

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2017

DELIVERED ON : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1041 of 2016

Dr.S.Rajagopal
S/o.E.P.Sanjeevi

.... Petitioner

vs.

1.The Inspector of Police,
District Crime Branch,
Anti-Land Grabbing Special Cell,
Kanchipuram District.

2.A.Chidambaram
S/o.Annamalai Chettiar

3.T.Vijaya Gandesan
S/o.Thiruvengadam

4.V.Bhuvaneshwari
W/o.Vijaya Gandesan

5.S.Bhaktavachalam
S/o.Somasundaram

.... Respondents

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. against the order of learned Judicial Magistrate II, Chengalpet, passed in Crl.M.P.No.2427 of 2015 on 02.05.2016.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.M.Mohammed Riyaz,
Government Advocate [Crl.side][R1]
Mr.R.Muniyapparaj [R2]
Mr.R.Arul Dhas [R3 & R4]
Mr.P.Sam Jaba Singh [R5]

ORDER

This revision arises against the order of learned Judicial Magistrate II, Chengalpet, passed in CrI.M.P.No.2427 of 2015 on 02.05.2016.

2. Petitioner is the *de facto* complainant. It is the petitioner's case that second respondent had approached him, introduced himself as a broker dealing with purchase and sale of properties and informed that some properties were available for sale. Petitioner conveyed his intent to purchase property measuring an extent of 4000 sq.ft. comprised in Survey No.135/1 (Part) New Survey No.347/13, patta bearing No.620 of No.41, Pudhupaakam Village, Chengalpattu Taluk, Kancheepuram District and an unregistered agreement for sale dated 25.06.2002 has been entered into. Second respondent has agreed to sell the aforesaid property along with two other properties for a total sale consideration of Rs.6,50,000/-. Upon receiving entire sale consideration, second respondent handed over possession of original title deeds and other documents pertaining to the properties and executed a Power of Attorney in favour of petitioner in 2003. The accusation is that second respondent, without informing petitioner, has revoked the Power of Attorney in 2007 and executed another Power of Attorney in favour of third respondent registered as Document No.2807 of 2013 on the file of Sub Registrar Office, Thiruporur, on 04.03.2013. Third respondent executed a sale deed dated 07.03.2013 registered as document No.2961 of 2013 at the Sub-Registrar Office, Thiruporur, in favour of fourth respondent, who in turn sold the same to fifth respondent for Rs.60,86,400/- on 10.10.2013 vide Document No.14084 of 2013 on the file of Sub Registrar, Thiruporur. On coming to know about

the wrong doings of respondents 2 to 5, petitioner preferred a complaint before respondent police but no action was taken. Upon petitioner moving this Court in Crl.O.P.No.26417 of 2014 and obtaining directions therein, a case was registered in Crime No.67 of 2014 on the file of first respondent for offences u/s.120(b), 420 and 406 IPC. On completion of investigation, first respondent has informed that respondents 2 to 5 had no intention to deceive petitioner through impersonation and fabrication of documents. Petitioner has produced only the unregistered Power of Attorney and no registered documents or revenue records have been produced to substantiate his contention. In the alleged Power of Attorney executed by second respondent, there is no mention of the subject property. While petitioner/complainant has not produced any proof to substantiate the contention that he has given a sum of Rs.1,00,000/- through cheque bearing No.772047 drawn on State Bank of India, Adyar Branch, second respondent, has stated that he has received a sum of Rs.2,75,000/- from the petitioner/complainant. Given such position, it was clear that there was real estate business dealings between complainant and second respondent and money transactions in connection therewith. In the unregistered sale deed, no value was fixed for the property in Survey No.135/1, new Survey No.347/13. Though complainant pleaded that all documents pertaining to the subject property are with him, it was found that such documents are with fifth respondent. It was also found that second respondent having received a sum of Rs.6,50,000/- from petitioner/complainant towards sale consideration in respect of properties in (i) S.No.135/1, New S.No.347/13, (ii) S.No.108/15 and (iii) S.No.80/10A, has executed a Power of Attorney in favour of petitioner/complainant only in respect of

properties bearing S.Nos.108/15 and 80/10A and executed a sale deed in respect of other property viz., S.No.135/1, New No.347/13, in favour of others. As there was real estate business dealings between petitioner/complainant and second respondent and money transactions in connection there with and petitioner/complainant claims right over property after completion of ten years of agreement, a decision thereupon could be taken only by civil Courts. Finding as above, first respondent filed a final report informing the case to be 'civil in nature'. Petitioner has preferred a protest petition in C.M.P.No.2427 of 2015 on the file of learned Judicial Magistrate II, Chengalpattu, which came to be dismissed under the impugned order. There against, petitioner has preferred the present revision.

3. Learned counsel for petitioner submitted that having received the entire sale consideration from petitioner, second respondent failed to execute a sale deed in his favour and he has also revoked the Power of Attorney executed in favour of petitioner without his knowledge. Second respondent has duly acknowledged the receipt of Rs.6,50,000/-. Learned counsel submitted that respondents 2 to 5 have conspired and cheated petitioner. First respondent, without examining petitioner and other witnesses, has filed a final report informing the case to be 'civil in nature'. Learned counsel submitted that Court below has failed to consider that only after registration of case, second respondent obtained anticipatory bail. He failed to comply with the conditions imposed therein and filed a modification petition before this Court. Though first respondent agreed that there was a sale agreement between petitioner and

second respondent and that the second respondent has received the entire sale consideration, it erroneously has filed the final report informing the case to be 'civil in nature' without examining petitioner and other witnesses. Submitting that Court below, without properly appreciating the materials on records, has dismissed the protest petition moved by petitioner, learned counsel prayed that this revision be allowed.

4. Relying on the counter filed, learned counsel for respondents 2 to 5 submitted that originally the subject property belonged to one Manickam Mudaliar, who sold the property to Kumarasamy Mudaliar and Nithyandanda Mudaliar under registered Document No.499 of 1966 on the file of Sub Registrar, Tiruporur, dated 15.03.1966. Patta bearing No.620 to the property bearing Survey No.347/13, Pudupakkam Village, Chengalpet Taluk, Kancheepuram District, has been issued in the name of Nithyananda Mudaliar. The aforesaid persons sold the property to second respondent, who in turn executed a registered General Power of Attorney in favour of third respondent, who executed a sale deed dated 07.03.2013 in favour of fourth respondent vide Document No.2961 of 2013 on the file of Sub Registrar, Tiruporur. Fourth respondent has executed a sale deed dated 10.10.2013 in favour of fifth respondent vide Document No.14084/2013 on the file of Sub-Registrar, Tiruporur. The encumbrance certificate in respect of the subject property informs only the name of previous vendors and respondents 2 to 5 for the period 01.01.1966 to 09.08.2015. Till date, the name of fifth respondent is mentioned in the encumbrance certificate. Likewise, other original documents also stand in the name of previous vendors and respondents 2 to 5. On completion

of thorough investigation, a report has been filed informing the case to be 'civil in nature'. Moreover, civil suits filed by both parties are pending before civil Courts. Submitting as above, learned counsel prayed for dismissal of the revision.

5. Learned Government Advocate [Crl.side] would support the contention of learned counsel for private respondents and informed that upon due investigation and finding the matter to be civil in nature, a referred charge sheet stands rightly filed by first respondent. The order under challenge calls for no interference.

6. On consideration of materials before it, Court below has held as follows:

"It is stated in the petition, that the said Chidambaram had introduced himself to the petitioner as a broker and wanted to dispose some of his properties. Hence the petitioner expressed his willingness to purchase the properties. One such properties was vacant grama natham housing plot measuring an extent of 4000 sq ft comprised in survey number 135/1 (part), new survey no.347/13 with patta no.620 at 41, Pudhupakkam Village, Chengalpattu Taluk, Kancheepuram District for which they both entered into an Agreement for sale, dated 25.06.2002, wherein the said Chidambaram agreed to sell the above referred property to the petitioner along with 2 other properties for sale consideration of Rs.6,50,000/- and the petitioner paid the advance amount of Rs.1,00,000/-. It is submitted that the petitioner had paid the balance sale consideration on various dates through cash and a cheque dated 27.09.2003 for Rs.2,75,000/-. It is also submitted that the said Chidambaram had handed over all the original title deeds to the petitioner along with the possession of the said properties. But the prosecution in its counter had denied that

the meeting held in the year 2002-2003 between the petitioner and the said Chidambaram is false and stated that the de facto complainant/petitioner worked as scientist at abroad and did real estate business in and around Chennai, so he and the said Chidambaram are having dealings regarding real estate and the duos did a lot of activities. It is found that the prosecution is not denying the alleged Agreement for sale entered between them. But it is strongly denied by the prosecution that the said Chidambaram gave original documents to the petitioner as utter false and baseless, because the xerox copies only were produced by the petitioner to the police during investigation.

It is strongly emphasised by the prosecution that the alleged agreement to sell which is relied upon vehemently by the petitioner is valid only for 2 years from its date, and the period had lapsed, hence the validity of such agreement should be decided by competent Civil Court alone. It is also stated that the said agreement is an unregistered one and they had failed to state the sale price in the agreement pertaining to the property in dispute. It is also submitted that the power of attorney given to the petitioner in the year 2003 by the said Chidambaram, had been revoked by him during the year 2007 and had issued notice to the petitioner regarding such revocation, but the petitioner stated that the notice had not been received by him.

On perusal of records, it is found that the said Chidambaram have gave power of attorney to the petitioner in the year 2003, dated : 15.09.2003 registered as document No.1309/2003 with no consideration received from power of attorney. It is found that in the year 2007 the petitioner as power of attorney of the said Chidambaram had sold some of the property bearing survey No.80/10A measuring 78 cents to one Mr.Ramesh through a sale deed dated 28.07.20007

registered as document No.8688/2007 for a sale consideration of Rs.7,00,000/-. The said sale deed was executed by the petitioner. It is found that on 11.01.2007 the said Chidambaram had revoked the general power of attorney registered as document No.105/2007 there by revoking the general power pertaining to the said properties given to the petitioner dated 15.09.2003.

On perusal of documents it is found that the said Chidambaram had lodged 2 complaints against the petitioner and one Mr.Vivekanandan before the DCB Kancheepuram in Crl.No.54/2013 and 78/2013 and both the complaints were investigated and closed as mistake of fact as the case is of Civil Nature. The present complaint in Crl.No.67/2014 is the counter complaint given by the petitioner against the said Chidambaram for offences of cheating on criminal breach of trust and the said complaint has been registered by the respondent police by the order of Hon'ble High Court.

In the light of the above discussion, this court feels that this protest petition is devoid of merits and deserves to be dismissed and hence accordingly dismissed."

7. This Court finds itself in agreement with the reasoning of the Court below. As rightly pointed out by it, the Power of Attorney of the year 2003 executed by second respondent in favour of petitioner/complainant and cancellation whereof is sought to be made much of, does not even relate to the property in respect of which the petitioner now complains of offences having been committed against him. The present is a case of allegations and counter allegations. Parties are also before the civil Court. Criminal process cannot be used to meet civil ends.

The Criminal Revision Case is dismissed.

03.08.2017

Index:yes
Internet:yes
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To

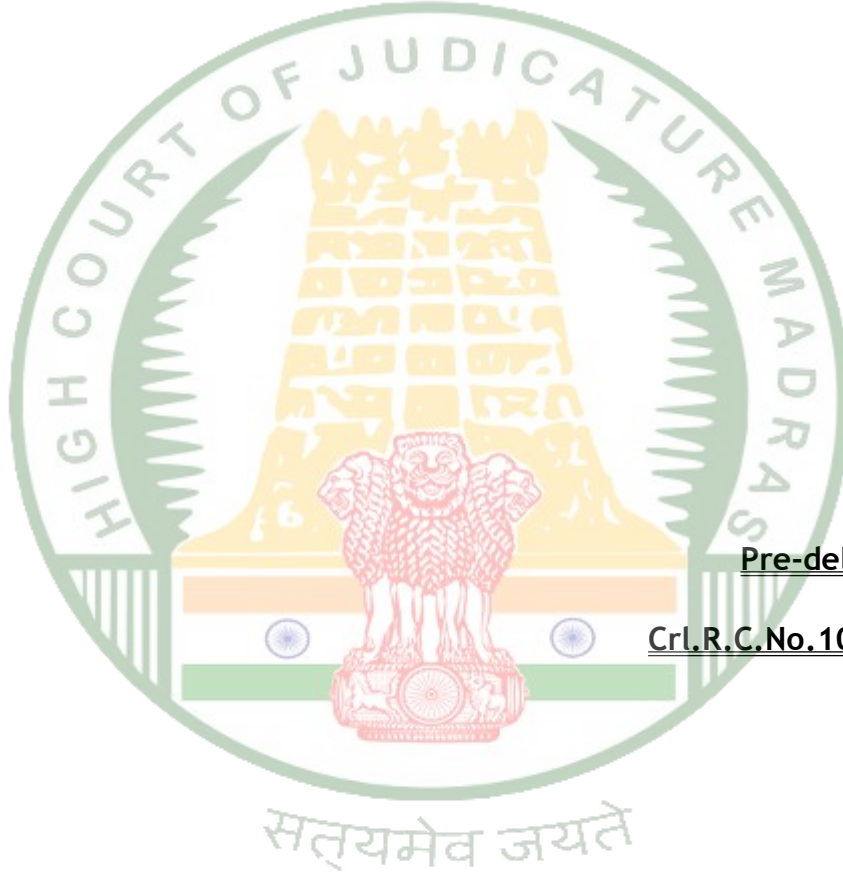
- 1.The Judicial Magistrate II,
Chengalpet.
- 2.The Inspector of Police,
District Crime Branch,
Anti-Land Grabbing Special Cell,
Kanchipuram District.
- 3.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

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Pre-delivery order
in
Crl.R.C.No.1041 of 2016

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