

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2021

CORAM:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No. 1111 of 2020

V.Loganathan

.. Petitioner

Vs.

1.State represented by
The Inspector of Police
M-1, Madhavaram Police Station (Crime)
Madhavaram.

2.M.R.Darmalingam @ Mr.R.P.Darmalingam

3.V.Shanmugam

4.V.S.Shankar

5.D.Sangupathi,

6.S.Baskar

[R2 to R6 are suo motu impleaded

as per order in Crl.R.C.No.1111 of 2020]

... Respondents

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order in C.M.P.No.120 of 2020 dated 24.07.2020 in FFRC No. 03 of 2019 in Crime No. 139 of 2019 at Madhavaram M-1 Police Station.

For Petitioner	:	Mr.V. Rajasekar
For R1	:	Mr.K.Madhan
		Government Advocate
For R2 and R4 to R6	:	Mr.D. Saikumaran
For R3	:	Died

ORDER

The petitioner herein filed a complaint before the first respondent police. Based on the complaint, an FIR was registered in Crime No.139 of 2019 for the offences punishable under Sections 406, 465, 468, 471 and 420 of IPC. Thereafter, the Investigating Officer investigated the matter and closed the investigation and filed a closure report in FFRC.No.3 of 2019 before the learned Magistrate. The learned Magistrate issued a notice to the petitioner and the petitioner has filed a protest petition in C.M.P.No.120 of 2020 before the learned Judicial

Magistrate, Madhavaram, Chennai, and after completion of enquiry, the same was dismissed. Challenging the said order, the complainant has filed the present revision before this Court.

2. The learned counsel for the petitioner/complainant submitted that the first respondent-police, without conducting investigation properly, filed the closure report before the learned Magistrate in the protest petition filed by the petitioner. The learned Magistrate has also without considering the facts erroneously dismissed the protest petition.

3. The learned counsel for the petitioner further submitted that the accused M.R. Darmalingam executed three sale deeds, based on the Joint Power of Attorney executed in favour of the said Ramalingam for a total extent of 1.36 acres, which was registered on 27.11.1987 as Doc. No.467 of 1987 for the development of the land on condition to execute the sale deeds in favour of the prospective purchasers and maintain proper and correct account to furnish as and when required by the petitioner and two other land owners. The learned counsel further submitted that the General Power of Attorney plotted the vacant land, named as Venugopal Nagar, thereby he obtained plan approval from MMDA on 24.01.1989 and vide, approval No.PPD/LO.No.194 of 1988. Accordingly, he started the sale processes of each plots to various parties. The land owners including the petitioner herein did not demark any area, nor any quantifiable share in the said property. Thus, he executed General Power of Attorney in view of close family relationship. Out of 1.36 acres, the approval was granted for 20 plots and one shop site both measured as 46753 sqft and two streets, with the total extent of 12543 sqft. All the accused, the General Power of Attorney viz., Dharmalingam colluded with the family members and other accused executed several sale deeds with the knowledge of demise of one among the land owners Venugopal, who died on 02.06.2003. Thereby, the accused committed criminal conspiracy, criminal breach of trust, cheated with an intention to misappropriate and made a false recitals and executed three sale deeds vide Nos. 4114 of 2014, 5506 of 2014 and 6843 of 2016 at Madhavaram SRO and two ratification deeds vide Nos. 3071 of 2017 and 4196 of 2017 and has committed fraud which was the subject matter of complaint filed by the petitioner, as against which an FIR was filed, and subsequently, a closure report was filed by the first respondent-police and thereafter, protest petition was filed before the learned Judicial Magistrate, Madhavaram, which was also dismissed as "civil in nature". Hence, the petitioner has filed the present Criminal Revision Case before this Court.

4. The learned counsel for the petitioner/complainant further submitted that even though the first respondent police registered the case in Crime No.139 of 2019, the Investigating

Officer, without conducting the investigation properly, suo motu closed the investigation and without notice to the de-facto complainant/petitioner herein. Further, the learned counsel submitted that the closure report was filed without application of mind and not taking into account the cognizance of material facts relating to the complaint even after passage of one month from the date of complaint and the FIR was registered even after obtaining all the necessary opinion from all the higher authorities from Police Department and from the Public Prosecutor. The closure report filed by the first respondent-police was filed without conducting formal enquiry by filing charge sheet and the complaint was closed as "mistake of fact" as the subject matter of complaint was civil in nature, which is against the eye of law, as the accused fraudulently transferred several Crores of money suppressing the fact of the death of executant of General Power of Attorney.

5. The learned counsel for the petitioner/complainant further submitted that the Investigating Officer had examined all the necessary witnesses and called for all the necessary documents as set out in the petition, which is stated to be defective and incomplete and the investigating process was completely biased, inaccurate and the same was not considered by the learned Magistrate. While deciding the protest petition, when there are sufficient material facts to take cognizance of offences under criminal breach of trust, misappropriation, fraud, creating fake documents, cheating and forgery, the FIR was filed under Sections 406, 465, 468, 471 and 420 of IPC as against all the accused, whereupon the investigation and enquiry process was not properly conducted. The accused persons also filed quash petition before this Court without appearing before the Investigating Officer upon the service of notices and during the pendency of such notice to appear, the said quash petition was filed without complying with orders as set out in the anticipatory bail petition in which the accused persons evaded service of notice for appearance and failed to comply with the terms of the notice, and they appears to be unwilling to identify when called upon, which shall be open to the first respondent-police to proceed under Section 41(A) (4) of the Code of Criminal Procedure to arrest the accused and the same was not followed. The statement made in the closure report by one accused person who is stated to be the Power Agent namely Dharmalingam, who has executed General Power of Attorney by deceased Venugopal, paid a sum of Rs.2,30,000/- towards sale agreement and debit note was also signed, which was stated to have destroyed in a fire accident on 19.06.2011 in the office, as against which a complaint before V5 Thirumangalam Police Station was filed, wherein Crime No. 1010 of 2011 was issued and the statement was accepted by the learned Magistrate who failed to note that such statement was completely missing and ousted

either in the anticipatory bail petition or in the quash petition filed by the accused persons. The learned counsel further submitted that upon receipt of RTI information from the said Police Station, it was informed in writing that only a crime number was registered, but neither the fire service authorities, nor any authorized surveyors visited the premises to calculate the fire damages and losses.

6. The learned counsel for the petitioner further submitted that the closure report as such filed by the first respondent-police was without verifying merits and the statement made therein with respect to the statement of fire accident and filing of complaint followed by the registration of crime number, but had failed to look into the aspects of actual losses and damages caused due to the fire accident which actually, took place or not and had the accident taken place the details of losses incurred thereof would have been stated in the closure report. The statement of the accused persons was fabricated and frivolous, which is not sustainable in law. The Investigating Officer, by colluding with the accused, prepared the closure report, who wantonly dragged the appearance of accused person, and hence, this revision petition is liable to be dismissed and the order passed by the learned Magistrate in the closure report and the order passed in the protest petition is liable to be set aside.

7. The learned counsel for the petitioner further submitted that the execution of agreement is a fraudulent one and the basis on which the Magistrate relied on the Xerox copy of the agreement when the original agreement was stated to be lost in a fire accident with the crime number, but without any quantification of losses as was quantified by the authorised authority. The petitioner and other persons received the full sale consideration from the second accused person, and the accused have falsely stated that the petitioner and his persons received the full sale consideration from the second accused, and hence, the same attracts Section 202 of the Indian Contract Act, 1872, where the agent himself has interest in the property, which forms the subject matter of agency, and the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. On the other hand, the learned Magistrate failed to take into account Section 201, the contract is automatically terminated if the Principal or Agent dies and Section 209 of the Indian Contract Act, 1872, states that when the agency is terminated consequent upon the death of the Principal, the agent is bound to take appropriate process on behalf of the representatives of his late principal, with all reasonable steps for the protection and preservation of the interests entrusted to the agent, which was completely ousted in the instant case.

8. The learned counsel for the petitioner further submitted that Section 33(4) of the Registration Act, may be proved by production of it, without further proof when it purports on the face of it have been executed before and authenticated by the person or Court mentioned in that behalf. In the instant case, the said General Power of Attorney was executed by the Principal on 27.11.1987, vide Doc.No.467 of 1987, whereas the sale deed of the said properties based on the General Power of Attorney which was executed on 27.11.1987, after the lapse of 28 years and the Principal died on 02.06.2003, which clearly proves that the death of Principal was prior and the execution of sale deed was posterior. The crucial point to mention here is that it was stated by the Power Agent and by adducing only photostat copies, the purported agreement executed by one of the Principal which was stated to have spoiled due to fire accident, for which neither the FIR copy nor the fire accident report was issued by the Fire Service Department which was submitted before the Investigating Officer and the Court relied on the Investigating Officer filed a closure report and the learned Judge, by endorsing as such a non est closure report, passed the order which is not sustainable in law and prayed that this revision has to be allowed and the order of the Magistrate passed in the protest petition is liable to be set aside.

9. The learned counsel for the petitioner further submitted that there is prima facie case and the materials are available to take cognizance of the offence and after executing the Power of Attorney, one of the principal died and the Power agent executed the sale deeds as if the principal was still alive on the date of the execution of the sale deed and he colluded with the other accused and executed the sale deeds and neither the Investigating Officer considered the same and filed the charge sheet, nor the learned Magistrate considered the same and allowed the protest petition and directed the police to file charge sheet. The dismissal of the protest petition by the Court below is perverse, illegal and may be recalled. Therefore, the learned counsel for the petitioner prayed that the order of the Magistrate may be set aside and the revision may be allowed.

10. The learned counsel appearing for the private respondents submitted that one Mr.N.Gopal, is the original owner of the property and the present petitioner herein and one Raghu jointly executed the Power of Attorney in favour of the accused namely Dharmalingam for the total extent of 1.36 acres, since the said Power of Attorney is registered one and irrevocable Power of Attorney and even at the time of executing the Power of Attorney itself, the entire sale consideration of Rs.2,30,000/- was paid towards the sale agreement and the debit note was also

signed by all the Principals and the same subsequently, got destroyed in the fire accident that had taken place on 19.06.2012 in the office, as against which a complaint was filed before V5, Thirumangalam Police Station, and in Crime No.1010 of 2011 was registered. Therefore, the learned Magistrate has come to the conclusion that it is dispute between the de-facto complainant and the private accused was only "civil in nature" and the protest petition filed by the petitioner was dismissed and therefore, even before the death of Venugopal, and the entire sale consideration was paid and the properties were also delivered to the Power Agent and he was fully authorised to lay out the plots and plan approval was obtained from the MMDA and the properties were also sold. When the sale consideration was also received and receipt was also given by the Principal, subsequently, taking advantage of the rising value of the land, false complaint was filed by the Investigating Officer and after thorough investigation, it was found that there was no conspiracy or any cognizance of offence. Therefore, the Investigating Officer filed the closure report as "mistake of fact" and the petitioner herein/defacto complainant filed a protest petition before the learned Magistrate. The learned counsel further submitted that, also considering the entire documentary evidence and also the closure report filed by the Investigating Officer as the disputes only was "civil in nature". Hence, there are no merits in the above Criminal Revision and the same is liable to be dismissed.

11. Heard both sides and perused the materials available on record.

12. Admittedly, a complaint was lodged against the accused M.R. Darrmalingam, V. Shanmugam, V.S. Shankar, Mrs.D. Sangupathi and Baskar and the said complaint was taken on file and the case was registered in Crime No.139 of 2019 on 13.09.2019 for the offences punishable under Sections 406, 465, 468, 471 and 420 of IPC on the file of the first respondent police, M2, Madhavaram Police Station. On completion of investigation, the first respondent-police filed a closure report on 16.04.2019 in FFRC.No.3 of 2019. On receipt of the notice, the petitioner had filed the protest petition before the learned Judicial Magistrate, Madhavaram in C.M.P.No.120 of 2020. The learned Magistrate dismissed the protest petition by order dated 24.07.2020, accepting the closure report of the first respondent police.

13. The main contention of the petitioner is that three persons had executed a Power of Attorney in favour of one of the accused Dharmalingam in the year 1987, and out of three persons, one of the Principals namely Venugopal who died in the year 2003. The said Dharmalingam also attended the funeral of

Venugopal, and with the knowledge of the demise of the said Venugopal, the accused Dharmalingam colluded with his family members and other executed three sale deeds at Madhavaram Sub Registrar Office, as per Section 201 and 209 of the Indian Contract Act. When once the Principal died, the said Power of Attorney loses its relevancy and cannot be acted upon and the legal heirs are brought on record. The accused Dharmalingam had not done the same on the other hand settled the property in favour of his family members in the year 2014 and there is no mention about the life certificate and the said accused Dharmalingam managed with registration and committed forgery and criminal conspiracy. Even though the petitioner raised all these allegations before the learned Magistrate in the protest petition, the learned Magistrate has failed to consider the same and simply dismissed the protest petition by stating the dispute as "civil in nature".

14. The main contentions of the private respondents are that even at the time of executing the Power of Attorney namely Dharmalingam entered into an agreement with the owners of the land and paid as entire sale consideration of Rs.2,30,000/- in the year 1987 and also taken the possession of the lands also and agreed to sell the property as his owner. However, subsequently, he developed the land and also execution of the sale deeds and gave the debit receipt also, signed and subsequently, he developed the land and sold the lands to the various persons. Once the Principal received the entire sale consideration and also given the delivery of the possession of the property and authorised to lay out the plots and sell it but the Principal subsequently cannot question the same. The said facts brought to the Investigating Officer and therefore, he filed the closure report and the petitioner has filed a protest petition before the learned Magistrate. They also brought on records and filed all the Xerox copy of the documents since the original were destroyed in the fire accident and to show that they also filed a complaint before the Police Station and FIR was also registered. Therefore, a reading of the entire materials and the complainant along with two others executed a Power of Attorney in favour of one of the accused Dharmalingam and also they received the sale consideration of Rs.2,30,000/- for which they issued a debit receipt. The copy of the debit receipt also produced before the learned Magistrate by stating that they lost original in the fire accident. The present petitioner herein only has filed the suit in O.S.No.36 of 2017 on the file of District Munsif, Thiruvottiyur against the said accused Dharmalingam by declaring the sale deed executed by one of the accused in favour of other accused dated 14.11.2016 and 16.11.2016 are null and void and not binding on the plaintiff and also challenging the Power of Attorney executed in favour of one of the accused N.C. Durairaj and also filed another suit in

O.S.No.187 of 2019 before the learned District Munsif Court, Madhavaram. One of the owners, petitioner herein has filed the suit in O.S.No. 179 of 2019 on the file of District Munsif Court, Madhavaram. When the civil suit is pending, all these disputes can be raised in the said suit by way of framing of issues and there can be decided by the Trial Court. They admittedly the petitioner along with two others have executed the Power of Attorney in favour of one of the accused Dharmalingam, whether they received the sale consideration and instead of giving the sale deeds executed and they have executed an agreement and delivered the possession and authorised to sell the property or not can be decided by the competent civil Court. The petitioner admitted the Power of Attorney in favour of one of the accused Dharmalingam and one of the Principals died after 20 years and they have not taken any steps to cancel the Power of Attorney or insisted them to acted upon the power and therefore, only after the death of one of the Principals Venugopal. They have filed this complaint and also the petitioner has also filed the civil suit. Therefore, under the circumstances, this Court does not find any illegality or infirmity in the order passed by the learned Magistrate by dismissing the protest petition and there is no merit in this revision and the revision petition is liable to be dismissed.

15. In fine, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

MSM
To

- 1.The Inspector of Police,
M-1, Madhavaram Police Station (Crime)
Madhavaram.
- 2.The Public Prosecutor,
High Court, Madras-104

Copy To:-
The Section Officer, Criminal Section,
High Court, Madras.

+5cc to Mr.A.Bonipas, Advocate, S.R.No.7252
+1cc to Mr.D.Saikumaran, Advocate, S.R.No.7389

Cr1.R.C.No. 1111 of 2020

CP(CO)
TE(29/04/2021)