IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.13791 & 2880 of 2020 and
CMP.Nos.1742, 1743, 5297 & 5298 of 2020

Crl.OP.No.13791 of 2020

T.Yamini ... Petitioner

Vs.

1.State rep. by
Inspector of Police,
Central Crime Branch,
Land Grabbing Wing, Team-XVI,
Vepery, Chennai-600 007
(in Cr.No.315 of 2012)
2.Upendra Mothilal Dalal ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to CC.No.113 of 2019 pending on the file of the learned Judicial Magistrate, Alandur and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.N.R.Elango,
Senior Counsel
for Mr.S.Manuraj

For Respondents

For R1 : Mr.A.Natarajan,
State Public Prosecutor,
Assisted by
Mr.M.Mohammed Muzammil
Government Advocate(Crl.side)

For R2 : No Appearance

Crl.OP.No.2880 of 2020

K.Thukkaiandi ... Petitioner

Vs.

1.State rep. by
Inspector of Police,
Central Crime Branch,
Land Grabbing Wing, Team-XVI,
Vepery, Chennai-600 008

2.Upendra Mothilal Dalal ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to CC.No.113 of 2019 pending on the file of the learned Judicial Magistrate, Alandur and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Shanmugasundaram,
Senior Counsel
for Mr.A.Gopinath

For Respondents
For R1 : Mr.A.Natarajan,
State Public Prosecutor,
Assisted by
Mr.M.Mohammed Muzammil
Government Advocate(Crl.side)
For R2 : No Appearance

O R D E R

These petitions have been been filed to quash the proceedings in CC.No.113 of 2019 on the file of the learned Judicial Magistrate, Alandur.

2. Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner in Crl.OP.No.2880 of 2020 submitted that there are totally four accused, in which the petitioner is arrayed as A4. The second respondent lodged complaint on 29.05.2012 and on receipt of the same, the first respondent registered FIR in Cr.No.315 of 2012 for the offences under Sections 419, 467, 471, 420 of IPC read with 120 of IPC. After completion of investigation, the first respondent laid final report for the offences punishable under Sections 109, 417, 419, 465, 467, 468, 471, 447 read with 120(b) of IPC read with 34 of IPC and offences under Sections 82 (c) & (d) of Registration

Act, 1908 and the same has been taken cognizance by the trial court. He further submitted that the first and third accused are his wife and daughter respectively. The second respondent lodged complaint alleging that the disputed property originally belonged to one Chokkalingam and he executed power of attorney in favour of one, Ganesan on 28.01.1967. The power of attorney sold the said property to one, Mothilal Karsondas Dalal and his brother Gunvant Karsondas Dalal vide document No.428 of 1967 with the Office of the Sub Registrar, Saidapet, Chennai. Both died and after their demise, the disputed property devolved on their legal heirs. While being so, the fourth accused was being high rank police officer, and also very influenced person and utilising official position, the first accused namely his wife fraudulently and dishonestly concealed the identity of the second accused, by using forged and fabricated power of attorney, executed power of attorney in favour of the second accused, as if the original owners have executed the same in favour of the second accused. In turn, the power of attorney namely the second accused had executed sale deed in favour of A3 on 05.06.2007 by document No.3388 of 2007. Further alleged that in the said sale deed, A2 has furnished address in the recital of the sale deed, but in the photo identification column, she has mentioned different address. The Sub Registrar who registered the sale deed so as to oblige and satisfy some higher officials, without even noticing that the executant has two addresses and incorrect documents of previous sale deed registered in favour of the third accused. Thereafter with the connivance of the first accused, rectification deed was executed in favour of the third accused on 07.10.2007 registered as document No.6087 of 2007 at the Office of the Sub Registrar at Neelangarai, Chennai.

2.1 He further submitted that even according to the case of the prosecution as far as the petitioner is concerned, no offence is made out and there is absolutely no one has spoken about the petitioner to constitute any of the offences as alleged by the prosecution. Except LW10, Khaja Hussain, no other have spoken about the petitioner. Even according to LW10, Khaja Hussain, while he was working as driver at camp office of the petitioner residence, he drove the car for A1, while she was going to Sub Registrar Office, Neelangarai for the purpose of registration of sale deed. LW10, happened to be the driver of the petitioner, he drove the vehicle for A1. That would not constitute any offence as alleged by the prosecution as against the petitioner. He further submitted that even in the year 2007, the second respondent noticed that in the disputed property, the third accused constructed building and obtained electricity connection in her name and also rented out to third party and collecting rent. Even then, the second respondent did not lodge any complaint.

2.2 In the year 2010, all the legal heirs represented by one person along with the second respondent herein filed suit in O.S.No.873 of 2010 on the file of the District Munsif Court, Alandur for declaration declaring the power of attorney executed in favour of the second accused and the sale deed executed in favour of the third accused are null and void and also consequential injunction restraining the accused 2 and 3 from further developing or putting up the superstructure over the disputed property and also for mandatory injunction restraining the second and third accused from encumbering the said property by mortgage or creating charge over the property. The learned District Munsif, Alandur was pleased to dismiss the injunction petition and the suit is pending for trial. In the plaint, stated in the cause of action column as if already lodged complaint before the Commissioner of Police on 19.01.2010 and the same was forwarded to the Assistant Commissioner of Police, Thorapakkam and thereafter no action has been taken by them. Though they stated in the cause of action column, no document is filed to show that the second respondent lodged complaint on 19.01.2010. After period of two years from the date of filing the suit, the present impugned complaint has been filed on 29.05.2012 and registered the same in Cr.No.315 of 2012. In fact, in the said complaint also, there is absolutely no whisper about the earlier complaint lodged by the second respondent before the Commissioner of Police. Therefore, the second respondent having been failed before the Civil Court to obtain any interim injunction as against the accused persons, the second respondent had given criminal colour to the civil dispute with false allegations. He further submitted that insofar as the petitioner is concerned, he retired from service as Additional Director General of Police. While he was in service in the year 1997 as Superintendent of Police, CBCID, he had taken action as against the then Chief Minister of Tamil Nadu, the present false case has been foisted as against the petitioner, that too after period of five years from the date of knowledge. Therefore, he sought for quashment of the entire proceedings.

3. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner in Crl.OP.No.13791 of 2020 submitted that the petitioner is arrayed as A3 who is none other than the daughter of the fourth accused herein. At the time of purchase of the said property, she was only 20 years old and she had absolutely no knowledge about the purchase and she had no income at the time of purchasing the property. The present complaint is clear abuse of process of law since it is the second complaint, that too without mentioning the earlier complaint lodged by the complainant. The legal heirs of the deceased, original owners of the property have already filed suit in O.S.No.873 of 2010 on

the file of the District Munsif Court, Alandur and after a period of two years from the date of the suit, the present impugned complaint has been lodged as against the petitioner and others. Even according to the case of the prosecution, no cognizable offence is made out as against the petitioner and there is absolutely no material to attract those offences.

3.1 He further submitted that even according to the second respondent, after demise of the original owners of the property, the second accused fabricated power of attorney in her favour impersonating the original owner of the property and registered the same vide document No.211 of 2007 at the Office of the Joint Sub Registrar-III, Trichy. On the strength of the said power of attorney, A2 executed sale deed in favour of the petitioner on 05.06.2007 vide registered document No.3388 of 2007 at the Office of the Sub Registrar, Neelangarai, Chennai. Thereafter, the second accused executed a rectification deed 07.12.2007 in favour of the third accused vide registered document No.6087 of 2007 at the Office of the Sub Registrar, Neelangarai, Chennai. The fourth accused misused his official position and influenced the Sub Registrar and registered document in favour of A3. Thereafter the first accused along with the third and fourth accused have constructed building and obtained electricity connection in the name of the third accused and let out the said premises to Renault-Nissan Technology & Business Centre India Private Limited and receiving monthly rent of Rs.1,53,000/-. The entire case has been foisted as against the entire family members of the petitioner and she is also roped in to the case out of malice and spite. He further submitted though the second respondent came to understand that the power of attorney and the sale deed executed in favour of the third accused, after receipt of the encumbrance certificate did not lodge any complaint. After period of five years, the present complaint has been filed that too after filing the suit in the year 2010. The said complaint was mechanically registered by the first respondent and filed final report without any material evidence to attract those offences as against the petitioner. Therefore, the entire proceedings are clear abuse of process of court and it is liable to be quashed. He further submitted that even according to the prosecution, the original impersonator was not being added as accused. Therefore, the impugned final report itself is incompleted final report and therefore the investigation itself is not completed and few more accused have to be traced. Therefore, he prayed for the quashment of the entire proceedings.

4. Per contra, Mr.A.Natarajan, State Public Prosecutor appearing for the first respondent filed counter and submitted that the second respondent's father's brother purchased the disputed property by the registered sale deed

dated 28.01.1967 vide document No.428 of 1967. Thereafter his fathers died on 24.09.1981 and 10.02.1993 respectively. After their demise, the legal heirs visited the property in the month of September 2008 and reported that some unknown person was constructing building in the said property. On verification of the encumbrance certificate 01.11.2008 from the Registrar of Neelangarai Registrar Office found that the sale deed was executed in favour of the third accused on the strength of the power of attorney by power holder namely the second accused herein. Even after demise of their fathers, namely in the year 1981 and 1993, the second accused impersonated them with the help of the first accused, executed power of attorney in favour of the second accused dated 12.04.2007 and the same was registered at the Office of the Joint Sub Registrar No.3 Trichy vide document No.211 of 2007. Thereafter the second accused Tamilarasi impersonated as Dhanalakshmi and opened savings bank account at Indian Bank, Thambu Chetty street, Chennai and executed sale deed in favour of the third accused on 05.06.2007 vide registered document No.3388 of 2007 with the Office of the Sub Registrar, Neelangarai, Chennai. The second accused impersonated Dhanalakshmi on the strength of the said power of attorney, executed rectification deed in favour of the third accused on 07.12.2007 vide document No.6087 of 2007 at the Office of the Sub Registrar, Neelangarai, Chennai. He further submitted that the first accused being the wife of the fourth accused cheated the second respondent and grabbed the property and also constructed building by obtaining electricity service connection in the name of the third accused. The entire building has been let out to one, Renault-Nissan Technology & Business Centre India Private Limited and received rent at Rs.1,53,000/- per month. The first accused, mother of the third accused with active cooperation with all the other accused persons have dishonestly and fraudulently fabricated fake document with malafide intention to grab the property belong to the second respondent herein. He further submitted that the second accused had taken precaution to conceal her identity with the view to grab the entire property knowingfully aware that Dhanalakshmi is pseudonym of Tamilarasi had executed sale deed in favour of the third accused. During the said purchase, the third accused played a vital role in the execution of sale process by abusing his official position.

4.1 He further submitted that LW10 categorically stated that the disputed property is located just opposite to the house of the fourth accused and the same was purchased by his wife namely the first accused and his daughter, third accused. She knew well aware of the fraudulent transaction, the fourth accused directed LW10, who is none other than camp driver Khaja Hussain, to go to the Sub Registrar Office, Neelangarai for registering document without any delay by abusing the official capacity as Senior Police Officer. Therefore, he had absolute knowledge about the illegal transaction and only under his influence, the illegal transaction took place. LW11, own brother of the fourth accused stated that after registering the case by the first respondent and also they were in search of their house, the fourth accused had handed over the copy of the documents related to the disputed property in question and instructed to keep it with him confidentiality. Therefore, the malafide intention and the involvement of the fourth accused are very clear. LW26 one, Mr.Chandrasekaran categorically stated that when he was working as Constable under the fourth accused, the fourth accused had contacted one, Ravi of Mayanoor and instructed him to cancel the document made in respect of the disputed property. He further submitted that LW28, one Mr.Sekar categorically deposed that the fourth accused called him to the Office and forced him to cancel the registration of document. Therefore, both petitioners namely third and fourth accused have committed offences under Sections 109, 417, 419, 465, 467, 468, 471, 447 read with 120(b) of IPC read with 34 of IPC and offences under Sections 82 (c) & (d) of Registration Act, 1908 and the petitions filed by the petitioners are clear abuse of process of court and liable to be dismissed. He also relied upon the following judgments:

(i) State of Madhya Praesh Vs. Yogendra Singh Jadon and Ors reported in MANU/SC/0117/2020, wherein the Hon'ble Surpeme Court of India has held as follows:

> We find that the High Court has examined the entire issue as to whether the offence Under Sections 420 and 120-B is made out or not at pre trial stage. The Respondents are beneficiary of the grant of cash credit limit when their father was the President of the Bank. The power Under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in court of law.

(ii) M.Jayanthi Vs. K.R.Menakshi and Ors reported in MANU/SC/1866/2019, wherein the Hon'ble Supreme Court of India has held as follows:

> It is too late in the day to seek reference to any authority for the proposition that while invoking the power Under Section 482, Code of Criminal Procedure for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the

allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

Unfortunately, the High Court put the cart before the horse and held that the Appellant had not produced any evidence to prove the entry in the Government Gazette though it is a relevant fact Under Section 35 of the Indian Evidence Act. Much before the case could reach the stage of trial, the High Court shut the door for the Appellant and pre-concluded the issue as though there was no evidence at all. This is completely contrary to law.

As such, he prayed for dismissal of the quash petitions.

5. Heard, Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner in Crl.OP.No.2880 of 2020, Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner in Crl.OP.No.13791 of 2020, and Mr.A.Natarajan, State Public Prosecutor appearing for the first respondent. Though notice was served on the second respondent and printed his name in the cause list, no one appeared on behalf of the second respondent by person or through pleader.

6. There are totally four accused, in which the petitioners are arrayed as A3 and A4. A1 is the wife of the fourth accused and A3 is the daughter of A1 and A4. The case of the prosecution is that the property situated at 189, Sholinganallur Village, "The Seashore Town", Tambaram Taluk, Kancheepuram District comprised in survey No.12/1 and survey No.12/349 admeasuring 12,000 sq.ft. originally belonged to one Chokkalinga Mudaliar's family. All the family members executed power of attorney in favour of one, Ganesan on 28.01.1967. On the strength of the power of attorney, the power holder Mr.Ganesan executed sale deed in favour of Mothilal Karsondas Dala and his brother Gunvantlal Karsondas Dalal vide document No.428 of 1967 at the Office of the Sub Registrar, Saidapet, Chennai. Both were died on 24.09.1981 and 10.02.1993. After their demise, the legal heirs of the deceased decided to develop the said property. In the month of September 2008, they visited the property and found that third persons are constructing building. On verification from the encumbrance certificate the second respondent found that the second accused impersonated their fathers who died even in the year 1981 and 1993, executed power of attorney in favour of the second accused with the influence of the first accused. In turn, the second accused mentioned two addresses in the sale deed and executed in favour of the third accused on 05.06.2007 by the sale deed vide document No.3388 of 2007. Further alleged that A2 impersonated Dhanalakshmi and using the said forged power of attorney

executed a rectification deed in favour of the third accused on 07.12.2007 vide document No.6087 of 2007 with the Office of Sub Registrar, Neelangarai, Chennai. The fourth accused misused his official position and coerced his camp office driver to go to Sub Registrar Office and assisted the first accused. Thereafter the first accused cheated the second respondent, grabbed the entire property and also constructed building. Thereafter electricity service connection was obtained in the name of the third accused and let out entire premises to Renault-Nissan Technology & Business Centre India Private Limited for the monthly rent of Rs.1,53,000/-. Also she received a sum of Rs.10,20,000/- as advance for the said premises. The monthly rent was deposited in the third accused account. After completion of the investigation, the first respondent laid final report as against A1 to A4 for the offences punishable under Sections 109, 417, 419, 465, 467, 468, 471, 447 read with 120(b) of IPC read with 34 of IPC and offences under Sections 82 (c) & (d) of Registration Act, 1908

7. On careful perusal of records revealed that in the month of September 2010, the second respondent came to understand that the disputed property was registered in favour of the third accused by the second accused on the strength of power of attorney dated 12.04.2007 registered vide document No.211 of 2007. Further the accused 1, 3 and 4 have put up construction on the disputed property and also obtained electricity service connection in the name of the third accused. Even then, the second respondent did not lodge any complaint before any of the police authority. In the year 2010 the second respondent and other legal heirs have filed suit in O.S.No.873 of 2010 on the file of the District Munsif Court, Alandur, Chennai for declaration declaring that the power of attorney executed in favour of the second accused and the sale deed executed in favour of the third accused are null and void. They also prayed for mandatory injunction to remove the construction put up by them and restraining the accused persons from creating further encumbrance over the disputed property. Injunction application filed by the second respondent herein was dismissed by the trial court and the trial is pending in the main suit. After two years from the date of filing the suit in the year 2012, namely on 29.05.2012, the second respondent lodged complaint before the Commissioner of Police and the same was forwarded to the file of the first respondent and registered FIR in Crime No.315 of 2012.

8. On perusal of the plaint in O.S.No.873 of 2010 in paragraph 9 that the defacto complaint lodged complaint before the Commissioner of Police on 19.01.2000 and the same was forwarded to the file of the Assistant Commissioner of Police, Thoraipakkam. Even then, no action has been taken since

defendants are highly influential persons. Though the second respondent attached the copy of the complaint dated 19.01.2010 in the plaint, there is no proof of acknowledgment for the said complaint by the Commissioner of Police or Assistant Commissioner of Police. Therefore, after period of four years from the date of knowledge, the present complaint has been lodged by the second respondent that too after filing suit for declaration and also failed to obtain injunction as against the accused persons. The FIR has been registered on 29.05.2012 and the first respondent filed final report only on 08.11.2018, there is absolutely no explanation for delay in filing final report. After filing the final report, trial court has taken cognizance for offences under Sections 109, 417, 419, 465, 467, 468, 471, 447 read with 120(b) of IPC read with 34 of IPC and offences under Sections 82 (c) & (d) of Registration Act, 1908 as against A1 to A4 in CC.No.113 of 2019.

9. That apart, the first respondent stated in the final report that the impersonation of two persons are yet to be traced out and after identifying them, separate final report will be filed as against them. As rightly pointed out by the learned Senior Counsels, the present final report is incompleted one and even after period of six years from the date of registration of FIR, the first respondent could not able to find out the impersonators and mechanically filed final report. The sale deed had been executed in favour of the third accused for valid sale consideration. After purchasing the disputed property by the third accused, put up construction and also obtained electricity service connection in her name. Though the prosecution alleged that A1, A3 and A4 with malafide intention to grab the property created fake documents they have dishonestly and fraudulently fabricated the above fake documents with malafide intention to grab the property. Further alleged that the fourth accused was being hold higher post in Police Department had played vital role in execution of sale process by abusing his official position. No one has spoken about his involvement in the alleged crime. Admittedly the general power of attorney and the sale deed have been registered before the Registrar Office vide document Nos.211 of 2007 and 3388 of 2007. Therefore, there is no question of fabrication of those documents by accused persons. According to the prosecution, the original owners of the property have been impersonated by two other persons and the first respondent yet to trace out them. Therefore, the third accused being purchaser of the property did not know about the power of attorney executed in favour of the second accused.

10. Further on perusal of LW10, Khaja Hussain was being driver of the fourth accused had driven the car for the first accused to Sub Registrar Office on several times. It would

not amount to any offence committed by the fourth accused. LW10 was being the driver of the fourth accused, he had driven the car. LW11, the brother of the fourth accused herein stated that the fourth accused handed over the copy of the document related to the disputed property and on his instruction, he kept the same in safe custody. Even according to him, all the documents are copies of the original documents and the fourth accused never entrusted original documents with LW11. Even assuming that the fourth accused entrusted copies of the document with the hands of LW11, that would not amount to any offence, since the certified copies of the power of attorney and the sale deed were produced before the first respondent. Further, LW26, a Police Constable served under the fourth accused stated that the fourth accused contacted one Ravi and instructed him to cancel the document in respect of the disputed property. He is only hear say evidence and he heard that the fourth accused had spoken through phone to one, Mr.Ravi. It is absolutely unbelievable to allege that the fourth accused also involved in this crime. Insofar as the statement of LW28, the Sub Registrar of Neelangarai is concerned, he stated that the fourth accused called him to his Office and forced him to cancel the registration of document. On perusal of the statement recorded under Section 161(3) of Cr.P.C, LW28 revealed that he was working as Sub Registrar from 24.07.2006 to 31.08.2009 at the Sub Registrar Office, Neelangarai. On 08.09.2008 he registered agreement for sale vide document No.3679 of 2008 through the power agent of Chandresh M.Kampani one, Mr.Ravi in favour of M.Rajaya. Thereafter in the month of March 2010, the first accused phoned him and threatened to cancel the said agreement for sale when already the said property was sold out in favour of A3. Thereafter the fourth accused also called him at his Office and compelled him to cancel the document.

11. It is curious to note that when LW28 was working from 24.07.2006 to 31.08.2009 at the Office of the Sub Registrar, Neelangarai, in the month of March 2010, he was working at some other Office and as such, the accused persons would not have compelled him to cancel that document. That apart, it would not amount to any offence since the present complaint is that all the accused persons have conspired together and impersonated the original owners of the property and executed power of attorney in favour of the second accused and in turn she executed sale deed in favour of the third accused. Therefore, the prosecution miserably failed to produce materials to attract those offences as against the petitioners herein. Under these circumstances, the petitioners need not go for ordeal of the trial since the entire proceedings are vitiated and clear abuse of process of court.

12. In view of the above discussion, both the Criminal Original Petitions are allowed and the proceedings in CC.No.113 of 2019 pending on the file of the learned Judicial Magistrate, Alandur is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The The Judicial Magistrate,
The Judicial Magistrate Court,
Alandur.

2.The Chief Judicial Magistrate,
Egmore, Chennai-8.

3.The Inspector of Police,
Central Crime Branch,
Land Grabbing Wing, Team-XVI,
Vepery, Chennai-600 007.

4.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Manuraj, Advocate Sr.32072
+1cc to Mr.A.Gopinath, Advocate Sr.32073

br[co]
srg 16/10/2020