2009) 08 MAD CK 0142

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : B. Kumar for R. Mubarak Basha, for the Appellant; R. Muniappa Raj, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The petitioners/accused No. 1 to 5 have filed the above Criminal Original Petition No. 23710 of 2007 to call for the

records and quash the entire proceedings in C.C. No. 411 of 2005 on the file of the Judicial Magistrate, Gudiyatham.

2. The respondent/complainant has filed the complaint against the petitioners on an alleged offence u/s 64 of the Indian Stamp Act, 1989, for

violation of provision u/s 27 of the Indian Stamp Act. The ingredients of the complaint is that the accused had purchased the schedule mentioned

property, mentioned in the complaint, by means of two separate registered sale deeds dated 21.09.2000 and 09.10.2000 under document No.

755 of 2000 and 806 of 2000 respectively by adopting the value for the same as agricultural land. But in the said property, buildings had already

been constructed. Later on, it has come to the notice of the registration department, that the schedule mentioned property is not an agricultural land

but it is a residential area with a RCC building already constructed therein on the date of registration of the Sale Deeds.

3. The accused herein had purposely and deliberately suppressed the said material fact of existence of the said building already constructed in the

schedule mentioned properties with the dishonest intention to evade the Stamp duty payable for registering the sale deeds. The schedule mentioned

property ought to have been valued and registered only on square Feet rate and not as agricultural land in cent or acre rate. The accused

purchased the said schedule mentioned properties showing the lesser consideration by not disclosing the nature of the land and RCC building, only

with the intention of evading stamp duty including registration fees. By suppression of facts, the accused have evaded payment of Stamp Duty and

registration fees to the tune of Rs. 13,12,269/- and thereby they intentionally defrauded the Government to sustain the said revenue loss. Hence,

the complainant has filed the said complaint. Supporting the complaint, 9 witnesses are mentioned and 6 documents have been furnished.

4. The petitioner has challenged the complaint in C.C. No. 411 of 2005 for quashing the case for the below mentioned reasons:

The petitioners have alleged that the said schedule mentioned property has been purchased as per guideline value. At the time of registration, there

was no dispute. The respondent also, after being satisfied about stamp duty, had registered the sale deeds. The petitioner further alleged that only

on anonymous complaint sent to the Chief Minister''s Cell by some 3rd parties stating that the properties were not valued property, the present

complaint has been filed against the petitioners. The petitioners have raised a question of law that in view of Section 468 of CrPC. the maximum

punishment u/s 64 of the Stamp Act is fine up to Rs. 5000/-. The complaint had been lodged in the year 2005 for the under valuation of the

instrument which was registered on 21.09.2000 and 09.10.2000 under Document No. 755 of 2000 and 806 of 2000. The complaint, which has

been filed only after 5 years is barred, no condone delay petition has been filed by the complainant for filing the petition. Further, the complaint filed

against the petitioners is violative of Article 21 of the Constitution to permit the proceedings to continue as the Learned Magistrate totally lacks

Jurisdiction even to take cognizance and much less to proceed. Further, the prosecution case has not been initiated in accordance with Indian

Stamp Act and also not been initiated in accordance with Cr.P.C.

5. The Deputy Inspector General of Registration Department has inspected the Schedule mentioned property and obtained valuation report from

the Assistant Engineer and he has come to the conclusion that there is revenue loss caused by the petitioners by way of suppression of facts that

there is a building over the schedule mentioned property.

6. Considering all facts of the complaint and the contents of the petition and documentary evidence, the case has to be tried to determine the facts

in this case, after hearing evidence of both the parties. Accordingly, the Criminal Original Petition No. 23710 of 2005 is dismissed. Consequently,

the connected Miscellaneous Petition is closed.

