IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.20640 of 2010

1.Chettan Sharma
2.Rohinidiwari
3.Ponnusamy
4.Sutha Swaminathan
5.Mariyappan
6.Saminathan ... Petitioners/Accused

vs.

1.State by Inspector of Police,
District Crime Branch,
Coimbatore.

2.C.Vijayalakshmi ... Respondents/Complainants
(Impleaded the 2nd Respondent as per the order of this Court dated 29.9.2010 in MP.No.3 of 2010)

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.325 of 2010, on the file of the learned Judicial Magistrate No.6, Coimbatore and quash the charge sheet.

For Petitioners : Mr.S.V.Pravin Rathinam

For Respondent : Mr.R.Rajarathinam (for R1)
Public Prosecutor

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JUDGMENT

The petitioners have filed the present Criminal original petition invoking the inherent power of this Court under Section 482 of Cr.P.C. to quash the charge sheet in C.C.No.352 of 2010 for the offence under Sections 420, 506(ii) and 420 r/w 109 IPC on the file of the learned Judicial Magistrate No.VI, Coimbatore.

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2.The petitioners herein are arrayed as accused Nos.1 to 5 and 7 respectively in the above Criminal Case. It is their case that the above charge sheet is liable to be quashed on the ground that the same is abuse of process of law, since they have not involved in any of the offence as alleged in the charge sheet and in fact by giving a criminal colour to a civil dispute, the subject complaint was given by the defacto complainant, the 2nd respondent herein namely C.Vijayalakshmi to settle the civil dispute in her favour.

3.The brief facts required for the disposal of the above criminal original petition is as follows; that the above charge sheet in C.C.No.352 of 2010 for the offence under Sections 420, 506(ii) and 420 r/w 109 IPC came to be laid by the 1st respondent in furtherance of the complaint of the 2nd respondent. The case of the 2nd respondent before the 1st respondent is that she owned a land measuring about 0.91 acres in Ka.Sa.No.352/1b situated at Veerakeralam village and she entered into a sale agreement with the 1st respondent herein with respect of the above property by receiving an amount of Rs.2,00,000/- as advance. In pursuance of the above sale agreement and as per the demand of the 1st petitioner, the defacto complainant executed a deed of power of attorney dated 29.08.2005 in favour of the 1st petitioner and the 3rd petitioner. It was assured by the 1st petitioner that the entire sale consideration will be disbursed within a week. Subsequently, they paid a sum of Rs.75,000/- to the defacto complainant. However, the 1st petitioner failed to keep up his promise but had sold the portion of land measuring about 23½ cents to the 2nd petitioner herein by virtue of the sale deed dated 22.12.2005 by utilizing the general power of attorney standing in his name. Again the 1st petitioner on 19.01.2007 executed a sale deed for a land measuring about 23 ½ cents in favour of the 6th petitioner herein by receiving a sale consideration of Rs.1,25,505/-. Thereupon on 15.02.2007, the defacto complainant immediately cancelled the deed of power of attorney executed in favour of the 1st and 6th petitioners and the same was informed to them. The 2nd respondent defacto complainant, while cancelling the power deed executed in favour of 1st and 6th petitioners in turn executed a general power of attorney in favour of one Kalyanasundaram vide a document No.155/2007. Thereafter the said Kalyanasundaram being the authorized power agent of the defacto complainant herein sold a piece of land measuring about 44 cents in favour of one Haja Mohideen by a registered sale deed dated 24.04.2007. In the above said factual background, the 2nd petitioner by manipulating the date of sale as if it was executed on 24.04.2007 itself in

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favour of the 1st petitioner for a land measuring about 22 cents as if projecting the sale was made in the month of January, 2007 during the subsistence of the general power. Again the 1st petitioner knowing well about the cancellation of his power of attorney fraudulently executed a sale deed in favour of the 6th petitioner. Thus the above complaint was lodged by the 2nd respondent and the same was registered by the 1st respondent in Crime No.20 of 2009 and the same was culminated into C.C.No.352 of 2010 on the file of the aforesaid Court.

4.Further the 1st petitioner was charge sheeted for the offence under section 420 of IPC, as against the petitioner Nos. 1, 2 and 6 charge sheet was laid for the offence under Section 420 r/w 109 of IPC and as against the 3rd and 4th petitioners charge sheet was laid for their intentional aid in the above said execution of sale deeds. That apart it was found that the 5th petitioner namely Mariappan and one Mr.Jeyakumar were also involved in the offence of intimidating the 2nd respondent with regard to the above transactions.

5.The case of the petitioners is that they have never involved in any of the alleged offence as set forth by the 2nd respondent, in fact the de-facto complainant launched the criminal prosecution only to nullify an order of Interim Injunction made by the competent civil Court in I.A.No.840 of 2009 in O.S.No.833 of 2009 on the file of the learned Principal District Munsif Court, Coimbatore filed by the 1st petitioner. It is significant to note that the defacto complainant herein suffered an order of Injunction with respect to the above properties standing in the name of the petitioners. Therefore, immediately so as to whittle down the above Injunction order and to settle the issue in her favour as per her wish had come up with the present complaint on 09.06.2009. In fact a civil dispute had arisen prior to the launching of the prosecution with regard to the above properties between the petitioners and the respondent. Originally it was the defacto complainant who entered into the sale agreement by receiving the sale consideration, but with an expectation to extort and extract more money and with a view to alienate proportionate of property to some other person, had come up with the above criminal complaint.

6.The learned counsel for the petitioner in this regard had drawn the attention of this Court to the 161 statement made by the defacto complainant which is annexed in the page No.67 of the Typed set of papers and the relevant page No.69, wherein

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stating that she had executed the subsequent power of attorney deed dated 15.02.2007 in favour of Kalyanasundaram and the subsequent sale deed executed by Kalyanasundaram in favour Haja Mohideen were all executed on the advice of one Rangaraj, a Village Administrative Officer only in order to recover the property that had been previously sold by the petitioners and that the execution of the documents were nominal and only for this purpose. Therefore, the 2nd respondent with a fraudulent intention and in collusion with the said Kalyanasundaram and Haja Mohideen only launched the instant prosecution in furtherance to an adverse order passed against her by the Civil Court in the suit in I.A.No.840 of 2009 in O.S.No.833 of 2009.

7.The further contention of the learned counsel for the petitioners is that the 2nd respondent herein has no right to cancel the power of attorney deed executed in favour of the petitioners 1 to 4 unilaterally without any prior notice to them when right is created in the power of attorney coupled with interest. Therefore, it is contented that the unilateral cancellation of power of attorney deed is squarely hit by section 32-A of the Registration Act, 1908 and registration of such document is illegal. To strengthen the above said submission, the learned counsel for the petitioners drawn the attention of this Court to the following reported Judgments of this Hon'ble Court.

1. P.Rajagurusamy -Vs- The Sub-Registrar, reported in 2008 (1) 284 Madras
2. G.D.Subramaniam -Vs- The Sub-Registrar, reported in 2009 (1) CTC Madras.

8.But the learned counsel for the 2nd respondent would submit that the above judgments will have no application to the present case on hand as the same are relates to unilateral cancellation of Settlement Deed and Sale Deed. But the power of attorney deed can be cancelled unilaterally. The learned counsel would further submit that even by issuing a notice to the petitioners the power of attorney deed could be cancelled.

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9.The other contention of the learned counsel for the 2nd respondent is that the above suit is relates to declaration of sale deed executed by her after cancellation of the power of attorney deed executed in favour of the petitioners 1 and 2 as they have not paid the sale consideration and cheated her by executing sale deed after cancellation of power of attorney deed and therefore the civil suits in O.S.Nos.833 and 849 of 2009 is nothing do to with this criminal case. The 1st respondent after

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conducting proper investigation found that there is a prima facie case made out against the petitioners and laid the above charge sheet and the same cannot be quashed at the threshold without conducting trial.

10.The learned Public Prosecutor appearing for the 1st respondent has argued that prima facie material evidences are available as against the petitioners for their involvement in the above criminal case. The other circumstances will be proved by the prosecution only after trial and therefore it is not a fit case to exercise the inherent powers of this Hon'ble Court to quash the charge sheet.

11.I heard Mr.S.V.Pravin Rathinam, learned counsel for the petitioners and Mr.R.Rajarathinam, learned Public Prosecutor for the 1st respondent and perused the entire materials available on record.

12.A reading of the above said Judgments clearly demonstrates that an unilateral cancellation of a deed or instrument is legally impermissible and it is unenforceable in the eye of law for the reason that if a right is conferred upon a person by executing settlement deed or power deed or any other instrument, the person in whose favour such deed or instrument has been executed accrues and derives right. To nullify such right, the principal or settlor cannot take any right to cancel the instrument without issuing a notice expressing his or her intention to cancel the deed.

13.In the present case on hand, in the sale agreement executed by the 2nd respondent in favour of the 1st petitioner it has been specifically stated that she is ready to execute power of attorney in favour of any person as per the wish of the 1st petitioner. From the above, it is clear that right has been conferred to the petitioners 1 to 4 through the power of attorney deed dated 29.08.2005. Therefore, in my considered opinion the unilateral cancellation of power of attorney is not valid in the eye of law, but the same is subject matter of the suit referred above and therefore the above finding by this Court will not bind the civil Court in deciding the issue relating to the unilateral cancellation of power of attorney deed.

14.This Court has carefully considered the other submission of the learned counsel for the petitioners that whether the

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respondents have given a criminal color to a civil dispute? In this case, admittedly the 2nd respondent herein has executed two general power of attorney deeds in favour of the petitioners 1 to 4 on 29.08.2005 and sale agreement in favour of the 1st petitioner. The 2nd respondent also received sale consideration of Rs.2,00,000/- and Rs.75,000/-. On the basis of the above said deeds, sale deeds also executed by the respective parties. While so, the 2nd respondent claimed that she has not been paid the entire sale consideration and the petitioners have cheated her and therefore she has executed another power of attorney deed in favour of one Kalyanasundaram on 15.02.2007 after cancelling the earlier power deed executed in favour of the petitioners with respect of the very same property in dispute. Subsequently, the power of attorney agent, Mr.Kalyanasundaram has executed sale deed in favour of one Mr.Hajamohideen on 28.2.2008. To set aside the above said sale deed two suits have been instituted by the 1st and 6th petitioner in O.S.Nos.833 and 849 of 2009 before the Principal District Munsif Court at Coimbatore and obtained an order of interim injunction from disturbing the possession and enjoyment of the petitioners. When the very same title dispute is pending disposal before the competent civil Court, it is not proper for the 1st respondent police to lay charge sheet against the petitioners. From the above said factual back ground of the case, according to this Court, it is only a civil dispute. In this regard this Court would like to emphasis the legal preposition laid down in the following judgments:

1. G.Sagar Suri -Vs- State of U.P, reported in AIR 2000 SC 754
2. Indian Oil Corporation -Vs- NEPC India Ltd, reported in AIR 2006 SC 2780

15.In the above referred Judgments the Hon’ble Apex Court clearly held that in the present, it is necessary to take notice of a growing tendency in business circle to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/ creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. All efforts to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

16.The above said principle of law laid down by the Hon’ble Supreme Court would squarely applicable to the facts of the

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present case. In this case also, the 2nd respondent herein through the above criminal case giving pressure to the petitioners to settle the issue and the same cannot be allowed to stand.

17.Hence, in view of the discussion made above and in the light of the settled legal proposition, this Court finds that there is no prima facie case made out against the petitioners and it is a fit case to quash the charge sheet against the petitioner by exercising the inherent powers under Section 482 of Cr.P.C. to secure the ends of justice and to prevent the abuse of process of Court and law.

18.In the result, this Criminal Original Petition is allowed and the impugned charge sheet laid against the petitioners in C.C.No.352 of 2010 for the offence under Sections 420, 506(ii) and 420 r/w 109 IPC, on the file of the learned Judicial Magistrate No.VI, Coimbatore stands quashed. No costs.

Sd/-
Asst.Registrar (CS II )

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Sub Asst. Registrar

vs

To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.The Inspector of Police,
District Crime Branch,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.V.Pravin Rathinam, Advocate sr.no.19582

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