IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.10.2018	Delivered on: 28.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.Nos.8562 and 13812 of 2012

In Crl.O.P.No.8562 of 2012

1.Sudarsen Varadaraj
Managing Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur
Coimbatore 641 005.

2.Jayaram Varadaraj
Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur,
Coimbatore 641 005.

3.Suresh Jaganathan
Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur,
Coimbatore 641 005.

4.Muthusamy John Edward
Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur
Coimbatore 641 005.

5.Natarajan Srivatsan
Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur,
Coimbatore 641 005.

6.Muthusamy Duraisamy Selvaraj
Director,
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur
Coimbatore 641 005.

... Petitioners /Accused Nos.4 to 9

/Vs/

Dhanalakshmi

... Respondent/complainant

In Crl.O.P.No.13812 of 2012

1.M/s.ELGI Rubber Company Limited
Represented by its Managing Director
Mr.Sudarsan Varadaraj
ELGI Rubber Co Limited
Regd Office at 2000 Trichy Road
Singanallur
Coimbatore 641 005.

2.S.R.Venkatachalam ...Petitioners/Accused Nos.1 and 2

Vs.

Dhanalakshmi

...Respondent/complainant

Prayer in Crl.O.P.No.8562 of 2012: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records and quash the private complaint in C.C.No.11 of 2012 filed by the respondent/complainant for offences under Sections 465, 466, 467, 468, 471, 423, 474, 424 read with 34 IPC on the file of the Judicial Magistrate No.VI, Coimbatore.

Prayer in Crl.O.P.No.13812 of 2012: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records and quash the summons issued in C.C.No.11 of 2012 for offences under Sections 465,466,467,468,471,423,474,424,34 IPC on the file of the Judicial Magistrate No.VI, Coimbatore.

For Petitioners in both Crl.O.Ps. : Mr.A.Ramesh, Senior Counsel for Mr.C.Arun Kumar

For Respondent in
both Crl.O.Ps. : Mr.K.R.Sankaran
for K.S.Karthik Raja

COMMON ORDER

Crl.O.P.No.8562 of 2012 has been filed by the accused Nos.4 to 9 to quash the proceedings against them in C.C.No.11 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore.

Crl.O.P.No.13812 of 2012 has been filed by the accused Nos.1 and 2 to quash the proceedings against them in C.C.No.11 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore.

2. The respondent herein had filed a private complaint under Section 200 Cr.P.C alleging that she is the daughter of late Pappannan. The said Pappannan is one of the sons of late Rangasamy. Accused Nos.10 to 12 are the other children of late Rangasamy. Apart from the complainant, late Pappannan had other legal heirs viz., his wife Pushpam, daughters Prema, Shymala and Kavitha. She further stated that the property measuring 2.67 acres in SF.No.361/1B are agricultural lands situated in Alandurai Village, Coimbatore South Taluk. The said property originally belonged to the complainant's paternal grand father namely, Rangasamy and after his death to accused Nos.10 to 12, late Pappannan and late Pappammal. Papammal is the widow of late Rangasamy. All of them had equal share in the said property. Late Pappannan, late Pappammal and accused Nos.10 to 12 had executed a registered General Power of Attorney dated 23.04.2002 in favour of the third accused in respect of the aforesaid property. Pappannan died on 16.04.2010. His mother Pappammal died on 27.12.2004. Accused Nos.10 to 12 are fully aware of the death of the aforesaid two persons. While so, the accused Nos.10 to 12 had colluded together with malicious intention and sold the aforesaid property under a registered sale deed dated 04.02.2010 to the first accused represented by the second accused as Power Agent of the first accused.

3. The complainant further stated that the first accused is a limited company for which the second accused is the Power Agent. The third accused is the Power Agent of the legal heirs of late Rangasamy. Accused Nos.10 to 12 had colluded with the accused Nos.1 to 9 with full knowledge that two of the principals namely, Pappannan and Pappammal were dead and created the purported sale deed dated 04.02.2010. She further stated that the said General Power of Attorney dated 23.04.2002 became invalid on the death of one or more of the principals. Therefore, the aforesaid sale deed is void ab initio.

4. The complainant further stated that the accused Nos.2 to 9, being the Chairman and Managing Director and Directors, are in charge of and responsible for the day to day affairs of the business of the first accused company. Hence, they are responsible for the perpetration of fraud. The acts of the accused clearly tantamount to forgery, forgery of a public record, forgery of a valuable security, forgery for the purpose of cheating, using forged document as genuine one, containing false statements, dishonest and fraudulent removal and concealment of properties and other allied offences. The accused persons have thereby enjoyed wrongful gain putting the complainant to a wrongful loss. The impugned sale deed has been grossly under valued. The sale consideration in the sale deed is shown as Rs.1,58,000/- for the entire extent of 2.67 acres. This would also be a piece of incriminating circumstance to show that all the accused had colluded together by purportedly showing a lesser value in the impugned sale deed to perpetrate the offences mentioned above.

5. The complainant further stated that she had sent a lawyer's notice dated 28.06.2010 to accused Nos.1 to 3 and 10 to 12. The accused Nos.1 to 9 had sent a reply dated 12.07.2010 with false averments and hence, the complainant and other legal heirs of Pappannan had sent a re-joinder dated 17.07.2010. They sent another lawyer's notice dated 21.09.2010 to the accused Nos.1 and 4 to 9 for which they sent a reply notice dated 29.09.2010 containing very many false and frivolous allegations. The aforesaid accused persons have committed the offences punishable under Sections 465, 466, 467, 468, 471, 423, 474, 424 read with 34 IPC. Hence, she prayed to punish the accused persons for the aforesaid offences.

6. The learned Judicial Magistrate No.VI, Coimbatore, after receipt of the complaint, has recorded sworn statement of the complainant under Section 200 Cr.P.C. and thereafter, he conducted an enquiry under Section 202 Cr.P.C. Thereafter he has taken the case on file in C.C.No.11 of 2012 under Sections 465, 466, 467, 468, 471, 423, 474, 424 r/w. 34 IPC and issued summons to the accused persons. After receipt of the summons, the accused Nos.4 to 9 have filed Crl.O.P.No.8562 of 2012 and accused Nos.1 and 2 filed Crl.OP.No.13812 of 2012 to quash the proceedings against them in C.C.No.11 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore.

7. Heard Mr.A.Ramesh, the learned Senior Counsel for Mr.C.Arun Kumar, learned counsel for the petitioners and Mr.K.R.Sankaran, for Mr.K.S.Karthik Raja, learned counsel for the respondent.

8. The learned Senior Counsel for the petitioners has submitted that admittedly the legal heirs of late Rangasamy executed a registered Power of Attorney dated 23.04.2002 in favour of Mr.K.Muralitharan, who has been arrayed as third accused and the said K.Muralitharan had executed a sale deed on 04.02.2010 in favour of the first accused, which is a public limited company for valuable consideration of Rs.1,58,000/-. He further submitted that the petitioners received a lawyer's notice dated 28.06.2010 and only in the said notice, the respondent/complainant and her sisters have stated that already two of the principals namely, Pappannan and Pappammal were dead. He further submitted that the aforesaid lawyer's notice has been suitably replied by the petitioners and thereafter the complainant and her sisters had sent another notice dated 21.09.2010 and for that also a reply was sent denying the allegations made in the said notice. Thereafter the accused Nos.1 and 3 had filed a suit in O.S.No.1602 of 2010 on the file of the First Additional District Munsif, Coimbatore against the legal heirs of Pappanan and also against the legal heirs of Rangasamy for the relief of specific performance.

9. He further submitted that the legal heirs of late Pappannan also filed a suit in O.S.No.610 of 2010 on the file of the District Court, Coimbatore for the relief of partition. He further submitted that after filing of the suit in O.S.No.1602 of 2010, the accused Nos.10 to 12 had executed the sale deeds in favour of the second accused on 30.09.2010 and 19.09.2011 with regard to their respective shares in the aforesaid property. He further submitted that only after filing of the suit by the accused Nos.1 and 2 in O.S.No.1602 of 2010, the respondent/complainant has filed a private complaint with a view to harass the petitioners. He further submitted that though the learned Judicial Magistrate has conducted enquiry under Section 202 Cr.P.C., he has not recorded any reason for taking the case on file and issuing summons. He further submitted that the petitioners were not informed at the time of executing the sale deed dated 04.02.2010 that two of the principals were already dead. He further submitted that merely, because two of the principals died, it cannot be said that the entire Power of Attorney has been terminated even as against the surveying principals.

10. He further submitted that the respondent/complainant has not made out a prima facie case to proceed against the petitioners under the aforesaid provisions of law. He further submitted that even if the allegations made in the complaint are taken as true at the face value, the petitioners cannot be convicted and therefore, he prayed to quash the proceedings against the petitioners in C.C.No.11 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore.

11. The learned Senior Counsel for the petitioners, in support of the aforesaid contentions, relied upon the following decisions:-

1) In V.G.P.Rajadoss Vs. State, (Crl.O.P.No.29903 of 2011, on the file of the Madras High Court, dated 13.10.2014).

2) In Prema Sudhamani and others Vs. D.Krishna Rao, and others (O.S.A.No.189 of 2007 on the file of the Madras High Court, dated 19.09.2008).

3) In Mohammed Ibrahim and others Vs. State of Bihar and others, MANU/SC/1604/2009 = (2009) 8 SCC 751.

4) In Sheila Sebastian Vs. R.Jawaharaj and others, MANU/SC/0542/2018 = AIR 2018 SC 2434.

12. Per contra, the learned counsel for the respondent/complainant has submitted that two of the principals namely, Pappannan died on 16.01.2010 and Pappammal died on 27.12.2004 and hence, the said Power of Attorney which has been executed by the legal heirs of Rangasamy in favour of the third accused has become automatically terminated and knowing the said fact, the third accused executed a sale deed in favour of the first accused on 04.02.2010 and hence, the said sale deed is void. He further submitted that after coming to know of the said sale deed, the legal heirs of the late Pappannan had issued lawyer's notices on 28.06.2010 and 21.09.2010 informing the petitioners herein that they have committed offences punishable under various Sections of the Indian Penal Code and also they will file a suit for partition. He further submitted that the petitioners had sent a false reply and thereafter the accused Nos.1 and 3 had filed a suit in O.S.No.1602 of 2010 on the file of the District Court, Coimbatore for the relief of specific performance and that the respondent herein and other legal heirs of late Pappannan have filed a suit in O.S.No.610 of 2010 on the file of the V Additional District Court, Coimbatore for the relief of partition.

13. He further submitted that subsequently, the suit in O.S.No.1602 of 2010 was also transferred to the V Additional District Judge, Coimbatore and renumbered as O.S.No.14 of 2012. He further submitted that the learned V Additional District Judge, Coimbatore, tried both the suits jointly and disposed of both the suits by the common judgment dated 29.08.2017 holding that since two of the principals dead, the Power of Attorney dated 23.04.2002 executed by the legal heirs of Rangasamy in favour of the third accused namely, K.Muralitharan terminated and hence, the sale deed executed by the said Power of Attorney dated 04.02.2010 is void ab initio and accordingly, he dismissed the suit which was filed by the accused Nos.1 and 3 for the

relief of specific performance, however, he decreed the suit for partition which was filed by the respondent herein and other legal heirs of late Pappannan. He further submitted that the petitioners herein have acted with a malafide intention and created false documents with a view to grab the property of late Pappannan, after knowing fully well that the said Pappannan already died.

14. He further submitted that the learned Judicial Magistrate No.VI, Coimbatore has not taken the case on file mechanically and issued summons to the accused persons as contended by the petitions. On the contrary, the learned Judicial Magistrate has conducted an enquiry under Section 202 Cr.P.C. and only after satisfying himself that a prima facie case is made out to proceed further, he has taken cognizance of the case and issued summons to the accused persons. He further submitted that the second accused has got the sale deed on behalf of the first accused company as Power Agent and the accused Nos.2 to 9, being the Chairman and Managing Director and Directors of the first accused company, are in charge and responsible for the day to day affairs of the business of the first accused company and hence, all of them are liable to be prosecuted along with the accused Nos.10 to 12 for the offence under Sections 465, 466, 467, 468, 471, 423, 474, 424 read with 34 IPC. He further submitted that there are sufficient materials to proceed against the petitioners and hence, he prayed to dismiss the petitions.

15. The learned counsel for the respondent/complainant, in support of the aforesaid contentions, relied upon the following the decisions:-

1) In Standard Chartered Bank Vs. Directorate of Enforcement, 2005 SCC (Cri) 961.

2) In Iridium India Telecom Limited Vs. Motorola Incorporated and others, (2011) 1 SCC 74 = AIR 2011 SC 20.

16. It is an admitted fact that the property measuring 2.67 acres situated in SF.No.361/1B of Alandurai Village, Coimbatore South Taluk, originally belonged to one Rangasamy. It is also an admitted fact that the said Rangasamy died and his legal heirs viz., accused Nos.10 to 12, late Pappannan and late Pappammal inherited the said property. It is also an admitted fact that all the legal heirs of late Rangasamy had executed a registered General Power of Attorney in favour of the third accused on 23.04.2002. It is also an admitted fact that on the basis of the said Power of Attorney, the third accused had executed a sale deed in respect of the aforesaid property in favour of the first accused represented by the second accused on

04.02.2010.

17. According to the respondent/complainant, two of the principals namely, Pappannan died on 16.01.2010 and Pappammal died on 27.12.2004 and after their death, automatically the Power of Attorney dated 23.04.2002 has been terminated and after knowing the said fact, all the accused colluded together and created a false document viz., sale deed on 04.02.2010 with a view to grab the property of the late Pappannan. However, the petitioners contended that they were not informed with regard to the death of Pappanan and Pappammal either by the respondent/complainant or other legal heirs of late Pappannan and hence, at the time of execution of the sale deed dated 04.02.2010, they did not have knowledge about the death of Pappannan and Papammal and hence, they cannot be prosecuted for the alleged offences.

18. The petitioners herein are the accused Nos.1, 2 and 4 to 9. The first accused is the company and the accused Nos.2 to 9 are the Directors of the said company. In the complaint no where, it is stated that the accused Nos.1 to 9 had knowledge about the death of the said Pappannan and Pappammal, at the time of execution of the sale deed dated 04.02.2010. In para No:3 of the complaint, it is stated that the accused Nos.10 to 12 have colluded with the accused Nos.1 to 9 with full knowledge that two of the principals in the General Power of Attorney dated 23.04.2002 were dead and created the sale deed as though, the accused Nos.1, 2 and 4 to 9 have purchased the property from the principals including late Pappannan and Pappammal, as though they were alive.

19. So, it is clear that according to the complainant only the accused Nos.10 to 12 with full knowledge of the death of the two principals have executed the sale deed. In para No:9 of the complaint, it is stated that the accused Nos.4 to 9 have failed to make diligent enquiry while referring to the documents on title. But no where in the complaint it is stated that the accused Nos.1 to 9 had knowledge about the death of Pappanan and Pappammal. Merely, because the accused Nos.1 to 9 have not made diligent enquiry with regard to the title, it cannot be said that they have acted with the criminal intention to grab the property. In the complaint, it is not at all stated as to how and when the accused Nos.1 to 9 came to know about the death of Pappannan and Pappammal.

20. It is not the case of the complainant that after the death of Pappannan and Pappammal either herself or other legal heirs of Pappannan informed the accused Nos.1 to 9 that the said Pappannan and Pappammal died and hence, the Power of Attorney dated 23.04.2002 was terminated. Only after execution of the sale deed dated 04.02.2010, the complainant and other legal heirs had sent lawyer's notice stating that the said Pappannan

and Pappammal were already dead. Therefore, the contention of the respondent/complainant that the accused Nos.1 to 9 got the sale deed after knowing the fact that already two of the principals namely, Pappannan and Pappammal were dead, cannot be accepted.

21. In Prema Sudhamani and others Vs. D.Krishna Rao and others (cited supra), a Division Bench of this Court in para Nos.6 to 9 and 11 has observed as follows:

> "6. It is brought to the notice of this Court that one of the persons who executed the General Power of Attorney dated 09.05.2005 has expired and therefore, the said power is not binding. At this stage, the learned counsel for the appellants urges that as per Section 201 of the Contract Act on the death or insanity of the (sole) principal the agency terminates automatically and further that as a rule, the authority of the agent is revoked by the death of the principal and the agency comes to an end and any attempted execution of the authority after that even is not binding. Added further, the learned and others AIR 1938 Madras 542 wherein it is laid down as follows:-
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> > "Where a power of attorney has been executed by several principals in favour of a person, and one of the principals having distinct interest in subject matter of the power of attorney dies, the death terminates the power of attorney."
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> 7. Per contra, the learned counsel for the respondents submits that if there are two or more principals and they are joint and several, and if one of them dies, the agency terminates only in regard to the representatives of the deceased principal, but it continues as regards the surviving principal and in support of his contention, he places reliance on the decision Monindra Lal Chatterjee V. Hari Pada Ghose and others AIR 1936 Calcutta 650 wherein it is inter alia held that 'on death one agency terminates only as regards representative of deceased principal but continues as regards surviving principal and that surviving principal may sue for rendition of accounts within three years of termination of agency as against him.'
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> 8. He also cites the decision M.Ponnusami Pillai and another V. Chidambaram Pillai and others Vol.35

M.L.J. 294 wherein it is held that 'A power of attorney given to an agent by two members of a joint Hindu trading family is not terminated by the death of one of the members.'

9. He presses into service the decision Syed Abdul Khader V. Rami Reddy and others (1979) 2 SCC 601 at page 602 where the Honourable Supreme Court has inter alia held that "What the Power of Attorney authorises depends on its terms and the purpose for which it is executed.

> "Where someone other than the person who has a right to act in respect of certain things has, under a contract of agency, the right to act on behalf of principal, the authority conferred by the written instrument has to be strictly construed. Ordinarily a Power of Attorney is constructed strictly by Courts."

11. By applying the enunciated legal principles to the General Power of Attorney dated 09.05.2005, in the matter in issue, we opine that the said power deed does not get terminated by virtue of death of one of the executants."

22. From the aforesaid decision, it is clear that the power deed does not get terminated by virtue of death of one of the executants.

23. In Mohammed Ibrahim and others Vs. State of Bihar and others, (cited supra), the Hon'ble Supreme Court held that the condition precedent for an offence under Sections 467 and 471 of IPC is forgery. The condition precedent for forgery is making a false document. Further, after analysing Section 464 of IPC, in para Nos:10 and 11 it has observed as follows:-

> 10. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:
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> 10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

> 10.2) The second is where person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
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> 10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.
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> 11. In short,
> a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practing deception, or from a person not in control of his senses."

24. In V.G.P.Rajadass and another Vs. The State (cited supra) this court following the decision in Mohammed Ibrahim and others Vs. State of Bihar and another (cited supra) in para-13 has observed as follows:

> "13.... It is no doubt true that the sale agreement, dated 21.11.2008, was executed on the strength of the Power of Attorney after the death of the principal, who executed the Power of Attorney deed. Such category of document is not covered under three categories of 'false documents' as above referred to........"

25. The aforesaid decision will squarely apply to the facts of this case. In this case also the sale deed has been executed by the Power of Attorney Agent after the death of two of the principals and the said sale deed is not covered under three categories of 'false documents' as referred to in Mohammed Ibrahim and Others Vs. State of Bihar and another (cited supra).

26. In Sheila Sebastin Vs. R.Jawaharaj and others (cited supra), the complainant alleges that the first accused with the aid of an imposter who by impersonating as Mrs.Doris Victor created a power of attorney in his name as if he was her agent. It was further alleged that, using the aforesaid power of attorney, the accused No.1, attempted to transfer the property of complainant by executing a mortgage deed in favour of the second accused for a sum of Rs.50,000/-. The trial Court has

convicted the first accused under Section 465 read with 109 IPC and awarded punishment. On appeal the Sessions Judge, confirmed the said conviction and that the accused persons filed a revision before the High Court. The High Court had allowed the said revision and acquitted the accused persons. As against the same, the daughter of the deceased Doris Victor has filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court in para Nos.25 and 26, has observed as follows:

> "25. Keeping in view the strict interpretation of penal statute i.e., referring to Rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.
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> 26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent No.1 nor respondent No.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial Court as well as appellate Court misguide themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

27. In the case on hand, it is not the case of the respondent/complainant that the accused Nos.1 to 9 have signed the sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. Admittedly, the legal heirs of late Rangasamy had executed a registered General Power of Attorney in respect of their property in favour of the third accused. Only on the strength of the said power of attorney, the third accused

executed the sale deed in favour of the first accused. So in view of the aforesaid decision also it cannot be said that the aforesaid sale deed will fal under the category of "false document".

28. In Standard Chartered Bank Vs. Directorate of Enforcement (cited supra), a constitutional Bench of the Hon'ble Supreme Court has held in para Nos:31 and 32 as follows:

> "31. As the company cannot be sentenced to imprisonment, the Court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the Court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of course, the Court cannot exercise the same discretion as regards a natural person. Then the Court would not be passing the sentence in accordance with law. As regards company, the Court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company fro any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.
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> 32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offence for which the punishment prescribed is mandatory imprisonment (sic and fine). We overrule the views expressed by the majority in Velliappa Textiles Ltd., on this point and answer the reference accordingly. Various other

contentions have been urged in all appeals, including this appeal, they be posted for hearing before an appropriate Bench.”

29. There is no quarrel with regard to the aforesaid proposition of law. In this case, there is no material that the accused Nos.2 to 9 have acted with mala fide intention and they had necessary mens rea for committing any offence. The only allegation against the accused Nos.2 to 9 is that after the death of two of the principals, the accused Nos.3 (Power Agent) had executed the sale deed in favour of the first accused, who is represented by the second accused and that the accused Nos.2 to 9 are directors of the first accused company and they are responsible for the day to day administration of the said company. As already pointed out that the aforesaid document would not come within the category of false document and therefore, the accused Nos.1 to 9 cannot be prosecuted for the alleged act.

30. In Iridium India Telecom Limited Vs. Motorola Incorporated and others, (cited supra) a complainant was filed alleging that the accused company made false promise and induced the public to invest by purchasing shares and operating a gateway. It was further alleged that the appellant company was induced to part with a sum of Rs.126 crores for the gateway and the necessity for installation of a gateway was a complete fraud. It was further alleged that the entire need for a gateway was dishonestly created to get a license to operate the system in it. It was further alleged that within 9 months of the huge investment made in Iridium, the first accused applied for bankruptcy protection and also sold the property and consequently, the investment of the appellant and its constituent shareholders of approximately Rs.500 crores was wiped out. Taking into consideration of the aforesaid facts, the Hon'ble Supreme Court in para-76 has observed as follows:-

> “76.As noticed earlier, both the appellants and the respondents have much to say in support of their respective view points. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the court. This Court has repeatedly held that power to quash proceedings at the initial stage has to be exercised sparingly with circumspection and in the rarest of rare cases. The power is to be exercised ex bedito justitiae. Such power can be exercised where a criminal proceeding is manifestly attended with mala fides and have been instituted maliciously with ulterior motive. This inherent power ought not to be

exercised to stifle a legitimate prosecution."

31. In Indian Oil Corporation Vs. NEPC India Ltd (2006) 6 SCC 736, the Hon'ble Supreme Court cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Hon'ble Supreme Court reitereated that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

32. In this case, as already pointed out that the allegation against the accused Nos.1 to 9 is that after the death of two of the principals, based on the original Power of Attorney, a sale deed was executed in favour of the first accused. As already pointed out that the said sale deed would not come within the category of 'false documents'. Further in view of the decision of the Hon'ble Division Bench of this Court in Prema Sudhamani Vs. D. Krishna Rao, the said Power of Attorney does not get terminated by virtue of death of one of the executants. Further no averments made in the complaint that the accused Nos. 1 to 9 had knowledge of the death of two of the principals before executing the sale deed dated 04.02.2010. Therefore, this Court is of the view that the continuance of the proceedings against the petitioners herein would amount to abuse of process of the court. Hence, this court is inclined to allow these petitions.

33. In the result, the Criminal Original Petitions are allowed. The proceedings against the accused Nos.1, 2 and 4 to 9 in C.C.No.11 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore, are quashed. The learned Judicial Magistrate No.VI, Coimbatore is directed to proceed against other accused persons and dispose of the case in accordance with law uninfluenced by the observations made by this court in this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.do Thro The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.C.Arun Kumar, Advocate sr.30409
+1cc to Mr.K.S.Karthik Raja, Advocate sr.30367

Crl.O.P.Nos.8562 and 13812 of 2012

ev(co)
nr 18/06/2019