IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.27423 of 2010

1.B.Murali

2.N.Mala ... Petitioners

vs.

1.State, by the Inspector of Police,
Shankar Nagar Police Station,
Pammal, Chennai – 600 075.

2.S.K.Dhanasekaran ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.63 of 2010, on the file of the Judicial Magistrate, Tambaram, and quash the same.

For Petitioners :Mr.AR.L.Sundaresan, Senior counsel
for M/s.S.Mohammed Uduman

For Respondents : Mr.P.Govindarajan (for R1)
Additional Public Prosecutor

Mr.B.Thanikachalam (for R2)

JUDGMENT

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.63 of 2010, on the file of the learned Judicial Magistrate, Tambaram and quash the same.

2.The 2nd respondent/de-facto complainant lodged a complaint before the 1st respondent/Police making certain allegations against the petitioners herein and two others and in a nutshell, the prosecution story is as under.

3.One D.Mariappan, who was the owner of the property comprised in S.No.18/10, admeasuring to an extent of 726 Sq.ft. situated in Kundrathur Village, had executed a Power of Attorney in favour of the 2nd respondent/defacto complainant in respect of the said property on 09.09.2008. However, the said D.Mariappan cancelled the Power of Attorney granted to the 2nd respondent herein on 07.11.2008 and on the very same day, executed a Power of Attorney in favour of the 1st petitioner in respect of the disputed property. Thereafter, the 1st petitioner executed a sale deed in favour of the 2nd petitioner on 12.11.2008.

4.It is the further case of the 2nd respondent/defacto complainant is that the said D.Mariappan in cahoots with the 1st petitioner herein with an intent to cheat the 2nd respondent had caused huge loss to him, the 2nd respondent made a complaint to the 1st respondent/Police, who conducted enquiry and registered an F.I.R. in Crime No.442 of 2009 under Sections 406, 417, 418, 420 read with 506(ii) of the Indian Penal Code and filed a charge sheet on 04.05.2010 on the file of the learned Judicial Magistrate, Tambaram, Kancheepuram District.

5.It is the case of the petitioners that the property in question originally belonged to one S.Balakrishnan and he executed a sale deed on 03.05.2007 in favour of the said D.Mariappan. The said D.Mariappan had originally executed a Power of Attorney in favour of the 2nd respondent on 09.09.2008 and since the 2nd respondent acted against the interest of the said D.Mariappan and violated the terms of the Power of Attorney and acted beyond the capacity of the Power of Attorney, the said D.Mariappan cancelled the Power of Attorney executed in favour of the 2nd respondent on 07.11.2008 vide Document No.1283 of 2008 registered on the file of the Sub-Registrar Office, Pammal and the same was communicated to the 2nd respondent on 17.11.2008.

6.It is the plea of the petitioners that the said D.Mariappan executed a Power of Attorney in favour of the 1st petitioner on 07.11.2008 vide

Document No.1284 of 2008 registered on the file of the Sub-Registrar Office, Pammal, and on payment of the entire sale consideration to the said D.Mariappan, the 1st petitioner executed a sale deed in favour of the 2nd respondent.

7.The case of the petitioners is that the said D.Mariappan cancelled the Power of Attorney granted in favour of the 2nd respondent as the 2nd respondent acted in violation of the terms of the Power of Attorney and therefore, with an intention to wreak vengeance, the 2nd respondent with malafide intention and ulterior motive had lodged the complaint as an instrument of harassment, for seeking private vendetta to pressurize the accused.

8.Drawing the attention of this Court to the fact that the 2nd respondent has filed O.S.No.509 of 2009, on the file of the learned District Munsif, Sriperumbudur, to declare that the sale deed executed by the 1st petitioner to the 2nd petitioner dated 12.11.2008 as null and void and the suit is still pending adjudication by the Civil Court. It was pleaded by the petitioners that it is explicitly clear that the present criminal proceedings initiated by the 2nd respondent is nothing but an abuse of process of the Court.

9.In such circumstances, the petitioners were filed this Crl.O.P.

No.27423 of 2010 against the respondents for quash the charge sheet pending in C.C.No.63 of 2010, on the file of the learned Judicial Magistrate, Tambaram.

10.At this juncture, it is to be noted that on 03.03.2011, this Court granted an order of interim stay of the criminal proceedings initiated until further orders and the said interim order is still in force. As such, as on date, there is no progress in the criminal proceedings initiated at the instance of the 2nd respondent.

11.I heard Mr.AR.L.Sundaresan, learned senior counsel appearing on behalf of the petitioners, Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the 1st respondent and Mr.B.Thanikachalam, learned counsel appearing for the 2nd respondent and perused the entire records.

12.The learned senior counsel appearing for the petitioners contended that when the dispute is purely civil in nature (in respect of which the 2nd respondent had already filed a suit and the same is pending), the complainant cannot be allowed to resort to the criminal litigation converting the civil litigation into criminal litigation and the instant case is a classic example of abuse of process of the Court by the 2nd respondent with an ulterior motive and malafide intention to pressurize the petitioners and other accused to settle private scores and therefore, the criminal proceedings are liable to be quashed on this score alone. He further pleaded that the allegations made in the complaint do not constitute any offence under Sections 406, 417, 418, 410 and 506(ii) of the Indian Penal Code.

13.In support of the above submission, the learned senior counsel appearing for the petitioners placed reliance upon a decision of the Hon'ble Supreme Court in a case of ***Mohammed Ibrahim and Ors. v. State of Bihar and Anr.***, reported in ***(2009) 8 SCC 751***, wherein it was held as under:

> ".. 8.This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes

> of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”

14.The learned Additional Public Prosecutor appearing on behalf of the 1st respondent submitted that the pursuant to the filing of the charge sheet before the learned Judicial Magistrate, Tambaram, there was no further progress in view of the order of interim stay granted by this Court and in any event, at this stage, the proceedings should not be quashed.

15.The learned counsel appearing for the 2nd respondent contended that the 1st petitioner and the said Mr.D.Mariappan colluded with each other and failed to return the money and fabricated a document with an intention to cheat the 2nd respondent and therefore, the Court should not interfere with the criminal proceedings. He also produced the death certificate of the 2nd respondent, which shows that the de-facto complainant passed away on 13.06.2016. The said fact is recorded.

16.It is beyond any demur that the entire dispute revolves around the cancellation of the Power of Attorney by D.Mariappan in favour of the 2nd respondent and the execution of another Power of Attorney by D.Mariappan in favour of the 1st petitioner on the very same date, namely on 07.11.2008, and the consequent execution of Sale Deed by the 1st petitioner to the 2nd petitioner on 12.11.2008.

17.It is also not in dispute that the 2nd respondent has filed a Civil Suit in O.S.No.509 of 2009, on the file of the learned District Munsif Court, Sriperumbudur, arraying the petitioners herein also as parties and seeking a declaration that the sale deed executed by the 1st petitioner in favour of the 2nd petitioner on 12.11.2008 is null and void and not binding on the 2nd respondent. The said suit is also admittedly pending as on date.

18.It is not disputed by either side that this very property which is the subject matter of these criminal proceedings is also the subject matter of the civil suit pending in the Civil Court. The question as to the fabrication of documents and / or ownership of the property in dispute would be determined by the Civil Court only. The criminal proceedings have been put on the back burner for almost eight years. I do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the Civil Court.

19.Moreover, the allegations levelled in the criminal complaint are also the questions directly involved in the suit pending between the parties in a competent Civil Court. The allegation in this complaint is that document had been fabricated by the accused persons. In my considered opinion, the ultimate result of the suit will have a direct bearing on the allegations raised in the complaint lodged by the 2nd respondent. In case in the civil suit, a finding is rendered that the document under challenge is fabricated, certainly the legal representatives of the de-facto complainant, if they are so advised, have a statutory right to move the criminal machinery for prosecution. In the light of these facts, I am of the view that the continuance of prosecution is an abuse of the process of Court. However, it is made clear that this will not deprive the legal representatives of the de-facto complainant, if they are so advised, of their right to approach the Court after culmination of the suit, if law permits.

20.Therefore, very filing of the complaint by the 2nd respondent, who alleged to be the Power of Attorney of the said D.Mariappan and have no valid right to the 2nd respondent/defacto complainant, when transfer of the property has not taken place in favour of the 2nd respondent/defacto complainant but he made claim only based on the Power of Attorney, which would not constitute any criminal offences against the petitioners. Therefore, this Court warranting interference in the charge sheet filed in C.C.No.63 of 2010, on the file of the learned Judicial Magistrate, Tambaram, and accordingly, the same is liable to be quashed.

21.In the result:

(a) this Criminal Original Petition is allowed;

(b) the charge sheet filed in C.C.No.63 of 2010, pending on the file of the learned Judicial Magistrate, Tambaram, is quashed. Consequently, connected miscellaneous petitions are closed.

18.09.2017

vs

Speaking order

Index : Yes

To

The Inspector of Police,
Shankar Nagar Police Station,
Pammal, Chennai – 600 075.

M.V.MURALIDARAN,J.

vs

Pre-Delivery Judgment in Crl.O.P No.27423 of 2010 and M.P.Nos.1 and 1 of 2010

18.09.2017