

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2017

(Orders reserved on 01.09.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.555 of 2011

and

M.P.No.1 of 2011

Mrs.Manimegalai

... Petitioner

... Vs ...

1.The State rep.by the Sub Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

2.The Branch Manager,
Karur vysya Bank, Anna Nagar Branch,
Chennai - 40.

...Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., praying, to set aside the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai dated 16.03.2011 passed in Crl.M.P.No.2661 of 2009 in the above C.C.No.16419 of 2008 and consequently to discharge the petitioner from the case in the above C.C.No.16419 of 2008.

For Petitioner : Mr.M.Mubarak Ahmad
For M/s.Ahmad Associates
For R1 : Mr.B.Ramesh Babu,
Government Advocate (Crl.Side)
For R2 : Mr.A.V.Radhakrishnan

ORDER

The accused has preferred this Criminal Revision Case under Sections 397 r/w. 401 of Cr.P.C., to set aside the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai dated 16.03.2011 passed in Crl.M.P.No.2661 of 2009 in the above C.C.No.16419 of 2008 and consequently to discharge the petitioner from the case in the above C.C.No.16419 of 2008.

2. The 1st respondent-State has filed a final report in Crime No.474 of 2008 and the same was taken on file in C.C.No.16419 of 2008 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. Before the Chief Judicial Magistrate, Egmore, Chennai the revision petitioner who is a sole accused has filed a petition under Section 239 of Cr.P.C. praying for discharge from her in the said case.

3. The case of the petitioner is that on the ground that the subject matter of the complaint filed by the defacto-complainant relates to civil transaction. No criminal offence is attracted to the said transaction. One V.Jeyaskumar, who is the younger brother of the husband of the petitioner. Under the family arrangement, he executed a power of attorney dated 13.05.2005 in favour of the petitioner. As such the property at No.Plot No.3, Survey No.271/3A (part), Mogappair Village, V.G.Panneer Nagar, Ambattur Taluk, Tiruvallur District measuring to an extent of 2487 sq.ft was purchased by the petitioner on 27.06.2005. The said Jeyakumar arranged only a part of the sale consideration and as requested by the said Jeyakumar the petitioner helped him by arranging loans from her own sources to make up the arrange of sale consideration. The said Jeyakumar wanted to construct a guest house over the above said property and asked the petitioner to supervise the construction and administer the proposed guest house. While, the construction was on progress, the said Jeyakumar due to deficiency of funds, asked the petitioner to arrange for funds from outside and complete the construction.

4. On the instruction of the Jeyakumar she mortgaged the property with the Anna Nagar Branch of Karur Vysya Bank and raised funds for further construction of the building. In the meantime, the said Jeyakumar executed a General Power of Attorney in the name of his brother, V.Parthiban. In order to protect the petitioner from the loan liabilities and in order to protect the property from any encumbrance by the said Parthiban, the petitioner settled a portion of the property in the name of the minor children of the petitioner with consent of the said Jeyakumar himself. The said Jeyakumar also assured the petitioner that he had instructed Parthiban to make monthly payments to the petitioner for the purpose of paying interest on loans and satisfying the loan commitments of the petitioner. But after the cancellation of the power of attorney of the petitioner they failed to honour their commitments.

5. The learned Chief Judicial Magistrate, Egmore, has gone into the records and found that the case for the prosecution is that the petitioner has power of attorney of one Jeyakumar gave the property as the security to the loan borrowed from the

defacto-complainant-Bank. But, subsequently, without the knowledge of the Bank, she sold a portion of land to her children. When the property is given as a security, he cannot deal with a property of the petitioner without the knowledge of the Bank and hence, rejected the case of the revision petitioner herein and framed the charge under Section 420 and 406 of I.P.C.

6. Heard both sides and perused the records.

7. It is seen from the records, a property in Plot No.3 in Survey No.271/3A (Part), V.G.Panneer Nagar, Mogappair Village, Ambattur Taluk, Tiruvallur District was owned by one V.Jeyakumar who is a the younger brother of the husband of the petitioner.

8. According to the complaint, she was given Power of Attorney which was subsequently duly authorized in the Tamil Nadu Registration Department. The accused-Manimegalai, who is a sister-in-law as a power agent and based upon the said Power of Attorney dated 13.05.2005 and she has raised loan to the tune of Rs.25,00,000/- amount from the defacto-complainant/Karur vysya Bank for making improvement and construction and in evidence their off mortgage. A memorandum of deposit title deed has been entered between the said Manimegalai as a general Power of Attoreny of the land owner-V.Jeyakumar and she has also borrowed the amount and made improvements in the plot and she availed loan in the year 2005 by mortgaging by deposit on 15.10.2005.

9. The terms of the agreement dated 15.10.2005 executed by the accused/petitioner as a Power of Attorney Mr.Jeyakumar, the defacto-complainant in favour of the second respondent and on perusal at clause 5, there is a specific clause stating that:

"The borrowers agree that they shall not during the continuance of the loan, let out or otherwise part with the possession of the property or any part thereof without the consent of the Bank in writing not shall be sell, mortgage, create any further charges or alienate the house property or any part thereof without the prior consent of the Bank in writing. It is also agreed that in the case the house property is rented out by the borrowers after containing the consent of the Bank the amount of monthly rent shall be paid to the Bank towards his/their liability in respect of the term loan".

10. When that being so, in exercise of the power given to the accused-Manimegalai during the subsistence of the said mortgage deed by deposit with the Karur Vysya Bank without the

knowledge of the Karur Vysya Bank or the principal, it appears that she had executed a sale deed in favour of her minor son and daughter and hence, the land owner, the Principal Jeyakumar have cancelled the General Power of Attorney given in favour of the present petitioner/accused Manimegalai and appointed his another brother Parthiban as a General Power of Attorney and filed a suit in O.S.No.78 of 2008 on the file of the District Munsif Court, Ambattur on 07.02.2008 for declaration that the said sale deed executed by the petitioner-accused Manimegalai in favour of her own son, on the ground that without the knowledge of the Bank as well as without the knowledge the principal declaration to declare those sale deeds are null and void and same was pending before the Civil Court.

11. At this juncture, the Mortgagee the Karur Vysya Bank gave a complaint to the Central Crime Branch, Egmore and it also appears from the statement of witnesses annexed with the Final Report filed by the first respondent herein. The land owner V.Jeyakumar also appears to have given a complaint against the accused herein before the first respondent.

12. After investigation, the first respondent-Police have filed a final report stating that during the subsistence of the mortgagee with the Karur Vysya Bank and without getting any consent or letter of intimation to the Karur Vysya Bank as well as the the land owner viz. the principal of accused herein have sold undivided share in the property thereby she has committed the offence under Section 406 and 420 of I.P.C. Further, in the final report statement of land owner Jeyakumar as L.W.2 were also recorded. The details of plaint in O.S.No.78 of 2008 were also collected from L.W.2 and filed thereon.

13. The learned counsel for the revision petitioner would submit that by merely creating a mortgage that will not forbear the owner from alienating by way of executing sale deed or a sale deed, it is only a charge that has been created over the suit property. Further the right of the ownership and Act of the ownership of the owner, who is a mortgagor, there is no impediment for her to execute the settlement deed or sale deed. However, here in the instant case, the owner of the property has not executed any sale deed or settlement deed in favour of the son and daughter of the accused herein. It is in exercise of the power confirmed by the L.W.2, it appears the accused herein has executed a sale deed in favour of her own minor as a General Power of Attorney of the land owner who is a mortgagor in the Bank without the consent and the prior approval of the principal..

14. It remains to be stated that the complaint has been

preferred by the Karur Vysya Bank, who lend the money on the deposit of title deeds. The facutm of execution mortgage deed by the accused as an agent of the owner Jeyakumar is not in dispute and during the subsistence of the mortgage, it appears and alleged that she had sold undivided of the property in favour of the her own son, showing the property as a vacant property and she has not obtained any consent or prior approval either from the principal nor intimated the matter to the Bank regarding execution of a sale deed and hence, considering the role played by the petitioner/accused is only that of the agent and L.W.2 being the principal of the property and while, the L.W.1 is the mortgagee bank which was advanced loan on the property. Based upon the memorandum of mortgage by deposit of title deeds executed by the accused herein, I am of the considered view that the matter is fit for trial and various allegations raised by the petitioner herein are matter for evidence to be tested during trial.

15. The plea raised by the petitioner herein as to:-

i) Whether a consent has been given by the owner of the property, viz., L.W.2 or not?

ii) Whether there was an intimation to the Bank before executing the sale deed in favour of the minor son and daughter of the accused are all for matter for trial

16. Based upon the material placed before this Court and sale deed dated 19.07.2006 and the plaint filed by the L.W.2, who is the owner of the property in O.S.No.78 of 2008 on the file of the District Munsif Court, Ambattur,

17. On perusal of the statement of the L.W.2, Jeyakumar who is the owner of the property which is in subject matter of the dispute. It appears that on going of the same, the alleged act of the accused who acted as a power agent of the land owner however without his knowledge and consent executed a sale deed in favour of her son and daughter and besides, in the said sale deed, he also described the property as a vacant site. While, already building has been constructed which has been raised from the loan availed from the L.W.1-Karur Vysya Bank.

18. It is also seen from the statement of L.W.2 Jeyakumar, (the owner of the land) that on coming to know about the misdeed committed by the petitioner/accused, he has duly cancelled the power of attorney given to the accused and thereafter, nominated his another brother V.Parthiban as his power of attorney through whom he has filed suit before the District Munsif Court, Ambattur for setting aside the sale deed as narrated in the proceedings paragraph also assumes significance.

19. In view of the above factual position taking advantage of the fact that the owner was is non-resident Indian, now in America, the petitioner without the knowledge of the owner as well as the Bank has effected the sale deed and hence, she has to stand the trial and face the charges, I am of the considered view that the various points raised by the petitioner herein to be met only during the course of the trial and it is not a fit case to exercise power under revisionary jurisdiction under Section 397 of Cr.P.C .

20. In this view of the matter, this Criminal Revision Petition shall stand dismissed. Consequently, connected Miscellaneous Petition is closed.

nvi

13.12.2017

BEING MENTIONED

This Matter having been listed to day i.e. Wednesday thrifty first October, two thousand and eighteen under the caption "For being Mentioned in pursuant to The order of this Court dated 13/12/17 made in Crl R.C.No555/2011 in the presence of the above said advocate the court made the following order:

Today, this revision is taken up under the caption 'for being mentioned'.

2. Heard both sides.

3. It is hereby directed that the trial Court shall dispose in C.C.No.16419 of 2008 uninfluenced by any of the findings and observations made in the judgment dated 13.12.2017 in Crl.R.C.No.555 of 2011, as the same are restricted only for the purpose of disposal of this revision petition.

4. In other respects, the earlier order dated 13.12.2017 shall remain un-altered.

nvi

31.10.2018

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

nvi

To

1.The Chief Metropolitan Magistrate, Egmore, Chennai.

2. The Public Prosecutor,
High Court of Madras.

3.The Section Officer,
Criminal Record Section,
High Court of Madras.

+1 CC to Mr.A.V.Radhakrishnan, Advocate (SR.No.88718)

+1 CC to M/s.Ahmad Associates, (SR.No.75246)

NR(CO)
MS:03/02/2018
GMY (12/11/2018)

CrI.R.C.No.555 of 2011 and
M.P.No.1 of 2011



WEB COPY