IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.7117 of 2021 and
Crl.M.P.No.4734 of 2021

Kirupakaran ... Petitioner

Versus

1. The State rep by,
Sub-Inspector of Police,
T-4 Police Station,
Maduravoyal,
Chennai.

2. P.Srinivasan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining in Crime No.45 of 2015 on the file of the 1st respondent/Police and quash the same.

For Petitioner : Mr.T.Tamilavel

For 1st Respondent : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.45 of 2015, dated 08.01.2015, on the file of the 1st respondent Police.

2.The learned counsel for the petitioner submitted that the petitioner is the power of attorney of the 2nd respondent. As per the power of attorney, the petitioner was given authority to sell and mortgage the property and also execute document before the concerned Sub Registrar and further to help the 2nd respondent before the Government authorities for executing the document to get approval of the property and to get Non Objection Certificate and other statutory documents in development of the property. After execution of such power of attorney, the 2nd respondent cannot now lodge a complaint stating that the petitioner had executed a mortgage deed in favour of

M/s.Sree Gokulam Chit & Finance Company Private Limited, Kodambakkam, Chennai to the tune of Rs.2,50,00,000/- for the loan taken by the petitioner and hence, the petitioner has committed the offence of cheating and misappropriation.

3.The learned counsel for the petitioner further submitted that the power of attorney has been executed on 29.08.2011 and the complaint has been lodged only on 08.01.2015 which is beyond the limitation period of three years. To circumvent the limitation expired, the 2nd respondent filed the above criminal complaint against the petitioner. Hence, he prayed for quashing of the First Information Report against the petitioner.

4.The learned Government Advocate (Crl. Side) appearing on behalf of the 1st respondent Police submitted that in this case, on receipt of the complaint, an FIR in Crime No.45 of 2015 was registered against the petitioner for offence under Sections 420 and 406 IPC. In the complaint, the 2nd respondent admitted that the petitioner was entrusted with the property in various survey numbers by execution of power of attorney. The said property was registered and mortgaged with M/s.Sree Gokulam Chit & Finance Company Private Limited, Kodambakkam, Chennai in document No.7686 of 2011. This mortgage and deposit of title deed loan advanced to the tune of Rs.2,50,00,000/- to M/s.Krupa Bullions, represented by its Proprietor, the petitioner herein.

5.The learned Government Advocate further submitted that now, the encumbrance has been created in the property of the 2nd respondent. The property is noted detachment and the petitioner is now making default in payment of the entire loan amount received from M/s.Sree Gokulam Chit & Finance Company Private Limited, Kodambakkam, Chennai. The petitioner entrusted with the property of the 2nd respondent is not denied. Once the entrustment is not denied, it is for the petitioner to disprove misappropriation. In this case, there is clear misappropriation of the amount received from M/s.Sree Gokulam Chit & Finance Company Private Limited, Kodambakkam, Chennai by the petitioner using the document of the 2nd respondent. The document was given in trust by the 2nd respondent, which has been misappropriated and cheated by the petitioner. The learned Government Advocate further submitted that within a stipulated time, the final report would be filed before the concerned Court.

6.On perusal of the FIR and the power of attorney executed by the 2nd respondent in favour of the petitioner dated 29.08.2011 and also the Memorandum of Deposit of Title of Deeds executed by the petitioner in favour of M/s.Sree Gokulam Chit & Finance Company Private Limited, Kodambakkam, Chennai dated 16.09.2011, this Court finds that the property given in trust by the 2nd respondent has been misappropriated by the petitioner and thereby, cheated the 2nd respondent. It is seen that the submissions made by the learned counsel for the petitioner is not sustainable to quash the FIR against the petitioner and there is no merit in the above Criminal Original Petition and the same is liable to be dismissed and, is dismissed.

7.It is seen that the First Information Report is of the year 2015. Almost seven years were lapsed, till now the 2nd respondent is yet to see the light of the complaint. Hence, the 1st respondent Police is directed to complete the investigation in Crime No.45 of 2015 and file a final report within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Inspector of Police,
T-4 Police Station,
Maduravoyal.

2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.7117 of 2021

CP(CO)
PM(30/07/2021)