IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.5041 of 2013
and
Crl.M.P.Nos.1 and 2 of 2013

K.Vasudevan ... Petitioner/Accused 2

Vs.

1.The State Represented by
Inspector of Police,
Crime Branch C.I.D.,
Kancheepuram.
(Cr.No.73 of 2009)

2.Maganth Pasanth Doss ... Respondents/Complainant/ Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for records and quash the charge sheet filed in C.C.No.39 of 2012, Judicial Magistrate No.I, Chengelpet.

For Petitioner : Mr.S.Agilesh Kumar, for Mr.D.Baskar

For R1 : Mr.B.Arul Mozhi Maran Government Advocate (Crl.side)

For R2 : Mr.S.Ravi

O R D E R

This petition has been filed by the accused No.2 to quash the proceedings against him in C.C.No.39 of 2012 on the file of the Judicial Magistrate No.1, Chengelpet.

2. The second respondent herein had lodged a complaint before the first respondent stating that the petitioner herein was serving as a legal advisor for him; that on 01.08.2007, he

executed a lease deed in respect of 9.50 acres in favour of ''People Progressive Trust'', and at that time, the accused No.1 (Selvaraj) and the accused No.2 (the petitioner herein) taking advantage that he does not know to read Tamil, had obtained signatures in the power of attorney also as if he had executed the general power of attorney in favour of one Vasanthan and Radhakrishnan on 30.07.2007. Based on the said complaint, the first respondent had registered a case in Crime No.73 of 2009 and investigated the case and filed a charge sheet against the said Selvaraj and the petitioner herein under Sections 120(B), 420 and 468 IPC. Based on the said charge sheet, the learned Judicial Magistrate No.I, Chengalpet, has taken the case on file in C.C.No.39 of 2012 and issued summons to the accused No.1 and accused No.2 (petitioner herein). After receipt of the said summons, the petitioner herein has filed the present petition under Section 482 Cr.P.C. to quash the proceedings against him.

3. Heard Mr.S.Agilesh Kumar, learned counsel for the petitioner; Mr.B.Arul Mozhi Maran, learned counsel for Government Advocate (Crl.side) appearing for the first respondent and Mr.S.Ravi, learned counsel for the second respondent.

4. The learned counsel for the petitioner has submitted that the only allegation against the petitioner is that at the time of getting signature in the lease deed, which was executed in favour of People Progressive Trust, Vellore, in respect of 9.5 acres, the accused No.1 and the petitioner herein fraudulently obtained signatures in the general power of attorney dated 30.07.2007 and the said power of attorney has been executed in favour of one Vasanthan and Radhakrishnan. He further submitted that though the said power of attorney was executed on 30.07.2007, till the same was cancelled by the second respondent on 20.07.2009, the said Power of Attorney was not at all used and hence, it cannot be said that the petitioner herein has acted with dishonest intention. He further submitted that the said Power of Attorney subsequently has been cancelled by the second respondent on 20.07.2009 and in the said document, nowhere it is stated that the petitioner herein also took an active role in getting signatures in the said general Power of Attorney and hence, there is no material to proceed against the petitioner herein and therefore, he requests to quash the proceedings against the petitioner.

5.The learned Government Advocate (Crl.side), who is appearing for the first respondent has submitted that based on the complaint given by the second respondent, the first respondent has registered an F.I.R. in Crime No.73 of 2009 under Sections 120(B), 420 and 468 IPC against seven persons. He further submitted that during investigation, the said Vasanthan and Radhakrishnan (power of attorney holders) have stated that they have no knowledge about the execution of the said power of attorney in their favour and only in the year 2009, when the petitioner herein approached them and made a request with them to execute a sale deed in respect of the properties belonging to the second respondent stating that already the second respondent had executed a general power of attorney in favour of them. He further submitted that the said persons did not believe the words of the petitioners herein and they refused to execute the sale deed in his favour and hence, the petitioner herein had shown a xerox copy of the said general power of attorney with them and after receiving a copy of the said document, they consulted with their advocate and only thereafter, they came to know that at the time of executing the lease deed on 01.08.2007 in favour of People Progressive Trust, Vellore, the petitioner herein along with the accused No.1 had fraudulently obtained signatures from the second respondent herein and also with them and they have categorically stated in their statement that they have not committed any offence. He further submitted that based on the statements given by the said persons and also the statement given by the second respondent and other witnesses, the first respondent had filed a charge sheet against the petitioner herein and one Selvaraj under Sections 120(B), 420, 468 IPC. He further submitted that the statements recorded under Section 161 Cr.P.C. would clearly prima facie show that the petitioner herein is involved in the above crime and therefore, he prayed to dismiss this petition.

6. The learned counsel for the second respondent has submitted that the second respondent does not know English and he can understand Tamil if any one talks with him in Tamil, but, he does not know to write and read Tamil. He further submitted that the second respondent can read Hindi only and he can sign only in Hindi. He further submitted that the second respondent is the Madathipathi of the Mutt, which is situated at Kancheepuram and in order to manage the properties of the said Mutt, he employed the first accused Selvaraj and the said first accused had introduced the petitioner herein who is a practising advocate and his wife Tmt.Revathi, who is also an advocate. He further submitted that the petitioner herein and his wife used to give legal advice to the second respondent and the second respondent reposed confidence on them. He further submitted that on 01.08.2007, a lease deed was executed in respect of the properties measuring about 9.5 acres belonging to the Mutt in favour of People Progressive Trust, Vellore, and at that time, the petitioner herein and the first accused were present in the

Sub-Registrar Office and misrepresented that only lease deed was executed and believing their words, the second respondent had signed in the lease deed and also in the general power of attorney which was already prepared by the accused persons in favour of one Vasanthan and Radhakrishnan. He further submitted that the second respondent has signed without knowing the contents of the documents because he is not able to read Tamil. He further submitted that after obtaining the said power of attorney in favour of one Vasanthan and Radhakrishnan, the petitioner herein attempted to get transfer of the properties of the Mutt in his name and also compelled the power of attorney holders viz., Vasanthan and Radhakrishan to execute a sale deed but they refused to execute the documents. He further submitted that the second respondent came to know about the said document through one Sudarmani, when the said Sudarmani shown a xerox copy of the said document and immediately he cancelled the said document on 20.07.2009 and thereafter, lodged a complaint before the police. He further submitted that the police after registering the case had investigated the matter. During investigation, the said alleged power of attorney holders have categorically stated before the police that without their knowledge, the petitioner herein had prepared a general power of attorney in their names and obtained signatures from the second respondent and therefore, sufficient materials are available to proceed against the petitioner herein and therefore, he prayed to dismiss the petition.

7. It is seen from the typed set of papers filed by the petitioners that on 06.10.2009, the second respondent had sent a complaint to the Superintendent of Police, Kancheepuram District. In the said complaint, he had stated that on 16.08.2009, one Sudarmani has shown a xerox copy of the general power of attorney said to have been executed by the second respondent on 30.07.2007 in favour of one Vasanthan and Radhakrishnan and only thereafter, he came to know that the said power of attorney had been created by the petitioner herein. He further stated that on 01.08.2007, he had executed a lease deed in favour of one People Progressive Trust in respect of 9.50 acres and at that time, the petitioner herein and the accused No.1 had obtained signatures in the said power of attorney also. He further stated that he had cancelled the said power of attorney on 18.08.2009. But a perusal of the copy of the cancellation deed of power of attorney shows that it was executed on 20.07.2009. So, it is clear that even prior to 20.07.2009, the second respondent got knowledge about the power of attorney which was said to have been executed in favour of Vasanthan and Radhakrishan on 30.07.2007. Therefore, the allegation made in the complaint that only on 16.08.2009, he came to know through Sudarmani with regard to the execution of

the said power of attorney is totally false. It is also to be pointed out that in the said cancellation deed dated 20.07.2009, the second respondent has made allegations against the accused No.1 alone. He has not stated that the petitioner herein also took an active role in getting signature from him. So, it is clear that only as on after thought, he has lodged a complaint stating that the petitioner herein also has actively participated in getting signature in the power of attorney.

8. In the statements recorded under Section 161 Cr.P.C., the alleged power of attorney holders viz.,Vasanthan and Radhakrishnan have stated that the petitioner herein had shown xerox copy of the power of attorney at the end of the year 2009 and requested them to execute a sale deed in his favour. But on 20.07.2009 itself, the second respondent had executed the cancellation deed and that being so, the statement of the witnesses viz., Vasanthan and Radhakrishnan that the petitioner herein had shown the xerox copy of the power of attorney and made a request to execute a sale deed in his favour is also against the facts. So, even the allegations made in the charge sheet and the F.I.R. are taken as true at the face value, the petitioner herein cannot be convicted for the offence under Sections 120(B),420, 468 IPC.

9. For the aforesaid said reasons, this Court is of the view that the continuance of the proceedings against the petitioner herein would amount to abuse of process of Court. Hence, this Criminal Original Petition is allowed. The proceedings against the petitioner in C.C.No.39 of 2012 on the file of the Judicial Magistrate No.I, Chengalpet, alone is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsa

To

1. The Judicial Magistrate No.I,
Chengelpet.

2. The Inspector of Police,
Crime Branch C.I.D., Kancheepuram.

3. The Public Prosecutor,
   Madras High Court.

Copy To:
   The Section Officer,
   Criminal Section, High Court, Madras.

+1 cc to Mr.R.Gururaj, Advocate SR.No.88907
+1 cc to Mr.Baskar, Advocate SR.No.89069

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and
Crl.M.P.Nos.1 and 2 of 2013

SSV(CO)
CSL/06.02.2019