

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P.No.833 of 2015

K.Krishnaveni

...Petitioner

Vs

1. The Commissioner of Police
Vepery, Chennai - 600 007
 2. The Dy. Commissioner of Police
City Crime Branch - II,
(Land Grabbing Wing)
Egmore, Chennai - 8
 3. The Inspector of Police
T-1, Ambattur Police Station,
Chennai - 600 053
- ...Respondents

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the respondents to register the case based on the complaint dated 01.09.2014 given by the petitioner and to investigate the case in accordance with law.

For Petitioner : Mr.C.D.Johnson
for Mr.R.Ramesh

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

सत्यमेव जयते

O R D E R

The petitioner has filed this petition to register the complaint given by the petitioner to the 1st respondent dated 01.09.2014.

2.It is submitted by the learned counsel for the petitioner that the petitioner borrowed a sum of Rs.4,00,000/- (Rupees four lakhs only) from one James son of Alex and executed registered mortgage deed dated 22.05.2013 in favour of A.James. The petitioner also paid interest at the rate of 24% per annum. But the mortgagee insisted for paying 5% interest per month. Therefore, the mortgagee insisted the petitioner to execute general power of attorney in favour of his

wife Bakiyam and petitioner also executed a general power of attorney on 12.08.2013 in favour of Mrs.Bakiyam wife of James and the same was registered in the Sub-Registrar office, Ambattur in document no.9185 of 2013. At that time, James gave Rs.2,00,000/- (Rupees two lakhs only) to the petitioner for her family expenses.

3. Thereafter, the petitioner suspected that the said James and his wife, the power agent may sell the property and therefore, gave a complaint to the T1 Ambattur Police Station on 21.07.2014 and CSR No.654 of 2014 was given and after obtaining the statement from James that he would not threaten and encroach upon the property belong to the petitioner, the complaint was closed. Thereafter, the petitioner applied for encumbrance certificate and on 25.07.2014, there was no endorsement in the encumbrance certificate regarding the sale of the petitioner's property. Thereafter, the petitioner cancelled the general power of attorney to Bakiyam and sent notice dated 30.07.2014 through her advocate to the power agent informing the power agent that the power was cancelled and the copy was sent to the Sub-Registrar Office, Ambattur.

4. Thereafter, the petitioner was surprised to note that the property was sold by the power agent Bakiyam in favour of her husband James and on that basis, officials of the Sub registrar office came to her property to inspect the same and on verification he came to know that the power agent sold the property to her husband James and registered the sale deed in document no.10146/ 2014. The petitioner also found on enquiry that while registering the sale deed in favour of the purchaser, James, the power agent produced the life certificate alleged to have been signed by the petitioner, on that basis, the registration was effected and life certificate was not signed by the petitioner and the signature found in the life certificate was challenged and enquiry was called by the I.G. of Registration by proceedings dated 30.11.2014.

5. The learned counsel for the petitioner, therefore, submitted that the property is worth Rs.25,00,000/- (Rupees twenty five lakhs only) and it was sold by the power agent for a sum of Rs.5,00,000/- (Rupees five lakhs only) by producing false and forged life certificate. The power agent and the purchaser were aware of the fact that the power was cancelled earlier to their sale deed and complaint was given by the petitioner against the said James on 27.07.2014 and only for the purpose of cheating the petitioner, the power agent in collusion with her husband created sale deed and therefore, the said persons committed offence and for that purpose, the complaint was given to the 1st respondent and no action has been taken. Therefore, the 1st respondent may be directed to conduct investigation through the 3rd respondent and register the case.

6. It is submitted by the learned Additional Public Prosecutor that on the complaint given by the petitioner before the 3rd respondent on

27.07.2014, enquiry was conducted and it was found that the sale deed was executed by the power agent duly appointed by the petitioner in favour of her husband. Therefore, the complaint was closed by directing the parties to workout their remedy through civil court and no case has been made out to register the case.

7.The learned counsel for the petitioner submitted that the present petition is filed to register a case on the complaint given before the 1st respondent and even assuming the 3rd respondent on earlier conducted enquiry and closed the complaint dated 27.07.2014, no action has been taken by the respondents in respect of the complaint given before the 1st respondent and therefore, the case has to be registered.

8.I am unable to accept the contention of the learned counsel for the petitioner.

9. Admittedly, the petitioner executed a registered a mortgage deed in favour of A.James on 22.05.2014 and borrowed a sum of Rs.4,00,000/- It is the further case of the petitioner that she paid more than Rs.90,000/- towards interest and the mortgagee James was demanding interest at the rate of 5% per annum. Therefore, the dispute arose between the parties and at the request of the mortgagee, the petitioner also executed general power of attorney in favour of Bakiyam, wife of James on 12.08.2013. It is also admitted by the petitioner in her complaint dated 18.08.2013, at the time of execution of the general power of attorney in favour of Bakiyam, James gave her a sum of Rs.2,00,000/- If the petitioner has obliged James by executing power of attorney and it was not the intention of the petitioner to sell the property to anybody through the power agent, there was no necessity for James to pay a sum of Rs.2,00,000/- to the petitioner. The fact that the petitioner has received Rs.2,00,000/- from the mortgagee James at the time of execution of general power of attorney would lead to the conclusion that mortgagee was given power to sell the property and the same is also evident from the recitals in the power document. Thereafter the sale deed was executed by the power agent in favour of James under document no.10146 of 2014.

10.Though the petitioner claims to have cancelled the power given to Bakiyam earlier to the execution of the sale deed by the power agent, the petitioner was not able to produce any document to that effect except the copy of the letter dated 21.07.2014 alleged to have been served on the power agent in-person. However, in the complaint given before the I.G. of Registration dated 18.08.2014, the petitioner referred to the legal notice sent through her advocate to 30.07.2014 to the power agent informing the agent that the power was cancelled. In the notice dated 30.07.2014 sent by the petitioner through her advocate to the power agent it was not been stated that on 21.07.2014, the power agent was informed about the cancellation of

power and the notice of cancellation was also served on the power agent. Therefore, the contention of the learned counsel for the petitioner that power was cancelled even on 21.07.2014 and it was intimated to the power agent and despite the same the power was used by the power agent to execute the sale deed in favour of James cannot be accepted.

11. Admittedly, the power in favour of James was valid and it was not cancelled and it was cancelled as per notice dated 30.07.2014 only after execution of sale deed. Therefore, when the sale deed was executed by the agent during the subsistence of the power, the said sale deed cannot be said to be an invalid document. The other contention of the learned counsel for the petitioner that while registering the sale deed in favour of James, life certificate was produced by forging the signature of the petitioner, cannot also be accepted. The life certificate is insisted only to prove that the principal is alive at the time of execution of sale deed through power and admittedly the principal is alive, who is none other than the petitioner herein.

12. Hence having regard to the facts stated above and also having regard to the submission made by the learned Additional Public Prosecutor, no criminal offence is made out on the basis of the complaint given by the petitioner. Hence this petition is dismissed.

ssd

-s/d-
Assistant Registrar(CO)
Dt:6/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Police
Vepery, Chennai - 600 007
2. The Dy. Commissioner of Police
City Crime Branch - II,
(Land Grabbing Wing)
Egmore, Chennai - 8
3. The Inspector of Police
T-1, Ambattur Police Station,
Chennai - 600 053

4. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.R.Ramesh, Advocate SR 9921

ts(co)
prk9/3

Cr1.O.P.No.833 of 2015



WEB COPY