

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.9124 of 2012
and
M.P.Nos.1 & 2 of 2012

1.B.Chengalvarayan
2.Muniammal
3.C.Manikandan
4.D.Sivasankar
5.G.Saravanan

.... Petitioners

Vs.

1.State represented by
The Inspector of Police,
District Crime Branch,
Tiruvallur District.
(Crime No.1 of 2011)

2.K.Subramani

... Respondents

(R2 is impleaded as per the order of
this Hon'ble Court dt:20.12.2017
made in Crl.M.P.No.16320/2017 in
Crl.O.P.No.9124/2012)

Prayer: Criminal Original Petition filed under Section 482 of
Cr.P.C., praying to call for the records in C.C.No.187 of 2011
on the file of the Judicial Magistrate No.I, Ponneri and
consequently quash the same as illegal, improper and not
maintainable in law.

For Petitioners: Mr.S.Kasirajan

For Respondents: Mr.G.Ramar
Government Advocate (Crl.Side) for R1
Mr.R.Sasikumar for R2

O R D E R

This petition has been filed by the accused Nos.1 to 5 to
quash the proceedings in C.C.No.187 of 2011 on the file of the
Judicial Magistrate No.I, Ponneri.

2. The learned counsel for the petitioners has submitted that the second respondent gave a complaint stating that the first petitioner had executed a power of attorney in favour of the second respondent's father namely B.Kuppan on 17.10.2005 in respect of the properties situated in Survey No.164/1B measuring about 28 cents; Survey No.164/3 measuring about 97 cents; Survey No.172/2A measuring about 2.17 acres and Survey No.173/2A measuring about 42 cents totally 3.84 acres of Pagalmedu Village. He further submitted that the said Kuppan died in the year 2008 and on his death, the said power of attorney was automatically cancelled. However, on 02.04.2009, the first petitioner has formally cancelled the power of attorney and executed a settlement deed in favour of the second petitioner, who is the wife of the first petitioner on 09.04.2009. He further submitted that the second respondent has stated in his complaint that by cancelling the said power of attorney and executing the settlement deed in favour of the second petitioner, the petitioners herein have committed offences punishable under Sections 420, 468, 471 r/w 34 IPC and based on the said complaint, the first respondent has registered a case in Crime No.1 of 2011 and after investigation, he filed a charge sheet and based on the said charge sheet, the learned Judicial Magistrate No.I, Ponneri, has taken the case on file in C.C.No.187 of 2011. He further submitted that after the death of the said Kuppan, the second respondent has executed a sale deed in favour of one Ramesh on 06.04.2009 and the said sale deed is not valid in law. He further submitted that after registering the case in Crime No.1 of 2011, on 14.01.2011, the second respondent took the first petitioner with the help of police and forced the first petitioner to execute a cancellation deed of settlement deed dated 09.04.2009 and after cancellation of the said settlement deed, the second respondent with the help of police again obtained a sale deed from the first petitioner by force on 14.01.2011 itself. He further submitted that in respect of obtaining the aforesaid sale deed, the second petitioner has filed a suit in O.S.No.35 of 2011 on the file of the Subordinate Court, Tiruvallur and the same is still pending and therefore, he prayed to quash the proceedings against the petitioners herein in C.C.No.187 of 2011 on the file of the Judicial Magistrate No.I, Ponneri.

3. The second respondent has filed a counter reiterating the allegations made in the complaint.

4. The learned counsel for the second respondent has submitted that the first petitioner and the father of the second respondent viz., Kuppan are brothers and they got ancestral

properties in Pagalmedu Village. He further submitted that some of the properties stood in the name of the first petitioner and some of the properties stood in the name of the second respondent's father namely Kuppan. He further submitted that on 10.10.2005, the first petitioner got sale deed from the said Kuppan in respect of the properties situated at Khadarvedu Village by force and executed a power of attorney in favour of the said Kuppan in respect of the properties situated at Pagalmedu Village and subsequently, without the knowledge of the said Kuppan's family members, the first petitioner fraudulently cancelled the said power of attorney and executed a settlement deed in favour of his wife viz., the second petitioner herein on 09.04.2009. He further submitted that the cancellation of the said power of attorney and execution of the settlement deed by the first petitioner in favour of the second petitioner would amount to cheating and also grabbing of the properties of the second respondent and hence, the second respondent has lodged a complaint. Based on the said complaint, the first respondent has registered a case and after investigation, he filed a charge sheet under Sections 420, 468, 471 r/w 34 IPC and hence, there is a prima facie case against the petitioners and therefore he prayed to dismiss the petition.

5. It is an admitted fact that on 10.10.2005, the second respondent's father viz., Kuppan and one Venkatammal have executed a sale deed in favour of the first petitioner in respect of the properties situated at Khadarvedu Village measuring about 4.61 acres. It is also an admitted fact that on the very same date, the first petitioner had executed a registered general power of attorney in favour of the second respondent's father viz., Kuppan with regard to the properties situated at Pagalmedu Village measuring about 3.84 acres. The only grievance for the second respondent is that the first petitioner has cancelled the general power of attorney without any intimation and communication to the second respondent and his family members and executed a settlement deed in respect of the aforesaid properties in favour of his wife viz., the second petitioner herein on 09.04.2009.

6. The second respondent has admitted in the complaint and also in the counter statement that his father viz., Kuppan died in the year 2008 and that being so, the power of attorney which was executed in favour of the said Kuppan would automatically cancelled and thereafter, his legal heirs cannot claim any right through the said power of attorney. On the death of the agent viz., Kuppan, the said power of attorney came to an end. Merely because the first petitioner has executed a cancellation deed on 06.04.2009 it cannot be said that only on that date the power of

attorney was cancelled. Already the said power of attorney terminated as per the law. After termination of power of attorney, the first petitioner has executed a settlement deed in favour of the second petitioner. The said act cannot be termed as cheating the second respondent or his family members.

7. It is also to be pointed out that based on the complaint given by the second respondent, the first respondent has registered a case on 13.01.2011 and thereafter, on 14.01.2011 itself, the second respondent has got a cancellation of the settlement deed dated 09.04.2009 and also obtained a sale deed in favour of the second respondent. Admittedly, a suit in O.S.No.35 of 2011 has been filed before the Subordinate Court, Tiruvallur by the second petitioner stating that the aforesaid sale deed has been obtained by force and the said suit is still pending.

8. As already pointed out that since on the date of death of the agent viz., Kuppan, the power of attorney dated 10.10.2005 came to an end, subsequently, the execution of the settlement deed on 09.04.2009 by the first petitioner in favour of the second petitioner would not amount to cheat the second respondent. So, the continuation of criminal proceedings against the petitioners herein is an abuse of process of law. Therefore, the said proceedings are liable to be quashed.

9. In the result, this Criminal Original Petition is allowed. The Proceedings against the petitioners in C.C.No.187 of 2011 on the file of the Judicial Magistrate No.I, Ponneri is quashed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

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सत्यमेव जयते

Sub Assistant Registrar

gsi/vsa

To

1. The Judicial Magistrate No.I,
Ponneri.
2. The Inspector of Police,
District Crime Branch,
Tiruvallur District.

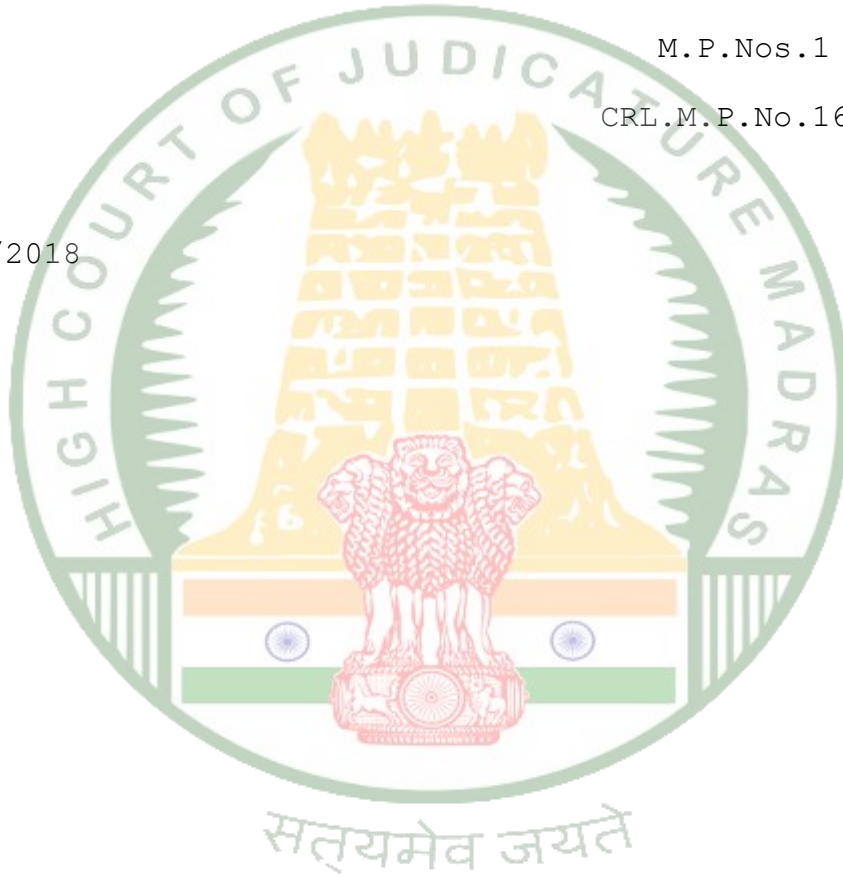
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3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.S.Kasirajan, Advocate Sr.66873
+1cc to M/S.R.Sasikumar, Advocate Sr.67591

CRL.O.P.No.9124 of 2012
and
M.P.Nos.1 & 2 of 2012
and
CRL.M.P.No.16320 of 2017

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srg 15/11/2018



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