BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.08.2015
CORAM:

THE HON'BLE MS.JUSTICE R.MALA

Crl OP(MD)No.11671 of 2015

1.Neelakandan
2.Veluchamy .. Petitioners/Accused Nos. 1 & 2

Vs.

1.State rep.by
its Inspector of Police,
District Crime Branch,
Karur District,
(Crime No.11 of 2015) .. 1st Respondent/Complainant
2.Sivasubramani .. 2nd Respondent/Defacto complainant

Criminal Original Petition under Section 482 of Cr.P.C., praying to call for records in Crime No.11 of 2015 on the file of the 1st respondent and quash the same as illegal with regard to the petitioners.

For Petitioners : Mr.S.Kameswaran
For R - 1 : Mr.K.Anbarasan
Govt.Advocate
For R - 2 : Mr.V.Balaji

ORDER

The accused in Crime No.11 of 2015 have come forward with this petition to quash the First Information Report registered in Crime No.11 of 2015 under Sections 120(b), 405, 464 and 420 of the Indian Penal Code.

2. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as accused 1 and 2. The property in dispute is originally belonged to one Palanichamy and his son, the defacto complainant/second respondent herein. They executed a general power of attorney deed on 06.12.2000 in favour of the first petitioner/A1. In pursuance of the same, the first accused has sold the property in favour of the second accused/second petitioner herein. On 12.03.2014, the defacto complainant has issued a notice, for which, reply notice has been given by the first petitioner. In the reply notice, in paragraph-8 it was clearly stated that the defacto complainant came to know all the things about the sale deed only on 12.12.2012 and on the basis of the complaint given by him, a case has been registered only on 17.03.2015. The learned counsel further submitted that the said Palanichamy died in the year 2007 and there is a delay

in preferring complaint. His next argument is that the paternal aunt of the defacto complainant by name Kaliammal @ Pappathi has filed a suit in O.S.No.330 of 2014 for partition and separate possession and the same is pending before the Sub Court, Karur. One of the items involved in the suit is the present property. Hence, it is purely civil in nature and ingredients of provision of law has not been made out with regard to criminal liability, and therefore prayed to quash the First Information Report.

3. Resisting the same, the learned counsel appearing for the defacto complainant/second respondent herein would submit that it is true that general power of attorney deed has been executed. But, in the sale consideration, four items have been mentioned, out of which, all three items are time barred debt. The defacto complainant and his father have not given authorisation to this power of attorney to discharge the time barred debt. The value of the property is more than 20 lakhs, but whereas, only Rs.2100/- alone has been mentioned as sale proceeds and no receipt has been obtained from the principals of the property viz., the defacto complainant and his father. So the document has been fabricated for unjust enrichment. He would further submit that pendency of civil suit is not a bar for criminal liability. Hence to substantiate the same, he relied upon the decisions reported in **(2001)2 Supreme Court Cases 17 [Lalmuni Devi Vs. State of Bihar and others]** and **(2001) 8 Supreme Court Cases 645 [M.Krishnan V. Vijay singh and another].**

4. He further submitted that as soon as the defacto complainant came to know that the property has been in possession of the second petitioner, immediately he has given a complaint. But no case has been registered. Hence he approached this Court by filing Crl.O.P.21762 of 2014, in which a direction has been given and on that basis, a case has been registered in Crime No.11 of 2015. Further more, he would submit that he filed Crl.O.P.No.13988 of 2015 for a direction, directing the first respondent, Investigating Officer to investigate the matter and file a final report, which was disposed of with a direction to the first respondent to file a final report within a period of six months from the date of receipt of a copy of the order. He would further submit that this petition is prematured and hence he prayed for dismissal of the same.

5. The learned Government Advocate appearing for the first respondent would submit that the second petitioner herein has not produced any receipt for payment of sale consideration and the investigation is going on and therefore, he prayed for dismissal.

6. Considering the submissions made on either side, it would be appropriate to narrate the facts as follows:

7. The property in dispute is originally belonged to one Palanichamy and his son Siva Subramani, the second respondent herein is the defacto complainant. It is an admitted fact that they executed the power of attorney deed on 06.12.2000 in favour of the first petitioner, who is the first accused. The said Palanichamy, father of the defacto complainant died in the year 2007. The second petitioner purchased the property from the power agent on 25.06.2004. On the date of purchase by the second petitioner, it is not disputed that power of attorney is in subsistence.

8. Now, the point to be decided is as to whether filing of the civil suit is a bar to proceed with a criminal case. Before going into the fact, now the Court has to consider the general power of attorney deed. On a perusal of the power of attorney deed, it has been specifically mentioned that the first petitioner has been given full power to execute a sale deed. But in the last column it was stated that the first petitioner is liable to give account, whenever it is sought for by the principals. It is not the case of the second respondent/defacto complainant that he sought for any account, which has not been given. In such circumstances, the argument advanced by the learned counsel appearing for the second respondent/defacto complainant that account has not been given to him, does not merit acceptance.

9. The second limb of argument advanced by the learned counsel appearing for the defacto complainant is that he has gone through the sale deed, in which three items have been mentioned as time barred debt and the sale consideration has been used for discharging the said time barred debt. Once he has given power of attorney, he is not entitled to question all those things. Merely because in the sale deed, promissory note of the year has been mentioned as 1997 and the sale deed has come in the year 2004, he is not competent to question the same. So, the argument advanced on the side of the defacto complainant/second respondent herein that the sale consideration has been used for discharging the time barred debt, does not merit acceptance. It is pertinent to note that the defacto complainant and brother of first accused are partners in Amar Suriya Finance Company, wherein which the defacto complainant and his father have borrowed money. So only to discharge the loan amount due to the said Amar Suriya Finance Company, power of attorney deed has come into existence. In such circumstances, I am of the view that the second respondent/defacto complainant now wants to obtain unjust enrichment by questioning the sale deed dated 25.06.2004.

10. Now the Court has to decide whether the civil proceeding is a bar for taking criminal liability.

11. The learned counsel appearing for the defacto complainant/second respondent has relied upon the decision reported in (2001) 2 Supreme Court Cases 17 [M.Krishnan V. Vijay Singh and another]. It is appropriate to incorporate paragraph-8 of the said decision as follows:

> 8.There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.

12. In the said decision it is held that the respondents 2 to 10 have fraudulently got the father of the complainant to execute a gift deed. On that basis, the Magistrate held an enquiry under Section 202 of Cr.P.C., and issued process for the offences under Sections 419, 420, 467 and 120-B of the Indian Penal Code. In which, since civil case has been filed, they come forward to quash the same and it was also held that civil suit filed by them will not take away the right of criminal liability. But in the case on hand, the defacto complaint and his father have admitted the execution of the power of attorney deed in favour of first petitioner and during subsistence of power of attorney deed, the first petitioner has executed the sale deed. In such circumstances, I am of the view that the above citation is not applicable to the present case.

13. The learned counsel also relied upon the decision reported in (2001) 8 Supreme Court Cases 645 [M.Krishnan V. Vijay singh and another] for the same proposition. It is appropriate to incorporate paragraphs-4 & 5 of the said decision as follows:

> 4.Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single

Judge of the High Court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings.

5.Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe :

"In my view, unless and until the civil court decides the question whether the document are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

14. It the said decision, the document has been fabricated. But, here in the case on hand, as already stated that the property is owned by Palanichamy and defacto complainant and it is admitted by them that they executed power of attorney in favour of the first petitioner/first accused. It is also an

admitted fact that the second respondent/defacto complainant and first petitioner's brother and second petitioner are the partners in Amar Suriya Finance Corporation. The said Palanichamy and defacto complainant have borrowed some loan in the said Finance and in order to discharge the same, they intend to execute the power of attorney in favour of the first petitioner. On subsistence of power of attorney deed, the sale deed has been executed. In such circumstances, I do not find any criminality in the FIR and this is a fit case to quash the First Information Report.

15. In the result, this Criminal Original Petition is allowed. The case registered in Crime No.11 of 2015 is quashed with regard to the petitioners/accused 1 & 2 herein. The findings given in this order shall not influence the Civil Court in deciding the pending suit.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

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To

1. The Inspector of Police,District Crime Branch, Karur District.
2. The Additional Public Prisecutor, Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.S.Kameswaran, Advocate in SR.No.46300
+one cc to Mr.V.Balaji, Advocate in SR.No.46138

Crl OP(MD)No.11671 of 2015
12.08.2015

CSL/JGB-DP/SAR(II)/ 31/08/2015
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