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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.2739 of 2015

and

CRL.M.P.Nos.1 and 2 of 2015

1. Jamuna

2. Balakrishnan

... Petitioners/Accused 1 & 2

Vs.

V.Baskaran

... Respondent/Complainant

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.II, Karaikal and quash the same.

For Petitioners : Mr.S.Sounthar

For Respondent : Mr.S.Sathish Rajan

ORDER

This Criminal Original Petition has been filed to call for the records relating to the complaint in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.II, Karaikal and quash the same.

2. The respondent herein has filed a private complaint against the petitioners in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.II, Karaikal for the offence under Sections 420 and 468 read with Section 34 of IPC.

3. The respondent has averred in his complaint that the respondent is the Power Agent of his Mother-in-law Sivakami. The said Sivagami, her brother Sivanandam and her sister



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Punithavathi are the joint owners of the landed property in R.S.No.108/11 measuring 60Ar-17Ca at Thirunallar Village. The petitioners are the real estate merchants. The 2nd petitioner had entered into a sale agreement on 16.03.2002 with the said Sivagami and her siblings for purchase of the above said property. The time fixed for performance of the sale was six months and the time was the essence of the contract. The said Sivagami and her siblings have executed an irrevocable power deed dated 08.01.2003 in favour of the 2nd petitioner empowering him to sell the above said property. The 1st petitioner is the wife of the 2nd petitioner. The said power deed was registered vide Document No.2 of 2003 in Book 4 on the file of the Sub-Registrar, Thirunallur. The power deed was unilaterally prepared by the 2nd petitioner. There is a clause in the power that power cannot be at anytime be revoked. This clause is arbitrary and contrary to law. As the 2nd petitioner was adopting dilatory tactics and committing breach of contract by not concluding the sale within the time period agreed upon, the said Sivagami had on 26.05.2005 issued a notice to the 2nd petitioner through her advocate expressly revoking and cancelling the powers granted under the power deed dated 08.01.2003 and requesting him to render account. But there was no response from the 2nd petitioner. The possession of the property was not given to the 2nd petitioner either under the sale agreement dated 16.03.2002 or at any time subsequent thereto. The sale agreement spoken to above got lapsed due to breach of contract committed by the 2nd petitioner.

4. It was further stated in the complaint that after the legal notice sent on 26.05.2005, the respondent and Sivagami met the 2nd petitioner and told him not to deal with their property in any manner as the grants made to him under the power document had been cancelled and terminated. The 2nd petitioner meekly accepted the termination and submitted that he would render true and proper accounts to the respondent's principal Sivagami and that he would also pay the entire amount realised by him from out of suit properties. But in spite of cancellation of power, the 2nd petitioner was giving out that he is the power agent. The act of 2nd petitioner was false and fraudulent. He has committed breach of trust and betrayed the confidence reposed by the respondent by his fraudulent misrepresentation. Therefore once again the respondent's principal have through her counsel issued a notice to the 2nd petitioner on 11.06.2005 strictly warning him not to represent her in any manner in respect of the suit property. The 2nd petitioner did not reply to the lawyer's notice. However, he called on the respondent and his principal and confessed the wrong committed by him. However he made an offer orally not to claim 47 kuzhis of lands of respondent in the front portion considering the steep escalation of price of the subject matter of contract of sale. This verbal promise was



made by 2nd petitioner in the presence of a venerable gentleman. Unfortunately the said gentleman is not alive now. The 2nd petitioner had requested the respondent to sell and convey only 8 Mahs of land to him. He had accepted and acknowledged the termination of powers.

5. It was also stated in the complaint that as submitted supra the said gentleman had passed away on 28.07.2005. Taking advantage of this situation, the 2nd petitioner had without knowledge or concurrence of respondent with a bad intention to make unlawful gain by misrepresenting himself to be the power agent of respondent's principal Sivagami and his siblings fraudulently fabricated a sale deed on 05.10.2005 in favour of the 1st petitioner vide Document No.1098 of 2005, Book 1 in the files of Sub Registry, Thirunallur. The respondent and his principal came to know of this fraudulent transaction only when they had applied and obtained encumbrance certificate on 14.03.2006. To add insult to injury, the respondent has come to know that on a perusal of impugned sale deed, the 2nd petitioner had unilaterally included two items of property viz. R.S.No.17/12, R.S.No.117/14 which were not the subject matter of sale agreement in the impugned sale deed. When the respondent questioned the unlawful and criminal act of 2nd petitioner in the impugned sale deed. He again assured to recover 47 kuzhis of land to the respondent abutting the road at his own cost. The 1st petitioner was knowing very well about their void transaction and she had conspired and connived with him in committing the offence of forgery. The document in question was concocted with false recitals and the averment in the so called sale deed dated 05.10.2005 regarding passing of sale consideration and delivery of possession is an utter falsehood.

6. Moreover, it was stated in the complaint that since the power granted to the 2nd petitioner was expressly revoked, he never had the capacity to alienate the suit property under the alleged sale deed dated 05.10.2005 and there was no other deed executed between the respondent and 2nd petitioner except the sale agreement spoken to above. The respondent once again through his principal's advocate had issued a legal notice on 03.07.2007 to undo the wrong and demanding compensation. But no reply has been sent by the petitioners. To add fuel on fire, the petitioners were illegally trying to sell the suit property by dividing the same into geometrical proportion on the strength of perse invalid documents. In the meanwhile, the Government of Puducherry had acquired the suit property to wit the public purpose of development of Temple Town, Thirunallur (Ring Road and facility mode) comprised in R.S.No.108/113 measuring 00H - 60Ar - 17Ca, at Thirunallar Village. In the said notification under Section 6 of the Land Acquisition Act published in the Gazette No.55 dated 22.07.2000 the respondent's principal and



her siblings have been shown as land owners/interested person. However, the 1st petitioner was also shown as interested person. The 2nd petitioner is an enterprising person. Time and again the respondent's principal had sent representation to the Land Acquisition Officer not to mention the 1st petitioner as an interested person.

7. It was further stated in the complaint that the respondent's principal had already filed a suit in O.S.No.26 of 2008 on the file of the Principal District Munsif, Karaikal to adjudge as nullity the aforesaid sale deed dated 05.10.2005, Document No.1098 of 2005, Book 1, Sub-Registry, Thirunallar and allied reliefs. The respondent have also duly appraised the Land Acquisition Officer about the pendency of O.S.No.26 of 2008. Due to exertion of political and monetary pressure, the Land Acquisition Officer had disbursed the compensation to the 1st petitioner. As the act of Land Acquisition Officer is violative of laws relating to Land Acquisition Act and the Principles of Natural Justice, the respondent had on 11.01.2011 issued a statutory notice under Section 80 of C.P.C to the petitioners requesting the Land Acquisition Officer to undo the wrong. Though the notice was acknowledged by Government functionaries, there is no response from them. But the petitioners have sent a reply containing palpable falsehood. The Land Acquisition Officer had acted outside purview of Law and equity. Further, in the information gathered from the Land Acquisition Officer, Karaikal, they gave evasive replies by suppressing the real set of facts. Thus the petitioners have committed the offence of cheating the respondent. They are liable to be dealt with severely according to Law.

8. The complaint given by the respondent is still pending on the file of the Judicial Magistrate No.II, Karaikal. As against the said complaint, the petitioners / accused have filed this Criminal Original Petition before this Court stating that the validity of cancellation of power in favour of the 2nd petitioner and the validity of sale deed executed by the 2nd petitioner in favour of 1st petitioner are very much in dispute in Civil Suit in O.S.No.26 of 2008 on the file of the District Munsif Court, Karaikal. The trial in the suit was already commenced in July 2010. The respondent was examined as PW1 on 01.07.2010 itself. Two other witnesses were also examined on the respondent's side. After participating in trial extensively and belatedly, the respondent has given a criminal complaint only as arm twisting method.

9. The petitioners have further stated that the allegations in the complaint are predominantly civil in nature. The core dispute in the matter is pending adjudication before Civil Court. The respondent has unnecessarily given a complaint



after 4 years from the date of commencement of trial in suit with the sole aim of converting a civil dispute into a criminal one. It has also been stated by the petitioner that the Learned Magistrate ought to have seen that the Power deed in question contains a clause that it is irrevocable and hence alleged revocation was not valid and binding on the petitioners. When revocation of power is invalid, the very foundation of accusation against the petitioners gets vanished. Moreover, the petitioner has stated that the Learned Magistrate ought to have seen in the facts and circumstances of the case, it is competent civil court, before which a suit is already pending, alone can decide the validity or otherwise of revocation of power and till civil court adjudicate on the validity of power no offence can be assumed.

10. Heard the learned counsel for the petitioners and the learned counsel for the respondent, and perused the materials available on record.

11. On perusal of the records, It is seen that the respondent's mother-in-law, namely, Sivakami, her brother Sivanandam and her sister Punithavathi are the joint owners of the property in R.S.No.108/11 measuring 60Ar-17Ca at Thirunallar Village and they have given power to the 2nd petitioner to sell those properties by executing a Power deed dated 08.01.2003 in favour of him. The time agreed for performance of the sale was six months, but the petitioner has not concluded the sale within the said period. Hence the Sivakami and her two siblings have cancelled the power deed dated 08.01.2003 and issued a notice to the 2nd petitioner stating that the power granted to him to sell the above said properties has been cancelled. In spite of the said notice, the 2nd petitioner fabricating the documents has executed a sale deed dated 05.10.2005 in favour of the 1st petitioner vide Document No.1098 of 2005 before the Sub Registry, Thirunallar. Hence the respondent has lodged a private complaint before the Judicial Magistrate Court No.II, Karaikal in C.C.No.168 of 2014. Aggrieved by the same, the petitioners / accused have preferred this Criminal Original Petition before this Court.

12. On going through the averments made in the complaint, it is seen that the 2nd petitioner has committed an offence of cheating being the power agent of the respondent. The allegations made in the complaint warrant interference of the Court below to find the bonafide on the part of the 2nd petitioner. Even though it was stated by the petitioners that the power executed by the said Sivagami and his siblings has got a specific provision to the effect that power is irrevocable, none of the documents are shown that it is not revocable in law. The offence alleged to have been committed by the petitioners is



purely criminal in nature. Hence the contention of the petitioners that a civil dispute cannot be converted into a criminal one, is not acceptable. The validity of cancellation of power in favour of the 2nd petitioner and validity of sale deed executed by the 2nd petitioner in favour of the 1st petitioner can be decided only at the time of trial. Hence this Court is not inclined to quash the complaint in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.II, Karaikal.

13. Accordingly, this Criminal Original Petition is dismissed with a direction to the Learned Judicial Magistrate No.II, Karaikal to expedite the trial and dispose of the case in C.C.No.168 of 2014 within a period of one year from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

raja

To:

The Judicial Magistrate Court No.II,
Karaikal.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.37817

CRL.O.P.No.2739 of 2015
and
CRL.M.P.Nos.1 and 2 of 2015

SR(CO)
SU(01/09/2021)