

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Cr1.OP.No.6178 of 2013

and

M.P.No.1 of 2013

Dr.R.Manivannan

...Petitioner/Accused No.1

Vs.

1. State rep. by
The Station House Officer,
Neravy Police Station,
Karaikal District.
Pondicherry.
(Crime No. 129 of 2008)

2. Nirmaladevi
(Impleaded 2nd respondent as per the order
dated 18.09.2013 in M.P.03 of 2013)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.103 of 2012 on the file of learned Judicial Magistrate No.II, Karaikal, peruse and quash the same.

For Petitioner : Mr. R.Sreerangan

For Respondents: Mr.D.Bharath Chakravarthy
Public Prosecutor (Pondicherry)
for R1

: No Appearance for R2

ORDER

This petition has been filed by the accused No.1 to quash the proceedings against him in C.C.No.103 of 2012 on the file of the learned Judicial Magistrate No.II, Karaikal.

2. The second respondent has filed a private complaint stating that the petitioner herein and other accused persons have conspired to grab her land measuring about 1894 sq. feet which is situated in town S.No.4/3/2 Re Survey No. 67/3, Block 4, Ward D, Kovilpathu village, Karaikal town and created a power of attorney dated 09.11.2006 and presented the same before the

sub-Registrar, Neravy, on 18.11.2006 for getting registration, but the Sub-Registrar refused to register the same. The learned Judicial Magistrate, Karaikal has forwarded the said complaint under Section 156 (3) Cr.P.C to the first respondent and hence, the first respondent has registered a case in Cr.No.129 of 2008 under Sections 465,468, 420 IPC r/w 34 IPC and 511 IPC.

3. The first respondent after registering the case, investigated the matter and filed a charge sheet against the petitioner herein and one Rajkumar under Sections 465, 468, 420 IPC r/w 34 IPC and 511 IPC. Based on the said charge sheet, the learned Judicial Magistrate No.II, Karaikal has taken the case on file in C.C.No.103 of 2012 and issued summons to the accused persons. After receipt of the summons, the first accused has filed the present petition to quash the proceedings against him.

4. When this matter came up for hearing on 01.10.2018, the learned counsel who appeared for the second respondent made an endorsement that she has already handedover the bundle to the party and hence the Registry was directed to delete the name of the counsel for the second respondent and print the name of the second respondent in the cause list. Accordingly, today it has been listed by printing the second respondent in the cause list. But today, the second respondent has not appeared either-in-person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and learned Public Prosecutor for the first respondent and perusing the records, order is being passed.

5. The learned counsel for the petitioner has submitted that the petitioner herein is the son of the second respondent. He further submitted that the second respondent has executed a power of attorney on 09.10.2006 in favour of the second accused in which the petitioner herein signed as witness. He further submitted that after executing the said power of attorney, the second respondent has not come forward for registering the same and thereafter the petitioner has not taken any role in respect of presenting the power of attorney before the sub-Registrar. He further submitted that in the complaint, the second respondent has not stated that she has not signed in the said document. Her only grievance is that in her absence, the petitioner herein and other accused persons attempted to get registration of the said document before the Sub-Registrar Neravy. He further submitted that as per the 161 statement given by the sub-Registrar, only the second accused namely Rajkumar has presented the power of attorney for registration. In the said statement, the Sub-Registrar has not stated that the petitioner also accompanied with the second accused for getting registration of the power of attorney. He further submitted that in the

complaint as well as in the 161 statement given by the second respondent, she has not specifically stated that she has not signed the said document. Under the said circumstances, it has to be presumed that she has executed the said document. He further submitted that after lodging the complaint, the matter has been compromised between the petitioner and the second respondent and a document was also executed by the second respondent on 10.02.2008 to that effect and that is the reason for not appearing before this Court. He further submitted that even if the entire prosecution case is taken as true, the petitioner herein cannot be punished under any of the provisions of law and therefore, he prayed to quash the proceedings.

6. The learned Public Prosecutor (Pondicherry) who is appearing for the first respondent has submitted that in the statement recorded under 161 Cr.P.C, the second respondent has clearly stated that the petitioner herein and the second accused namely Rajkumar have created the power of attorney with a view to grab her property. He further submitted that the scribe of the said power of attorney also has stated in his statement that only the second accused has approached him for writing the said document and that itself shows that the second respondent has not appeared before the document writer and she has not signed in the said document. He further submitted that the Investigating Officer has obtained a certified xerox copy of the said power of attorney and sent to the court and therefore, he strongly opposed for quashing the proceedings against the petitioner.

7. A perusal of the complaint and also the statements recorded under Section 161 Cr.P.C, shows that the second respondent has not specifically stated that she has not signed in the said power of attorney. On the contrary, she has stated that the accused persons attempted to get registered the said document in her absence. The statement which was recorded from the document writer namely Detchanamurthy also does not contain the particulars as to whether at the time of executing the said document, the second respondent was present or not. The I.O has simply recorded that the second accused has approached the said witness for writing power of attorney. It is also to be pointed out that though the I.O has obtained a certified Xerox copy of the said power of attorney, he has not taken any steps to get handwriting expert's opinion to ascertain whether the signature found in the said document is that of the second respondent or not. It shows that the I.O. had no doubt that the signature found in the said document is the second respondent's signature. Under the said circumstances, it cannot be said that the petitioner herein has created a forged document by putting the signature of the second respondent. It is also to be pointed out

that in the complaint, the second respondent has stated that on 25.10.2006 a person came from the Sub-Registrar's Office and gave a Xerox Copy of the said document. With regard to the said fact, the I.O has not specifically obtained statement from the second respondent as to who gave a Xerox copy of the said document. If really, a copy of the said document was given by the person who came from the Sub-Registrar's Office and if that person was examined by I.O, the truth will come out but the I.O has not examined the said person and also has not asked any question with regard to the same to the second respondent also. As rightly pointed out by the learned counsel for the petitioner, in the statement recorded under Section 161 Cr.P.C., the Sub-Registrar has not stated that the petitioner herein also came to his officer for registering the said document. Under the said circumstances, this Court of the view that no purpose will be served by allowing the prosecution to continue against the petitioner herein. Hence this Court is inclined to allow this petition.

8. In the result, this petition is allowed, the proceeding against the petitioner herein in C.C.No.103 of 2012 of Judicial Magistrate-II Karaikal is quashed. The learned Judicial Magistrate II Karaikal is directed to proceed against the second accused and dispose of the case in accordance with law uninfluenced by the observations made in this order. Consequently, connected miscellaneous petition M.P.No.1 of 2013 is closed.

vv/vsn

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Karaikal.
2. The Station House Officer,
Neravy Police Station,
Karaikal District.
Pondicherry.

3. The Chief Judge,
Pondicherry.

4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.R. Sreerangan, Advocate, S.R.No.68437, 68746

+1cc to the Government Pleader, S.R.No.68765

CrI.OP.No.6178 of 2013

and

M.P.No.1 of 2013

RV(CO)
KAK (19/12/2018)



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