



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2020

Pronounced on : 09.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P. (MD)Nos.13228 of 2015 and 19634 of 2016

and

M.P. (MD)No.1 of 2015 and Crl.M.P. (MD)No.1627 of 2016

1.D.S.Velmurugan
2.T.Jeyachandran
3.S.Rajendran
4.S.Sathishkumar
in both

.. Petitioners/Accused 1 to 3 & 5
in both the Crl.O.Ps.

Vs.

M.C.Ravikumar

.. Respondent/Complainant
in both the Crl.O.Ps.

Prayer in Crl.O.P. (MD)No.13228 of 2015:- Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in C.C.No.41 of 2015 on the file of the Judicial Magistrate Court No.I, Thanjavur, Thanjavur District and quash the same.

Prayer in Crl.O.P. (MD)No.19634 of 2016:- Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the docket order passed by the learned Judicial Magistrate No.I, Thanjavur, in C.C.No.41 of 2015, on 21.09.2016, insofar as his decision of proceeding with the case right from 19.01.2016 in the event of non-production of order copy meant for extending the stay of the said proceedings.

For Petitioners
in both the Crl.O.Ps. : Mr.R.Anand

For Respondent : Mr.S.Muthumalai Raja
in both the Crl.O.Ps.

COMMON ORDER

Crl.O.P. (MD)No.13228 of 2015:-

This Criminal Original Petition is filed to quash the criminal complaint taken on file by the learned Judicial Magistrate No.I, Thanjavur, based on the private complaint filed under Section 200 of Cr.P.C.



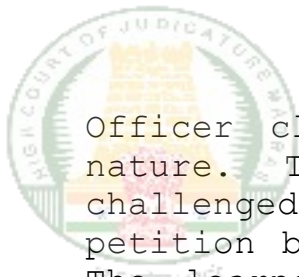
2.The facts of the case, which has a chequered history, is portrayed as follows:-

2.1. The first petitioner herein is a moneylender. The respondent/complainant had borrowed a sum of Rs.3 Crores from him for his business purpose. As a security for the said loan, documents like Promissory Notes, Cheques and Hypothecation Deeds were obtained from the respondent/complainant and his wife. More particularly, in the year 2007, around 26,000 sq.ft. of land in the prime locality of Thanjavur, was given as a security to the first petitioner for the loan by way of General Power of Attorney. The petitioners fraudulently, misused the power and alienated the property. Further, a sum of Rs.86,98,000/-, being the Chit money of the respondent/complainant held by the accused persons has been appropriated without the consent of the respondent/complainant. Therefore, private complaint under Section 200 Cr.P.C. was filed before the Judicial Magistrate Court No.I, Thanjavur.

2.2. The learned Magistrate after recording the sworn statement of the respondent/complainant M.C.Ravikumar and his witness A.T.Bhagavath Singh, was *prima facie* satisfied that the offence under Sections 406 and 420 r/w. 34 of IPC, is made out and taken the said complaint on file and assigned C.C.No.41 of 2015 and issued notice. This is now under challenge in Crl.O.P.(MD) No.13228 of 2015 by A1 to A3 and A5 on the ground that they are innocent persons and the criminal complaint is abuse of process of Court. The subject matter of the complaint already probed by the police and found it a civil dispute. The same was challenged in the Courts and rejected by the Trial Court, High Court and the Supreme Court.

3.According to the petitioner, a larger extent of land including the subject property originally owned by E.K.K.Syed Mohamed. On 05.07.2006, the said E.K.K.Syed Mohamed gave a Power of Attorney in respect of the property measuring to an extent of 35,265 sq.ft., comprised in T.S.No.38/1A, Block No.6, Ward No.5, Thanjavur Town, to the respondent/complainant - M.C.Ravikumar. Later, the said Power of Attorney was cancelled on 03.09.2007. Thereafter, the owner of the property viz., E.K.K.Syed Mohamed gave a Power of Attorney in favour of the second petitioner/A2 on 07.09.2007 in respect of the property measuring to an extent of 26,000 sq.ft. The respondent/complainant is not the owner of the property. There was no element of entrustment of property or element of cheating in the said transaction. Without proper disclosure of facts, the complaint was filed and the learned Magistrate has also taken it on file.

4.On the very same set of allegation, the respondent/complainant gave a complaint to the Commissioner of Police on 22.11.2011. After enquiry, the Investigation



Officer closed the complaint as mistake of fact and civil in nature. The said report of the Investigation Officer was challenged by the respondent/complainant by way of protest petition before the Chief Metropolitan Magistrate Court, Chennai. The learned Chief Metropolitan Magistrate, Chennai, vide order dated 23.09.2013, held that the facts of the complaint and the investigation does not constitute any cognizable offence and therefore, there is no necessity to interfere in the final report filed by the Investigation Officer. This order was challenged by the respondent/complainant in Crl.R.C.No.1305 of 2013 before the Principal Seat of this Court. This Court, vide order dated 24.10.2013, held that the dispute is only adjustment of account and civil in nature and therefore, the Investigation Officer has filed the final report closing the complaint as mistake of fact. The Trial Court has rightly accepted the same and there is no scope for interference in the said order under the revisional jurisdiction.

5.The order of the High Court in Crl.R.C.No.1305 of 2013 was further challenged by the respondent/complainant before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.1042 of 2014. The Hon'ble Supreme Court, vide order dated 07.01.2015, upheld the orders of the Courts below. Dismissed the Special Leave Petition, giving liberty to the respondent/complainant to avail civil remedy, if he chooses.

6.Later, the said order of the Hon'ble Supreme Court, dated 07.01.2015, was modified on 09.01.2015, by substituting the words 'Civil remedy' by the words 'appropriate remedies'. Based on this observation, the present complaint has been filed on the same set of facts and as such, there is no material to entertain the complaint, since the content of the complaint and the sworn statements are contrary to the documents relied by the respondent/complainant.

7.Already, the Courts starting from the Chief Metropolitan Magistrate Court to the Hon'ble Supreme Court had categorically held that there is no element of cognizable offence in the transaction and the allegation of cheating and breach of trust is not made out. Because, the Hon'ble Supreme Court has given liberty to the respondent to avail appropriate remedy, if he chooses, he cannot again, start from the square one by filing a criminal complaint under Section 200 Cr.P.C.

8.Now, the short point involved in this case is, whether the oral statement made by the respondent/complainant, which is contrary to the recital of the documents and the conduct of the parties at the time of executing the documents, can be entertained while the same subject matter dealt at length by

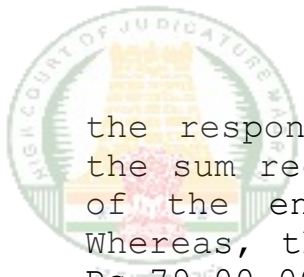


the Courts and held against the respondent/complainant.

9. In this regard, this Court after going through the complaint and the sworn statement of the respondent/complainant and A.T.Bhagavat Singh finds that the respondent/complainant claim title and right over 26,000 sq.ft. of land based on the unregistered sale agreement executed in favour of the respondent/complainant by E.K.K.Syed Mohamed, which is dated 19.01.2006. The recital indicates that E.K.K.Syed Mohamed had sold away the property to the extent of 35,265 sq.ft. to the respondent/complainant M.C.Ravikumar. However, after six months i.e., on 05.07.2006, a Power of Attorney has been executed by E.K.K.Syed Mohamed in favour of the respondent/complainant. The said Power of Attorney is a registered document. It does not whisper about the unregistered sale deed executed by the same parties six months ago. This Power of Attorney has been cancelled by consent of the respondent/complainant on 03.09.2007.

10. It is a case of the respondent/complainant that though there was a Power of Attorney in his favour and the same was cancelled subsequently, in fact, the property was sold by E.K.K.Syed Mohamed to him and entire sale consideration was received by the Vendor and he has also given 161 Cr.P.C. statement before the Investigation Officer, when his complaint against the petitioners was investigated. Despite that, the Investigation Officer closed the final report as mistake of fact, which was subject matter of the Crl.R.C. before High Court and the S.L.P. disposed by the Hon'ble Supreme Court on 09.01.2015. Yet another document highly relied by the respondent/complaint is the Tripartite Agreement, dated 23.05.2008, entered between him, one R.R.Vasudevan and D.S.Velumurugan, who is the first accused/first petitioner herein.

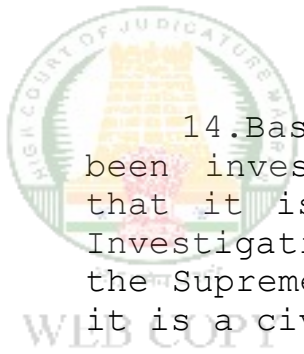
11. From a bare reading of the Tripartite Agreement dated 23.05.2008, referred in the complaint, this Court finds that in the said Tripartite Agreement, various money transactions between the respondent/complainant - M.C.Ravikumar and the first petitioner - D.S.Velumurugan, has been discussed, in which, the second party R.R.Vasudevan has promised to pay a sum of Rs.94,00,000/- to the third party for the money already received and for the said purpose, he has created second charge over the property, which stood in his name [R.R.Vasudevan]. Similarly, it is also admitted by the respondent/complainant - M.C.Ravikumar that he will have no further claim against R.R.Vasudevan, since the due payable by R.R.Vasudevan is made over to D.S.Velumurugan and D.S.Velumurugan will give credit of Rs.79,00,000/- as against Rs.3 Crores loan availed by the respondent/complainant - M.C.Ravikumar. In the notice sent by the respondent to the



the respondent/complainant that the made over of Rs.79,00,000/-, the sum receivable from R.R.Vasudevan is full and final settlement of the entire loan transactions with the petitioners/accused. Whereas, the recital found in the Tripartite Agreement shows that Rs.79,00,000/- of R.R.Vasudevan's debt made over in favour of the first petitioner/ D.S.Velmurugan, will be taken credit towards part settlement of the total amount of Rs.3 Crores and not final settlement for Rs.3 Crores. Even in this Tripartite Agreement, there is no indication that the Power of Attorney executed by E.K.K.Syed Mohamed was misused and the property of the respondent/complainant was illegally grabbed by the petitioners/accused.

12.In fact, to attract Section 406 of I.P.C., the essence of the offence, namely entrustment of the property and dishonest misappropriation or conversion of the property by the Agent, is necessary. In this case, the property stood in the name of E.K.K.Syed Mohamed. The Power of Attorney was executed in favour of the second petitioner/second accused by the said E.K.K.Syed Mohamed. While so, on the face of the record, no entrustment of property by the respondent/complainant in favour of the second petitioner/second accused is made out. Therefore, on the face value of the complaint, the provision of Section 406 I.P.C. is not attracted in this case.

13.The other Penal Section for which the petitioners face trial is Section 420 IPC, which requires the ingredient of cheating and thereby, dishonestly inducing the persons to deliver any property. If really the respondent/complainant had any right or title in the property, which is subject matter of the Power of Attorney Deed, then, on the day, when E.K.K.Syed Mohamed cancelled the Power of Attorney given in favour of the respondent/complainant, he should have agitated the same. On 03.09.2007, the Power of Attorney granted in favour of the respondent/complainant was cancelled by his Principal E.K.K.Syed Mohamed. Having accepted the cancellation of Power of Attorney Deed, in respect of the property and acted upon the same by getting the sale deed executed for the remaining portion of the land. The subsequent alienation of the property by the second petitioner/second accused based on the Power of Attorney for 26,000/- sq.ft. out of 35,265 sq.ft. cannot be an act of cheating. If at all anybody has locus to challenge the said transaction, it can only be E.K.K.Syed Mohamed, who was the Principal/owner of the property and not the respondent/complainant, based on the Power of Attorney cancelled much before the alienation of the property through the subsequent Power Agent. Hence, the ingredient of Section 420 of I.P.C. also does not attract from the documents relied by the respondent/complainant.



14. Based on the merits of the complaint, the issue has already been investigated and report filed by the Investigation Agency that it is a matter of civil dispute. This conclusion of the Investigation Agency was tested by the Trial Court, High Court and the Supreme Court. Uniformly, all the three Courts have held that it is a civil dispute and criminal action cannot be taken.

15. When the Hon'ble Supreme Court gave liberty to the respondent/complainant to resort civil remedy, if chooses, and later, modified as any other appropriate remedy, it does not mean that the respondent/complainant been given liberty to initiate criminal action and start the proceedings from the square one. If really the intention of the Hon'ble Supreme Court was to give liberty for the respondent/complainant to pursue the matter by criminal prosecution, they would have interfered in the order of the Trial Court as confirmed by the High Court and would have allowed the S.L.P. They would not have dismissed the S.L.P., confirming the finding of the Investigation Officer that it is a civil dispute. Therefore, liberty given to the respondent by the Hon'ble Supreme Court, vide order dated 09.01.2005, has to be considered in the light of the order challenged before the Hon'ble Supreme Court. It cannot be read in isolation and presume that the Hon'ble Supreme Court has given liberty to the respondent to file criminal case. The duly registered documents with knowledge and consent of the respondent/complainant, if to be challenged, it should be challenged by the person concerned and not by a third party. The recital in the General Power of Attorney Deed as pointed out earlier is not between the respondent/complainant and any of the accused persons, but between one E.K.K.Syed Mohamed and the second accused.

16. In **State of Haryana Vs. Bhajan Lal** reported in **1992 Cri.L.J. 527**, the Hon'ble Supreme Court has held that the power under Section 482 of Cr.P.C. should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by the Hon'ble Supreme Court, are as follows:-

'1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.''

17. In this case, in the first round of litigation which went upto the Hon'ble Supreme Court, it has been held that the allegation made by the respondent/complainant regarding the General Power of Attorney even if it is taken on the face value, do not *prima facie* constitute any offence. The said legal position held consistently throughout the hierarchy of the judiciary, needs no re-visit again. Hence, this Criminal Original Petition is allowed and the proceedings in C.C.No.41 of 2015, on the file of the Judicial Magistrate Court No.I, Thanjavur, Thanjavur District, is quashed.

Crl.O.P. (MD) No.19634/2016:-

This is a off-shoot Petition, pending Crl.O.P.(MD)No.13228 of 2015.

2. The Trial Court on 21.09.2016 has passed an order that it with the trial if the copy of the stay order by High

<https://www.e-courts.gov.in/#useriest>



Court not produced by the petitioners/accused persons before 19.10.2016.

3.The said docket order was challenged in this Criminal Original Petition. Since the main Criminal Original Petition itself now allowed, the docket order passed by the learned Judicial Magistrate No.I, Thanjavur, on 21.09.2016 has become infructuous. Hence, there is no necessity to pass any order separately in this Criminal Original Petition except to record the dismissal as infructuous.

In the result,

(i) Crl.O.P.(MD)No.13228 of 2015 is allowed and the proceedings in C.C.No.41 of 2015, on the file of the Judicial Magistrate Court No.I, Thanjavur, Thanjavur District, is quashed.

(ii) Crl.O.P.(MD)No.19634 of 2016 is dismissed as infructuous. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.I,
Thanjavur, Thanjavur District.

+2 CC to M/s.R.ANAND, Advocate SR-10941 & 10940[F]

+1 CC to M/s.S.PANDIYARAJ, Advocate SR-10593[F]

order made in
CRL.O.P.(MD) Nos.13228 of 2015
and 19634 of 2016
09.03.2020

DB(CO)

TR(17.03.2020) 8P 5C