(2015) 06 MAD CK 0283

In the Madras High Court

Case No : Criminal OP No. 20766 of 2014, M.P. No. 1 of 2014 and M.P. No. 1 of 2015

R. Babashankar and Others — APPELLANT

Vs

The State and Others — RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 419, 465, 468, 471

Citation : (2015) 06 MAD CK 0283

Hon'ble Judges : P.N. Prakash, J

Bench : Single Bench

Advocate : S. Srinivas, for the Appellant; C. Emalias, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.N. Prakash, J.—This petition has been filed to call for the records in connection with the case in Cr.No. 50 of 2014 on the file of the 1st respondent and quash the same insofar as the petitioners 1 and 2 are concerned.

2. Heard the learned counsel for the petitioners, learned counsel for the defacto complainant and the learned Additional Public Prosecutor appearing for the State.

3. On a complaint given by one Narasimhan, S/o Ramu, the respondent police registered a case in Cr.No. 50 of 2014 on 29.07.2014 for offences under Sections 419, 465, 468, 471 r/w 34 IPC against the petitioners herein and other accused, challenging which the petitioners are before this Court.

4. The learned counsel for the petitioners submitted that this is a second FIR for the same cause of action, which is not maintainable as laid down by the Supreme Court in T.T. Antony Vs. State of Kerala and Others, AIR 2001 SC 2637 : (2001) CriLJ 3329 : (2001) 3 Crimes 276 : (2001) 5 JT 440 : (2001) 4 SCALE 348 : (2001) 6 SCC 181 : (2001) 3 SCR 942 : (2001) AIRSCW 2571 : (2001) 5 Supreme 131 . In support of this submission, he took me through the FIR in

Cr.No. 16/2007 that was registered by the police on the complaint given by these petitioners. The police conducted investigation in Cr.No. 16 of 2007 and filed a Final Report before the XI Metropolitan Magistrate, Saidapet, which was taken on file as C.C. No. 11822 of 2009 against 11 accused. In that Final Report, the petitioner has been shown as prosecution witness.

5. On a reading of the Final Report in C.C. No. 11822 of 2009 it is clearly stated as follows:

"7. I also understand that the above 3 persons have committed various frauds and criminal offences in the process of getting some sale deeds registered in my name. The following are a few examples of the various frauds committed by the above 3 persons.

a) In respect of the sale deed dt.5.6.06 registered in the name of my daughter Mrs.K.Shri Aishwarya in respect of 2 acres and 23 cents of lands we were shocked to find that one of the vendors Mr.K.Ramu had died before 30 years. The 3 persons have produced a Power Deed in the name of the number 2 of them viz. Mr.P.babu dt.23.12.2005 and represented to me that the power deed was executed by Mr.K.Ramu in the name of Mr.P.Babu. Based on this representation they obtained money from me and got the above sale deed registered in the name of my daughter wherein Mr.P.Babu had represented Mr.K.Ramu as his Power Agent. As stated above now I learnt that Mr.K.Ramu has expired before 30 years and therefore there is no possibility that he would have executed the power deed in the name of Mr.P.Babu and hence the said 3 persons have committed forgery and impersonation and created a power deed purportedly executed by Mr.K.Ramu and knowing fully well that it is a false document they have used it as a real one and cheated me and obtained money through me and registered the sale deed in the name of my daughter using the false power deed and by making false declaration and representations and obtained the sale deed in the name of my daughter Shri Aishwarya. The copy of the Power Deed and Sale Deed stated above are filed herewith as Doct.No. 3 series."

6. From the above it is clear that, in respect of the land belonging to one K.Ramu [father of the present defacto complainant in Cr.No. 50/2014], 2.23 acres of lands were sold by Babu and two others on 05.06.2006 to Mrs. K.Aishwarya, the daughter of the first petitioner. Thus, the subject matter of the illegal sale of Ramu''s property on 05.06.2006 has been investigated by the police in Cr.No. 16 of 2007 and a Final Report also has been filed against 11 persons as stated above. Therefore, for the same offence, Narasimhan S/o Ramu has lodged the present complaint alleging that, the petitioners herein had usurped his father''s property. In the considered opinion of this Court, the present FIR is clearly an abuse of process of law intended to harass the petitioners.

7. Mr. John Sathyan, learned counsel appearing for Narasimhan [defacto complainant] submitted that, none of the family members of Ramu have been shown as a witness in C.C. No. 11822 of 2009 and that would cause prejudice to

the defacto complainant.

8. This Court is unable to countenance this argument, because the police have collected enough materials to show that Ramu had died 30 years back and with the help of a fabricated Power of Attorney, the property has been sold on 05.06.2006 to Mrs. Aishwarya, who is the daughter of the present petitioner/ R.Babashankar. No person will be so credulous to purchase a dead man''s property in his own daughter''s name, unless he has been cheated by the vendor. That precisely is the case of the petitioners herein and also of the police, in Cr.No. 16 of 2007, which has culminated in C.C. No. 11822 of 2009.

9. The contention of Mr. John Sathyan, Advocate, on behalf of Narasimhan [defacto complainant] that, his client came to know about all these prosecutions only now and therefore, he had to file a fresh complaint defies credulity. In fact, Cr.No. 50 of 2014 has been registered based on a general direction issued by this Court in Crl.O.P. No. 9776 of 2014 on 17.07.2014, without this Court being apprised of the fact that a case was already registered in Cr.No. 16 of 2007, which culminated into C.C. No. 11822 of 2009.

10. Mr. John Sathyan submitted that this Court should protect the interest of Narasimhan [defacto complainant] and permit him to be made as a prosecution witness in C.C. No. 11822 of 2009. In the considered opinion of this Court, the interest of Narasimhan has been sufficiently protected by the assertion of the first petitioner himself that his daughter Aishwarya has been sold the land belonging to deceased Ramu, by Babu and two others through deceit. In effect, the first petitioner himself has admitted that his daughter Aishwayra does not have title to the said land, which itself sufficiently protects the interest of Narasimhan. The Hon''ble Supreme Court in T.T. Anonty''s case [cited supra] has held that the second FIR for the same offence is not maintainable. Relying upon the said judgment, this Court is of the view that the FIR in Cr.No. 50 of 2014 is an abuse of process of law.

Accordingly, this petition stands allowed and the proceedings in Cr.No. 50 of 2014 on the file of the 1st respondent are quashed. Consequently, connected miscellaneous petitions are closed.