IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.5797 of 2010
and M.P.No.1 of 2010

1. S.Chandrakumar
2.Priya Chandrakumar .. Petitioners / Accused 1 & 2

Vs.

1. State Rep. by
Inspector of Police
Central Crime Branch,
Thousand Lights,
Che0nnai - 600 006.

2. P.Rajasekaran .. Respondents

(Impleaded the second respondent
as per the order of this Court
dated 02.08.2011 in M.P.No.1 of 2011)

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.10488 of 2008 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners: Mr.B.Natarajan

For Respondents: Mr.B.Ramesh Babu
Govt. Advocate (Crl side) for R1

Mr.N.Sreenivasalu for R2

ORDER

The petitioners have come forward with this Criminal Original Petition praying to call for the records in C.C.No.10488 of 2008 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. It is averred in the petition that the first petitioner mortgaged the house property in which he is residing worth more than Rs.3 Crores on 11.06.2004, as he was in urgent need of

money from one Ravi @ Ravikumar. The said P.Ravi @ Ravikumar also obtained the signature of the first petitioner in a Rs.100/- Stamp paper, which he converted into a General Power of Attorney. The first petitioner was regularly repaying the loan with interest and has totally repaid the entire loan with interest. The mortgagee never gave receipts and he repeatedly assured that the mortgage has been repaid and redeemed. Therefore, the first petitioner settled the property in favour of his wife, the second petitioner on 05.02.2007. He also cancelled the General Power of Deed on 16.02.2007. As the mortgagee started harassing the petitioners and their family asking for more money, the first petitioner filed a suit in O.S.No.1157 of 2007 on the file of the XVII Assistant City Civil Court, Chennai for permanent injunction.

3. When the defacto-complainant filed impleading petition in that suit, the petitioners came to know that the mortgagee P.Ravi @ Ravikumar had sold the property to him on 27.04.2006 for consideration of Rs.25 lakhs using the General Power of Attorney. Thus, the property mortgaged for the loan amount of Rs.3 lakhs, which was worth more than Rs.3 Crores had been sold by the mortgagee to his own brother for Rs.25 lakhs and thus, the mortgagee P.Ravi @ Ravikumar and his brother, the defacto-complainant Mr.P.Rajasekaran are the actual offenders. Using their influence, the present case has been filed as against the petitioners and therefore, the same is liable to be quashed.

4. The learned counsel appearing for the petitioners contends that Power Deed was obtained from the first petitioner fraudulently on the same day when the mortgage deed was executed; that the mortgagee sold the property for a very low consideration of Rs.25 lakhs even though the property is worth more than Rs.3 crores; that mandatory provision of the Transfer of Property Act has not been followed for selling the mortgaged property; that the Power of Attorney obtained under coercion as security for the loan has been misused and that criminal colour is given to the civil dispute and therefore, the proceedings in C.C.No.10488 of 2008 as against the petitioners is to be quashed.

5. The learned counsel appearing for the second respondent per contra contends that on the basis of the compliant given by the second respondent, case was registered on 01.08.2007 and after thorough investigation by the Central Crime Branch, charge sheet has been laid as against the petitioners and the trial Court has also framed charges as against the petitioners having satisfied by thoroughly going through all the materials filed with final report; that the offences as alleged have been made out and therefore, interference under the inherent jurisdiction of this Court is not required.

6. The learned Government Advocate also argued that already two witnesses have been examined and the contentions of the petitioners are matter for evidence. Both the respondents contend that the first petitioner having executed Power Deed in favour of one Ravi @ Ravikumar clandestinely executed settlement deed in favour of his wife, the second petitioner knowing fully well the sale deed in favour of the defacto-complainant and therefore, the offences charged as against the petitioners have been clearly made out and there is absolutely no abuse of process in this case.

7. On 11.06.2004, the first petitioner mortgaged the property in favour of Ravi @ Ravikumar under the mortgage deed and on the same day he also executed General Power of Attorney Deed in favour of Ravi @ Ravikumar. On 27.04.2006, P.Ravi @ Ravikumar executed the sale deed in favour of the defacto-complainant P.Rajasekaran. Subsequent to this on 05.02.2007, the first petitioner executed settlement deed in favour of his wife, the second petitioner and on 16.02.2007, he cancelled the General Power Deed already executed in favour of Ravi @ Ravikumar.

8. According to the petitioners, the first petitioner paid the mortgage amount with interest regularly and entire loan with interest was repaid; but the mortgagee had not given receipts for the repayment. It is their further case that the property worth more than Rs.3 crores was sold by the mortgagee to a very low price, i.e., Rs.25 lakhs. Their further contention is that mortgagee obtained the Power Deed fraudulently and by coercion. All the above contentions are the matters for evidence. It is to be noted that all the above documents including the General Power Deed are registered documents.

9. Regarding repayment and non-issuance of receipts requires proof. The valuation of the property in the sale deed also requires evidence when the petitioners themselves indicate the value only as Rs.90 lakhs in their settlement deed executed subsequent to the sale deed. Regarding coercion and fraud in obtaining the Power Deed, it also requires evidence particularly when the document is registered one. Therefore on perusal of the entire records, prima facie offences are made out and the learned Metropolitan Magistrate has rightly framed the charges and proceeded with the trial and this Court does not find any abuse of process to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C and accordingly, this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed. The trial Court is directed to dispose of the C.C.No.10488 of 2008 within a period of six months from the date of receipt of a copy of this order and Report the same to the Registry. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The XI Metropolitan Magistrate
Saidapet, Chennai.

2. The Inspector of Police
Central Crime Branch,
Thousand Lights, Chennai - 600 006.

3. The Public Prosecutor,
High Court of Madras, Chennai.

4.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.N.Sreenivasalu, Advocate Sr.69387

ak[co]
srg 21/12/2016