IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2020

PRONOUNCED ON : 04.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10330 of 2015 and
Crl.M.P.No.1 of 2015

1.V.Rajaram

2.J.Sadasivam ...Petitioners

Vs.

1.State of Tamilnadu Rep. by,
The Inspector of Police,
V-5, Thirumangalam Police Station,
Thirumangalam, Chennai.

2.M.Rajalakshmi ...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in the above Crime No.1666 of 2014 on the file of the 1st respondent Police and quash the same as against the petitioners.

For Petitioners: Mr.G.Vijayakumar

For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

For R2 : Mr.R.Murali

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.1666 of 2014 pending on the file of the 1st respondent Police.

2.The 2nd respondent lodged a complaint on 24.12.2013 to the Commissioner of Police, Vepery, Chennai. Since no action was taken, the 2nd respondent filed a direction petition before this

Court in Crl.O.P.No.2350 of 2014. This Court, by order, dated 11.02.2014 directed the 1st respondent Police to register a case. Thereafter, an FIR in Crime No.1666 of 2014 was registered against the petitioners for offence under Sections 294(b), 420 and 506(i) of IPC.

3.The complaint of the 2nd respondent is that the 2nd respondent owned a house property measuring about 455 sq.ft situated at No.373/23, Ganga Kanchi Plot, Thirumangalam Road, Anna Nagar West, Chennai. This flat was originally purchased by her husband P.Malaiappan and subsequently, the same was settled in her favour on 05.04.2004. The 2nd respondent's husband for family expenses, mortgaged the property with M/s.East West Benefit Fund for a sum of Rs.1,25,000/- in the year 2007. Thereafter, the 2nd respondent and her husband paid back Rs.1,00,000/- towards the mortgage to M/s.East West Benefit Fund in the year 2007. They were facing some difficulty in making balance payment of Rs.25,000/- and the balance amount along with the interest had spiralled and increased to a sum of Rs.65,000/- and it was unable to be mobilized. Hence, the 2nd respondent approached the 1st petitioner, a financier and borrowed a sum of Rs.1,00,000/- to settle the dues with the mortgage in M/s.East West Benefit Fund during the March 2012 and signed in the blank Non Judicial Stamp paper and handed over the same to the 1st petitioner. The original documents is with the 1st petitioner along with signed blank Non Judicial Stamp papers. The 1st petitioner had extended the loan of Rs.3,50,000/- and another loan of Rs.2,50,000/- with 4% interest. At that time also, four signed blank Non Judicial Stamp papers and also blank cheques were obtained from the 2nd respondent. Without knowledge of the 2nd respondent, her husband Malaiappan for the business purpose approached the 1st petitioner, received a principle of Rs.75,000/- with interest of Rs.35,000/-, totally Rs.1,10,000/-. Since he was unable to repay the loan, the 2nd respondent decided to sell the property valued around Rs.26,00,000/-. Sofar the 2nd respondent had borrowed a sum of Rs.5,30,000/- based on the property. Since the 2nd respondent's elder daughter marriage was fixed in the month of June 2013, the 2nd respondent and her husband were unable to arrange funds for the marriage. Having no other option, the 2nd respondent approached the 1st petitioner for additional loan. The 1st petitioner expressed his inability and introduced the 2nd petitioner as big financier and he would arrange loan for the marriage, on condition that the 2nd respondent shall execute power of attorney in favour of the 2nd petitioner. Trusting the words of the petitioners, the 2nd respondent executed a power of attorney on 18.06.2013 and she was busy with her daughter's marriage to be held on 24.06.2013. To her shock and surprise the 2nd respondent came to know that without her knowledge, the 2nd petitioner by using the power of attorney, executed a sale deed in favour of one G.Chandrasekaran and the property sale consideration has been shown as Rs.13,00,000/- and thereby, caused huge loss and cheated the 2nd respondent by fabricating and impersonating her. When the 2nd respondent questioned the same, the petitioners used abusive and unparliamentary words and threatened her with dire consequences.

4.The learned counsel for the petitioners submitted that the 2nd respondent along with her husband Malaiappan approached the 1st petitioner through one common friend and sought for a loan of Rs.15,00,000/- to redeem her property and for conducting her elder daughter's marriage. The 1st petitioner with an intention to help the 2nd respondent had borrowed amount from his friends and relatives and provided a loan of Rs.15,00,000/- to the 2nd respondent. The learned counsel further submitted that the 2nd respondent again requested the 1st petitioner for further loan of Rs.3,00,000/-. Since the 1st petitioner was unable to mobilize the amount of Rs.3,00,000/-, he refused. Again the 2nd respondent insisted the 1st petitioner for additional loan and submitted the property as security. On her request, since the 2nd respondent daughter's marriage was nearing and she was in immediate need of money, the 1st petitioner referred her to the 2nd petitioner. The 2nd respondent's husband approached the 2nd petitioner and agreed to execute power of attorney and the sale agreement on condition that the 2nd petitioner pays a sum of Rs.20,00,000/- towards total consideration. Out of which, Rs.18,00,000/- should be paid immediately to repay the loan amount of Rs.15,00,000/- obtained from the 1st petitioner and the amount of Rs.3,00,000/- to meet the marriage expenses and the remaining Rs.2,00,000/- to be paid at the time of execution of the sale deed. The 2nd petitioner had paid Rs.18,00,000/- to the 2nd respondent as per the agreement.

5.The learned counsel for the petitioner further submitted that apart from the power of attorney, agreement for sale and receipts were executed by the 2nd respondent. The power of attorney was registered as document No.3545 of 2013 with the Sub Registrar, Villivakkam on 18.06.2013. Further, the receipt for receiving Rs.18,00,000/- executed by the 2nd respondent in all these document, the 2nd respondent's husband stood as witness. On 16.09.2013, the 2nd petitioner as power agent of the 2nd respondent executed a sale deed in favour of one Chandrasekaran. As per the guideline value, the sale consideration of Rs.13,00,000/- was mentioned in the sale deed, which was registered as document No.5054 of 2013. While executing the sale deed, the 2nd respondent had signed the life certificate for the purpose of registration. The signature found in the life certificate and in all other documents are identical as could be seen from the naked eye. The 2nd respondent now claiming that she was not aware about the execution of sale deed and the signature obtained in the life certificate is for the purpose of extracting money are not acceptable. From the power of attorney document, it is seen that nowhere it is stated that the 2nd petitioner to hand over the sale consideration and give accounts for execution of the sale deed for the flat.

6.The learned counsel for the petitioner further submitted that the 2nd respondent with ulterior motive on the one hand received the entire sale consideration, on the same breadth on 15.06.2013 to create hardship and encumbrance placed one Shanthi as tenant after getting Rs.3,50,000/- lakhs from her as lease for the said flat. The subsequent purchaser Chandrasekaran filed a suit in O.S.No.4410 of 2014 and the said Shanthi also filed a suit in O.S.No.6871 of 2013, wherein the subsequent purchaser as well the 2nd respondent and the 2nd petitioner are arrayed as defendants. In the plaint in O.S.No.6871 of 2013, the said Shanthi admits that the 2nd respondent/2nd defendant entered into the lease agreement with her on 15.06.2013 for 33 months and she paid a sum of Rs.3,50,000/-. When Shanthi was forced to vacate the premises by the subsequent purchaser Chandrasekar, she enquired the 2nd respondent about the sale agreement, but the 2nd respondent failed to give any reply to her. The learned counsel further submitted that the subsequent purchaser Chandrasekar filed a suit in O.S.No.4410 of 2014, which came to be dismissed on 24.11.2016 by the XIII Assistant City Civil Court, Chennai, against which, appeal was filed in A.S.No.84 of 2017 before the IV Assistant City Civil Court, Chennai. During pendency of the Appeal Suit in A.S.No.84 of 2017, the subsequent purchaser and Shanthi entered into compromise on 22.06.2018 and thereafter, she vacated the premises, handed over the possession to the subsequent purchaser Chandrasekar after receiving the lease amount from him.

7.The learned counsel further submitted that the 2nd respondent filed Crl.O.P.No.2350 of 2014 before this Court seeking direction to register a case on her complaint, in which this Court, by order, dated 11.02.2014 directed the 1st respondent Police to consider her complaint. Despite the same, no action was taken. Again on 27.04.2016, the case again listed and this Court directed the 1st respondent Police to follow the guidelines issued in the case of “Lalita Kumar Versus Government of Uttar Pradesh reported in (2014) 2 SCC 1” and disposed the petition. Thereafter, the 2nd respondent filed a petition in Crl.O.P.No.20026 of 2018 before this Court, seeking direction to complete the investigation and to file the charge sheet in Crime No.1666 of 2014. This Court, by order, dated 27.08.2018 closed the petition with a direction to the 1st respondent Police either to file a closure report or a charge sheet as the case may be under intimation to the 2nd respondent. The learned counsel further submitted that the petitioners filed Anticipatory Bail before this Court in Crl.O.P.No.32325 of 2014, in which this

Court, by order, dated 15.12.2014 on the submissions and perusal of the materials observed that the case appears to be civil nature and granted Anticipatory Bail to the petitioners. In this case, the 2nd respondent admits borrowing of money, execution of power, entered into agreement for sale and issuance of receipt. Now, the contention of the 2nd respondent is that in the sale deed, the value of the property has been shown lesser and the signature found in the life certificate was obtained earlier for some other purpose and later misused cannot be a ground to sustain the criminal case against the petitioners.

8.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, initially the complaint was given on 24.12.2013. On the directions of this Court, an First Information Report in Crime No.1666 of 2014 came to be registered on 03.12.2014. He further submitted that the 2nd respondent failed to cooperate with the investigation, on the other hand has filed the petition before this Court in Crl.O.P.No.20026 of 2018 seeking for completion of the investigation. As per the direction of this Court in Crl.O.P.No.20026 of 2018, dated 27.08.2018, the investigation in Crime No.1666 of 2014 was taken up and the petitioners were enquired, documents were collected. During investigation, the 2nd respondent admitted the execution of power attorney, agreement for sale and receipts. The 2nd respondent had objections with regard to the execution of sale deed by the 2nd petitioner in favour of one Chandrasekar, which according to the 2nd respondent, she was not informed about the same. The investigation is in progress and hence, he prayed for dismissal of the Quash Petition.

9.The learned counsel appearing for the 2nd respondent filed a counter affidavit along with typed set and made his submissions that the flat of 455 sq.ft situated at No.373/23, Ganga Kaveri Flat, Thirumangalam Road, Anna Nagar West, Chennai was purchased by her husband Malaiappan and it was promoted by the Tamil Nadu Housing Board. The plot was initially allotted to one Narayana Rao and the Tamil Nadu Housing Board executed a sale deed in favour of Narayana Rao on 19.10.1990 in document No.395 of 1991. The said Narayana Rao sold the property in favour of the 2nd respondent's husband on 17.12.1999 registered as document No.3393 of 1999. Thereafter, the said Malaiappan executed the settlement deed in favour of his wife/2nd respondent on 05.11.2004 in document No.3720 of 2004. Then on, the 2nd respondent is in enjoyment and possession of the property. The learned counsel further submitted that the property was initially mortgaged with M/s.East West Benefit Fund for sum of Rs.1,25,000/- to meet out the family expenses in the year 2004. Thereafter, the mortgage could be cleared in the year 2012 by availing loan from the 1st petitioner. At that time, the 1st petitioner insisted the 2nd respondent to sign the blank Non Judicial Stamp papers and he retained the signed papers along with the original title deeds. The 2nd respondent borrowed a sum of Rs.3,50,000/- and another Rs.2,50,000/- at the rate of 4% interest from the 1st petitioner and again he obtained four signed blank Non Judicial Stamp Papers and blank cheques from the 2nd respondent. Since the 2nd respondent was not in a position to repay the amount, she decided to sell the property which was valued around Rs.26,00,000/- to clear her loans.

10.It is further submitted that the 1st petitioner introduced the 2nd petitioner and projected him as big financier and he will arrange loan to clear all the pending dues of the 2nd respondent. Trusting the same, the 2nd respondent executed a power of attorney in favour of the 2nd petitioner on 18.06.2013 eventhough she was busy with her daughter's marriage which was to be held on 21.06.2013. The power of attorney was executed without receiving any consideration. Thereafter, the 2nd respondent came to know that the property was sold to one G.Chandrasekar by the 2nd petitioner by using the power of attorney for meagre amount of Rs.13,00,000/-. The 2nd respondent lodged a complaint on 24.12.2013 to the 1st respondent Police, but no action taken. Hence, she filed a petition in Crl.O.P.No.2350 of 2013 and subsequently, the First Information Report in Crime No.1666 of 2014 came to be registered for offence under Sections 294(b), 420 and 506(ii) IPC as per the orders of this Court. The 2nd respondent admitted that she borrowed Rs.7,00,000/- on various occasions to repay the loan and for her daughter's marriage. Each and every time, the accused herein obtained signature in the blank Non Judicial Stamp papers. Taking advantage of original deeds possessed by them, the petitioners cheated the 2nd respondent and usurped her property.

11.The contention of the 2nd respondent is that she borrowed a sum of Rs.18,00,000/- from the petitioners. Further, the life certificate dated 16.03.2013 is not genuine. At the time of execution of the power of attorney, the petitioners have clandestinely obtained her photo and signature in the life certificate and later, used the same for their convenience. After registration of the First Information Report, no action was taken. Hence, she filed a petition in Crl.O.P.No.20026 of 2018 to complete the investigation and file a final report, in which this Court, by order, dated 27.08.2018 directed the 1st respondent Police to complete the investigation in Crime No.1666 of 2014 within a period of three months. Thereafter to, no action was taken to complete the investigation. The 1st respondent Police in connivance with the petitioners did not conduct proper investigation. Because of the fraudulent act of the petitioners, the 2nd respondent had lost valuable property worth about Rs.26,00,000/-. The learned counsel further submitted that the First Information Report is not an encyclopaedia, only after completion of investigation, the veracity and claim of the 2nd respondent are to be ascertained. Hence, he prayed to dismiss the Quash Petition and seek direction to complete the investigation.

12.This Court considered the rival submissions and perused the materials available on record.

13.In this case, the 2nd respondent admits that she availed loan from the 1st petitioner on three occasions, for each time, her claim is that she signed and handed over the blank Non Judicial Stamp Papers. This signed Non Judicial Stamp papers were used by the petitioners in creating sale agreement and receipts. Further, admits about handing over the original title deeds. As regards the power of attorney, it is a registered document in No.3545 of 2013, dated 18.06.2013. On the same day, the agreement of sale and receipts were executed. In all these documents, the petitioner's husband Malaiappan is the witness. The Non Judicial Stamp papers were purchased from the Stamp Vendor G.Abusyed almost during the same period. All the three documents were almost simultaneously executed.

14.In the agreement of sale, it is clearly mentioned that the total sale consideration was fixed as Rs.20,00,000/-, of which Rs.18,00,000/- was paid and the balance amount of Rs.2,00,000/- to be paid within 90 days. The receipt for Rs.18,00,000/- is also produced. All these documents cannot be simply brushed aside. Further, the sale consideration executed on 17.09.2009 as document No.5054 of 2013 by the 2nd petitioner in favour of Chandrasekar is also perused. Both the sale deed and the power of attorney document are drafted by Advocate K.S.Dhandapani. Having given authority to the 2nd petitioner to deal with the property and to execute the sale deed, now the 2nd respondent cannot have a turn around and make allegation against the petitioners as though she was cheated by the petitioners. In fact, after registration of the sale deed dated 17.09.2013, the subsequent purchaser Chandrasekar had dispute with the tenant Shanthi, who was given possession of the flat by the 2nd respondent on 15.06.2013 for lease after receiving Rs.3,50,000/- which later got resolved.

15.Due to the above dispute, the tenant Shanthi filed the suit in O.S.No.6871 of 2013 before the learned XIV Assistant City Civil Judge, Chennai and the subsequent purchaser Chandrasekar filed O.S.No.4410 of 2014 before the XIII Assistant City City Judge, Chennai. In the plaint, the said Shanthi clearly mentions attempt of forcible eviction by the subsequent purchaser Chandrasekar, for which she questioned the 2nd respondent, who failed to give any explanation. Had the document was prepared as projected by the 2nd respondent, the same would have been informed to Shanthi. There is no such averment in the plaint. The said Shanthi is brought in by the 2nd respondent to sit over the property as a lessee. On the above facts and materials, the contention of the 2nd respondent is far-fetched. Having executed all the documents that too before the registration authorities, the 2nd respondent's claim that she was cheated by the petitioners cannot be accepted. Further, the 2nd respondent herself admits the receipt of money from the petitioners over a period of time for various reasons including her daughter's marriage.

16.The main grievance of the 2nd respondent seems that the property has been sold for lesser consideration. Strangely, there is no complaint against the subsequent purchaser Chandrasekar, who purchased the property in question with the petitioners. Further, the 2nd respondent having executed several documents and being party to the suit filed by Shanthi, not whispered anything with regard to the contentions made and the role of Chandrasekar. Hence, the First Information Report against the petitioners is inherently improbable and the complaint was lodged with ulterior motive.

17.In view of the above, this Court finds that the offence of cheating is not made out against the petitioners and the criminal intimidation seems to be only in words and nothing more. This Court is aware that the First Information Report is not an encyclopaedia, but in this case the First Information Report is a detailed one elaborating all the particulars. Thus, the continuation of the investigation against the petitioner would amount to abuse of process of law and the First Information Report in Crime No.1666 of 2014 pending on the file of the 1st respondent is liable to be set aside and, is set aside. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   V-5, Thirumangalam Police Station,
   Thirumangalam, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to M/s.G.Vijayakumar, Advocate, S.R.No.37956

Crl.O.P.No.10330 of 2015

PMK(CO)
RGA(24/08/2021)