

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1311 of 2015

A.M.Abu Backer
S/o.Ahamed Moideen

... Petitioner/Complainant

Vs

State represented by
The Inspector of Police,
Central Crime Branch,
Team 18-A, Vepery,
Chennai.
Crime No.108 of 2013

... Respondent/Respondent

Criminal Revision filed under section 397 r/w 401 of the
Code of Criminal Procedure, against the order of learned
Judicial Magistrate, Alandur, passed in Crl.M.P.No.7505 of 2015
on 01.12.2015.

For Petitioner : Mr.P.Wilson, senior counsel
for Mr.K.J.Saravanan

For Respondent : Mr.C.Iyyapparaj
Government Advocate (Crl.side)

For Intervener : Mr.S.V.Jayaraman
(T.Robert Gnanasekaran) for Mr.P.Gangadharan
(Vide Crl.M.P.No.656/16)

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O R D E R

This revision arises against the order of learned Judicial
Magistrate, Alandur, passed in Crl.M.P.No.7505 of 2015 on
01.12.2015, dismissing a protest petition moved by petitioner/de
facto complainant.

2. A case in Crime No.108 of 2013 on the file of respondent
was registered on the complaint of the petitioner for offences

u/s.420, 465, 468, 471 and 120(b) IPC. The grievance of the petitioner was that one Mary Thomas, now deceased, owned property and had constituted the intervening petitioner as the Power of Attorney. Though under the Deed of Power of Attorney, no powers of sale were vested upon the agent, he had executed several sale deeds.

3. Heard learned senior counsel for petitioner, learned Government Advocate [Crl.side] for the State and learned counsel for intervening petitioner.

4. Though learned counsel for petitioner has objected to this Court hearing learned counsel for the intervening petitioner, this Court finds that certain facts which cannot be ignored are placed before us. Though the intervening petitioner indeed has effected sale of property and in doing so, acted beyond the powers vested in him under Power of Attorney of the original owner dated 25.05.2004, an agreement registered as document No.5805 of 2011 has been entered into between the legal heirs of original owner and the petitioner on 11.08.2011. Petitioner had moved O.S.No.6549 of 2011 on the file of learned Additional District Judge, Fast Track Court II, Chennai, seeking relief of specific performance and permanent injunction. As the original owner had died, her legal heirs had been impleaded as defendants. Upon a compromise arrived at between parties, such suit had been decreed. Thereafter, in keeping with such decree, a sale deed registered as document No.7282 of 2011 on the file of Sub Registrar, Neelangarai, has been executed by the legal heirs of the original owner in favour of the petitioner on 19.10.2011. Subsequently, the agreement registered as document No.5805 of 2011 dated 11.08.2011 entered into between legal heirs of original owner and the petitioner has been cancelled under Deed of Cancellation originally entered upon on 25.08.2015 and finally executed and registered as document No.6799 of 2015 on 03.09.2015 at the office of Sub Registrar, Neelangarai. What started as a civil transaction has given rise to certain acts which if proved to be with malafide intent would amount to commission of offences. However, in the instant case, both petitioner as also the intervening petitioner have, after such offending acts, entered upon an agreement and pursuant to a decree passed upon compromise, the property also stands sold to the petitioner. When it is the admitted case that the Power of Attorney/intervening petitioner had no power to sell the property and purchasers of property had not taken care to satisfy themselves as to whether the Power of Attorney indeed did bestow a right of sale on the intervening petitioner then the principle of Caveat Emptor would apply. Though learned senior counsel for petitioner has submitted that the offences committed by the intervening petitioner are not compoundable,

this Court in the facts and circumstances would apply its inherent powers u/s.482 Cr.P.C. and towards securing the ends of justice, dismiss this revision.

In the result, this Criminal Revision stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Judicial Magistrate,
Alandur.
2. The Inspector of Police,
Central Crime Branch,
Team 18-A, Vepery,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.J.Saravanan, Advocate, S.R.No.3894
+1cc to Mr.P.Gangadharan, Advocate, S.R.No.4377

Cr1.R.C.No.1311 of 2015

SAI (CO)
CA(11/02/2016)

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