

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018

DELIVERED ON: 17.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.20890 of 2012

and

Crl.M.P.Nos.1 of 2012

K.Rangasamy ... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
The District Crime Branch,
Salem. ... 1st Respondent/complainant

2. A.Chander ... 2nd Respondent/de-facto complainant

Prayer : This Criminal Original Petition has been filed under Section 482 of Cr.P.C to call for the records in FIR 3/2012 dated 23.02.2012 on the file of the respondent police registered under Section 120(b), 468, 471 and 420 of the Indian Penal Code and quash the same.

For Petitioner : Mr. V.Raghavachari

For 1st Respondent : Mr.T.Shunmugarejeswaran,
Government Advocate (Crl.Side)

For 2nd Respondent : Mr.P.Jagadeesan

ORDER

The petitioner is the 2nd accused in the First Information Report registered in Crime No.03 of 2012 by the Inspector of Police, District Crime Branch, Salem for the alleged offences punishable under Sections 120(b), 468, 471 and 420 of the Indian Penal Code.

2. The case of the de-facto complainant is that the property measuring 109771 sq.ft. of agricultural lands along with RCC building and a tiled house with a well was bought by

his mother A.Swayamprabha from one Gopalakrishna Naidu and others for Rs.47,50,000/- in 2001 through a registered sale deed. This property is in Amani Neikarapatty Village in Survey No.157/2B2. Mr.Sanjay Chawla, Director of Bhuvaneswari Spinning Mills Private Limited in Salem approached his mother to buy this land for his mill initially and subsequently due to his inability to buy the land, he promised to sell the land, if he is given a power of attorney and that he may be paid 1% as brokerage for the same. The 2nd respondent's mother keeping in mind the family situation and her old age, decided to give power of attorney to Sanjay Chawla and accordingly, a power of attorney and sale agreement dated 16.10.2007 were executed and registered. However, subsequently, on 22.05.2008, the sale agreement was cancelled vide document No.2073 of 2008 and the advance of Rs.1,00,000/- was also returned. Thereafter, based on the power of attorney, a sale deed between the power of attorney holder and T.Karthikeyan, D.Shanmugasundaram, P.Ganesan and K.Natesan for the property measuring 31,194 1/2 sq.ft. land together with RCC building for Rs.19,50,000/- was executed. Subsequently, the remaining 75.576 1/2 sq.ft. land was agreed to be sold to one A.S.Balakrishnann son of Sengoda Gounder for a sum of Rs.60 lakhs and Rs.1Lakh was accepted as advance with a 4 months period to complete the sale. This agreement between the power of attorney holder Sanjay Chawla and A.S.Balakrishnann son of Sengodan was registered vide document No.2075 of 2008 dated 23.05.2008. Later, both the power agent and A.S.Balakrishnan sold 37,720 sq.ft. on 25.08.2008 to the petitioner K.Rangasamy for Rs.26,78,000 Lakhs. These two sale comprised of 71,914 1/2 sq.ft. and the remaining 37,856 1/2 sq.ft. was unsold. The sale proceeds of these two sale transactions dated 23.05.2008 and 25.08.2008 amounting to Rs.80 lakhs were given to Swayamprabha and 1% commission for same was also obtained by the power of attorney holder. Since late Swayamprabha was suffering from frequent ailments, she executed a Will dated 27.07.2008 favouring the 2nd respondent for the remaining land which was unsold. After the demise of his mother, there was pressure on him to give a power of attorney for the remaining unsold land, which was refused by him and therefore, in order to grab that land, Sanjay Chawla, A.S.Balakrishnan and his brother T.Karthikeyan and B.Shanmugasundaram along with their friends P.Ganesan and K.Natesan conspired and subsequently, on 3.11.2008, 3720 sq.ft. was sold to ne P.Ganesan and K.Natesan and the remaining 34586 1/2 sq.ft. to the present petitioner for Rs.2,32,000/- and Rs.33,94,800/- respectively. The legal notice to all those involved in this conspiracy including the present petitioner subsequent to the sale on 12.01.2009 and thereafter approached for a relief in O.S.No.126 of 2011 in the I Additional District Munsif, Salem.

3. The case of the petitioner (Accused in Crime No.03

of 2012 on the file of the respondent police) in brief is as follows:- One Mrs.Swayam prabha had executed a General Power of Attorney dated 16.10.2007 favouring one Mr.Sanjay Chawla for which the de-facto complainant and his wife were witnesses. Using this power of attorney, the power of attorney holder Sanjay Chawla entered into an agreement of sale with one A.S.Balakrishnan on 23.05.2008 and sold the property to him. This petitioner purchased the property admeasuring 37,720 sq.ft. from the power of attorney holder Mr.Sanjay Chawla based on the same power of attorney vide sale deed dated 3.11.2008. The petitioner has also contended that the 2nd respondent A.Chander, who is de-facto complainant and son of late Swayam prabha created records as though a Will was executed by his mother, when she was alive favouring him and that the Will is a fabricated one. The 2nd respondent had filed a civil suit before I Additional District Munsif, Salem in O.S.No.126 of 2011 seeking a declaration of the sale deed dated 3.11.2008 before the Sub Registrar, Veerapandi as null and void and simultaneously, filed this criminal complaint dated 23.02.2012, based on which a First Information Report in Crime No.3 of 2012 of District Crime Branch, Salem was registered. The petitioner has mainly relied on the ground that the police has not only taken on file the complaint, which is belated, motivated and false but also interfered in a purely civil matter, which is already sub-Judice.

4. The 2nd respondent/de-facto complainant has disputed the contention of the petitioner that the complaint was belated by relying on the various legal notices, the earliest one being dated 06.12.2008 issued to Sanjay Chawla, power of attorney holder and the last one dated 12.01.2009, which was issued by this petitioner as well. Therefore, according to the II respondent, the complaint given by him cannot be termed as belated and motivated. It is also contended that the I Additional District Munsif, Salem has held that the power of attorney had ceased to exist on the date of death of the principal i.e. the mother of the 2nd respondent. However, in the reply notice dated 30.12.2008, the power of attorney holder Sanjay Chawla has contended that the death of the principal i.e. Swayamprabha does not invalidate the power of attorney, since it is coupled with interest and also that the entire sale consideration of Rs.80 Lakhs was settled in full as early as on 17.10.2007 itself by ABN Bank pay order.

5. Interestingly, the power of attorney itself is dated 16.10.2007, which is just one day before the receipt of the earlier sale consideration as claimed by the power of attorney holder. There are contradictions observed in the averments of the de-facto complainant. The remaining unsold property according to the 2nd respondent is 37,856 1/2 sq.ft.

The Will executed in his

favour is for 37,720 sq.ft. only. The petitioner has averred that the sale of 37,720 sq.ft. to him was by way of a sale deed dated 3.11.2008, which is found to be true, as per the judgement of the learned I Additional District Munsif, Salem, whereas, the de-facto complainant/2nd respondent in his complaint has mentioned the area sold to him vide the sale deed dated 3.11.2008 was only 34,586 1/2 sq.ft. It can also be observed that the 2nd respondent in his police complaint has mentioned that Rs.80 Lakhs being the proceeds of the sold portion of the land was paid to his mother after the 2nd sale dated 25.08.2008, while in the Will, it is mentioned that Rs.80 Lakhs was paid on 17.10.2007 itself. More over, the complaint also does not clearly mention as to what was the conspiracy and forgery allegedly committed by the accused. After perusing the entire records including the contents of the Will and the judgment of the I Additional District Munsif, Salem in O.S.No.126 of 2011, this court opines that the entire matter is civil in nature. Therefore, I hold that the proceedings in the First Information Report registered in Crime No. 3/2012 dated 23.02.2012 on the file of the Inspector of Police, District Crime Branch, Salem under Section 120(b), 468, 471 and 420 of the Indian Penal Code is liable to be quashed, as regards the present petitioner.

6. In the result, this Criminal Original Petition is allowed and the proceedings in the First Information Report registered in Crime No.3/2012 dated 23.02.2012 on the file of the Inspector of Police, District Crime Branch, Salem under Section 120(b), 468, 471 and 420 of the Indian Penal Code is quashed, as regards the present petitioner/2nd accused. Consequently, connected criminal miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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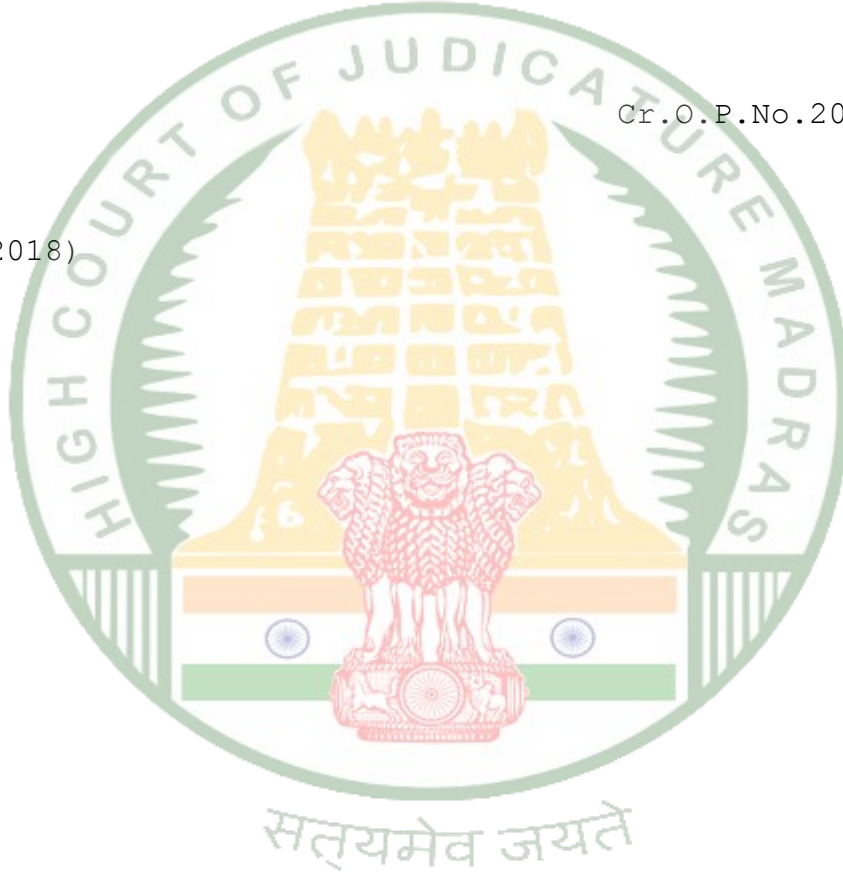
To

1. The Inspector of Police,
District Crime Branch,
Salem.
2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.Jagadeesan, Advocate SR.No.46946
+lcc to Mr.V.Raghavachari, Advocate SR.No.46753

Cr.O.P.No.20890 of 2012

KJI (CO)
GN(30/07/2018)



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