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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2020

Pronounced on: 11 .12.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No. 15813 of 2016

and

Crl.M.P.(MD)No. 7589 and 10242 of 2016

1. Irudayaraj
2. Anthonydasan

: Petitioners/Accused

Vs.

Manokari

: Respondent/Complainant

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No 32 of 2015 on the file of the learned Judicial Magistrate No.V, Madurai and quash the same.

For Petitioners: Mr.C.Vakeeswaran

For Respondent : Mr.N.Ananthapadmanabhan

ORDER

This petition has been filed to quash the proceedings in C.C.No 32 of 2015 on the file of the learned Judicial Magistrate No.V, Madurai.

2. The learned counsel for the petitioners would submit that the offence is not made out as against the petitioners and the learned Magistrate ought not to have taken cognizance, since the power of attorney deed dated 19.08.1998 allegedly to have been created by the accused persons and registered before the Sub Registrar, Rameshwaram, whereas the complaint lodged before the learned Judicial Magistrate No.V, Madurai which has no jurisdiction to entertain the same. Therefore no cause of action arose within the jurisdiction of the learned Judicial Magistrate, Rameswaram to take cognizance.

3. According to the prosecution who executed power of attorney were not arrayed as accused , but simply stood as witness, which is fatal to the case of prosecution and it cannot be sustained as against the accused persons. He further submitted that when the wife of the complainant is a mentally retarded person and she is



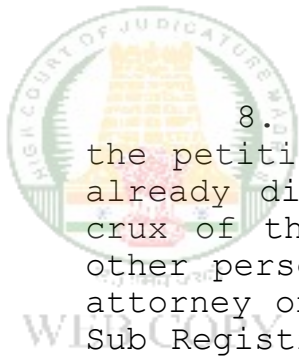
represented through her husband based on the power of attorney dated 10.06.2002 which was executed in his favour. When the wife of the defacto complainant is mentally retarded person the power of attorney is not valid in the eye of law and as such the defacto complainant has no locus as alleged in the complaint. Further the petitioners created forged power of attorney since the defacto complainant herself put her thumb impression in the power deed, therefore no offence under Sections 465,468,471 of IPC is made out as against the accused persons.

4. There are four accused in this case and the accused A1 and A2 died and the petitioners herein are aged persons. That apart in the power of attorney 32 persons signed and gave power to the power holder one Kanagaraj on 19.08.1998, whereas in the complaint the other persons who have executed power of attorney were not arrayed as accused. He further submitted that the defacto complainant also filed a suit in O.S. No.406 of 2006 on the file of the Sub Court, Madurai and the same is pending. Therefore he sought for quashing the entire proceedings.

5. The learned counsel for the defacto complainant would submit that the case pertains to the commission of forgery committed by all the accused persons A1 to A4, since the defacto complainant is not a person having sufficient IQ to understand and perceive things as a common regular person. The accused persons taking advantage of the fact that she was left in their custody by the petitioners had impersonated her and produced another person to act as the petitioner's wife and executed power of attorney by affixing her left hand thumb impression. He further submitted that the subject property very much within the jurisdiction of the learned Magistrate even the power of attorney was executed before the Sub Registrar, Rameshwaram that too by impersonating the defacto complainant. Since their house is situated at Madurai the learned Judicial Magistrate No.V is having jurisdiction to try the case.

6. In fact after filing the complaint the complaint was misplaced, thereafter traced out and taken cognizance by the learned Magistrate., hence there is no delay on the part of the defacto complainant. He further submitted that complaint as lodged by the retarded person through her husband and there is no legal impediment to lodge the complaint representing through her husband. Further the ground raised by the petitioners cannot be considered under Section 482 of Cr.P.C and it can be considered only during trial.

7. Heard Mr. C.Vakeeswaran, learned counsel for the petitioners and Mr. N.Ananthapadmanbhan, learned counsel for the defacto complainant.



8. It is seen that there are four accused in this case and the petitioners herein are A3 and A4. The first and second accused already died and all the charges against them stand abated. The crux of the complaint is that all the accused persons along with other persons cheated the defacto complainant and executed power of attorney on 19.08.1998 and registered the same at the office of the Sub Registrar, Rameshwaram in respect of the property at measuring 12 ½ cents comprised in R.S.No.217/1 situated at Madakulam Village, Madurai South in favour of one Kanagaraj and the subject property belongs to A1 to A5 and others including the defacto complainant. The defacto complainant was impersonated and forged her left thumb and executed power of attorney in favour of said Kanagaraj by the accused persons and other relatives. On perusal of the complaint they categorically stated that in respect of accused persons 1 to 4 and others having already relinquished their rights and executed partition deed. Thereafter the defacto complainant lodged complaint only as against A1 to A4. Further it is stated in the complaint that other 26 persons who executed power of attorney have absolutely no intention to impersonate the defacto complainant as well as no intention to grab the property. So far as the petitioners are concerned they are arrayed as A3 and A4 and there are specific allegations against them. Since A1 and A2 died and all the charges abated as against them. All the grounds raised by the petitioners are mixed question of facts and it cannot be decided under Section 482 of Cr.P.C and further the evidence cannot be appreciated under Section 482 of Cr.P.C.

9. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



10. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Invstigation Vs. Arvind Khanna**, wherein, it has been held as follows:

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"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

11. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C 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.



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13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

12. Hence, the Criminal Original Petition stands dismissed. However, the trial Court is directed to complete the trial in C.C. No.32 of 2015 , within a period of six months from the date of receipt of copy of the order.

13. At this juncture, the learned Counsel for the petitioners submitted that the presence of the petitioners before the trial Court may be dispensed with.

14. Accepting the said submission, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

15. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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