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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
Crl.R.C.(MD)Nos.461 to 464 of 2015

and

M.P.(MD)No.1 of 2015 in all Crl.R.Cs.

1. Immanuvel Grate,
Document Writer,
Panjampatti,
Aathur Taluk,
Dindigul District.

... Petitioner/A4 in
Crl.R.C.No.461 of 2015

2. Joseph Yugin

.... Petitioner/Accused No.3
in Crl.R.C.(MD)No.462 of 2015

3. Nirmala Sahayarani

... Petitioner/Accused No.2
in Crl.R.C.(MD)No.463 of 2015

4. Amaldoss Henry

.... Petitioner/Accused No.1
in Crl.R.C.(MD)No.464 of 2015

Vs.

The State,
Represented by the Inspector of Police,
Taluk Police Station,
Dindigul.
Crime No.62 of 2014.

... Respondent/Complainant
in all Revision Cases

2. Joseph Selvaraj
(R2 impleaded as per order of
this Court made in Crl.M.P.
(MD)No.6686 of 2017 in Crl.RC.
(MD)No.461 of 2015, dated
10.08.2017.)

... 2nd Respondent
in Crl.R.C.Nos.461 & 464/2015

PRAYER: Criminal Revisions filed under Section 397 r/w. Section 401 of Cr.P.C., against the order in Cr.M.P.Nos.5002 to 5005 of 2014 in C.C.No.161 of 2014, dated 06.08.2015 on the file of the Judicial Magistrate No.1, Dindigul.

For Petitioners	:	Mr.N.Sathish Babu
For R1	:	Mr.C.Mayilvahana Rajendran
	:	Additional Public prosecutor
For R2	:	Mr.M.Sivakumar

C O M M O N O R D E R

Challenging the order dismissing the petitioners' applications discharging them from the charges, the present Revision Petitions have been filed.

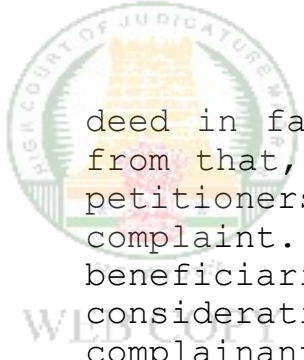
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2. The petitioners in the revision petitions are the accused Nos.1 to 4 and all stood charged for the offences under Sections 294(b), 468, 420 and 506(ii) of I.P.C., and they have filed the petitions to discharge them from the criminal charges. The Court below dismissed the discharge petitions. Now, challenging the above said orders, the present Revision Petitions have been filed.

3. The case of the prosecution in brief is as follows:

A1 in this case is the father of the de-facto complainant, A2 is his sister, A3 is the husband of A2 and A4 is a Document Writer. The de-facto complainant is the owner of the property in Survey Nos.450/4B and 450/541, at Seelapadi Village, Authur Taluk, to the total extent of 27 cents. Since the de-facto complainant was working in abroad, he executed a power of attorney in favour of A1, who is the father of the de-facto complainant, in respect of the above mentioned property and some other properties. Thereafter, in the year 2005, the de-facto complainant came to India and settled down at Dindigul. In the year 2010, at the request of A1, the de-facto complainant executed two settlement deeds in favour of A2 and another sister to an extent of 5898 ¼ sq.ft. and 3736 1/8 sq.ft. of house sites respectively in the above said Survey Numbers. While executing the above said settlement deeds, he has retained a 12 feet pathway as a common pathway, enabling the parties to reach their property. Thereafter, in the year 2013, A1, in this case, has executed a sale deed in respect of the common pathway in favour of second accused, whereby preventing the de-facto complainant, to use the common pathway to reach his property. When he questioned the same, A2 and A3 had abused him filthy language and criminally intimidated him and the 4th accused, who is a Document Writer has prepared a settlement deed in favour of A2 and another person, earlier has also prepared the second sale deed in collusion with the other accused. In the above circumstances, the de-facto complainant filed a complaint before the respondent police and the same was registered in Crime No.62 of 2014 for the above said offences. After investigation, the respondent police also filed a charge sheet. Thereafter, the petitioners filed the above discharge petitions and the trial Court dismissed the same. Now, challenging the same, the present revision petitions have been filed.

4. The learned counsel appearing for the petitioners would contend that A1 in this case is a father and power of attorney of the de-facto complainant and the power of attorney was not cancelled and using the power given to A1, he has executed a sale

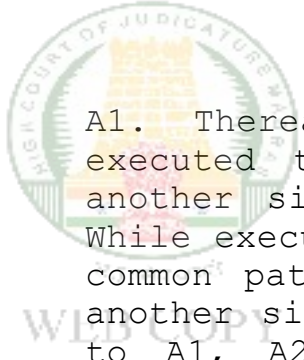


deed in favour of A2 and he has not committed any offence. Apart from that, it is only a civil dispute between the parties and the petitioners had given criminal flavour to the same and filed a complaint. So far as A2 and A3 are concerned, they are only beneficiaries. They have purchased the property for a valuable consideration from A1, who is the power agent of the de-facto complainant and they have not committed any offence. So far as A4 is concerned, who is only the Document Writer and he has only written the document. Apart from that, he has no role to play in the above occurrence and he has been falsely implicated in this case.

5. Per contra, the learned counsel appearing for the second respondent/de-facto complainant would contend that even though the de-facto complainant executed a power of attorney in favour of A1, subsequently, during the pendency of power deed, he has settled the entire property in favour of A2 and another sister and also retained 12 feet path way as a common pathway for the use of his sisters and the de-facto complainant. In the above circumstances, the power deed executed in favour of A1 has been impliedly revoked under Section 207 of the Indian Contract Act. Thereafter, A1 has no authority to execute a sale deed, that too as if he has received a sum of Rs.1,50,000/- from A2 on behalf of the de-facto complainant to discharge his personal loan. After fully knowing that the settlement deed has been executed at the instance of A1 and fully aware of the fact that already the de-facto complainant has settled the property in favour of his sisters, A2 and A3 have deliberately conspired together and cheated the second respondent/de-facto complainant and when he questioned the same, they also abused him with filthy language and criminally intimidated him. Apart from that, A4 is a Document Writer, who prepared the earlier settlement deed executed by the de-facto complainant and he deliberately in collusion with the other accused prepared the sale deed and it has been registered through him. Hence, he has also committed the offence. The Court below after considering the entire materials available on record, has rightly dismissed the applications and there is no reason to interfere with the order passed by the learned Judicial Magistrate No.I, Dindigul.

6. Heard Mr.N.Sathish Babu, learned counsel appearing for the petitioners, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the first respondent and Mr.M.Sivakumar, learned counsel appearing for the second respondent/de-facto complainant and perused the materials available on record carefully.

7. Considering the above submissions, it is an admitted fact that the de-facto complainant is the owner of the property. It is further admitted that in respect of the above property, the de-facto complainant has executed a power of attorney in favour of



A1. Thereafter, in the year 2010, the de-facto complainant executed two settlement deeds in favour of A2/his sister and another sister in respect of the above said disputed property. While executing the settlement deed, he has retained 12 feet as a common pathway for the use of the de-facto complainant, A2 and another sister. The factum of the settlement deed is fully known to A1, A2 and A3. Thereafter, in the year 2013 without the knowledge of the 2nd respondent, A1 executed a sale deed in favour of A2 in respect of the above said property. A perusal of the sale deed, it is seen that A1 sold the property in favour of A2 as a power of attorney of the de-facto complainant and it is also stated that for a sale consideration, a sum of Rs.1,50,000/- has been received on behalf of the de-facto complainant to discharge the de-facto complainant's loan and other expenses. A4 is a Document Writer and he prepared the earlier settlement deed and he also fully aware of the settlement deed. Subsequently, he prepared the sale deed and got it registered in favour of A2. Now, the only contention of the learned counsel for the petitioners is that at the time of execution of sale deed, a valid power of attorney was in the name of A1 and by virtue of the above power of attorney, he executed the sale deed.

8. But, the contention of the learned counsel for the petitioners cannot be countenanced for the simple reason that A1 is the father of the de-facto complainant and A2 is his sister and the earlier settlement deed was executed in favour of A2 and another sister by the de-facto complainant, wherein a pathway has been reserved as a common pathway. As rightly contended by the learned counsel for the petitioners that once the entire property for which the power given to A1 has been disbursed by the de-facto complainant and the power deed executed in favour of A1 has been impliedly revoked under Section 207 of the Indian Contract Act. After fully knowing the fact that the common path way was provided in the earlier settlement deed, A1 deliberately sold the property in favour of A2, that too stating that the sale consideration has been used to discharge of 2nd respondent loan amount. A4, who is the Document Writer, was written the earlier settlement deed, also deliberately prepared the second sale deed and get it registered. The materials available on record shows that when the de-facto complainant questioned the same, A2 to A3 scolded him and criminally intimidated him.

9. It is settled law that at the time of framing charges, the Court cannot conduct roving enquiry and the Court has to see any prima facie case is made out to proceed against the accused. From the materials available on record, I am satisfied that a prima facie case is made out against the petitioners to proceed against them and the Court below also considered the entire materials available on record and dismissed all the applications and I find no illegality or irregularity in the order passed by the Court below and these Revisions are deserves to be dismissed.



10. Accordingly, these Criminal Revision Cases are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Dindigul.
- 2.- Do - Through The Chief Judicial Magistrate,
Dindigul.
3. The Inspector of Police,
Taluk Police Station,
Dindigul.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Coordinator,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.P.ANDIRAJ, Advocate SR.No. 78509

Cr1.R.C.(MD)Nos.461 to 464 of 2015
13.09.2017

AKV/LS
JM/SV MMS/SAR 1/15.12.2017/5P/7C