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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 20034 of 2017

and

Crl.M.P.Nos.12075 and 12076 of 2017

Joseph Devasagayam

. . . Petitioner/ Accused

Versus

The Inspector of Police,
Central Crime Branch,
Coimbatore.
(Crime No.50 of 2010)

. . . Respondent/Complainant

PRAYER :

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the final report in C.C.No.309 of 2013 pending on the file of the learned Judicial Magistrate No-V, Coimbatore.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the final report in C.C.No.309 of 2013 pending on the file of the Judicial Magistrate No-V, Coimbatore.

2. The case of the prosecution is that the defacto complainant has given a Power of Attorney to the accused/petitioner, when the property, viz., a plot measuring 7 cents in Telungupalayam Village, Coimbatore, brought for auction. Pursuant to the above Power of Attorney, the accused after paying the amount to the Dena bank, took back the originals and sold the property to one Arumugham, on 26/12/2006, for a total consideration of Rs.14,31,000/-, but did not give the balance amount of Rs.12,06,000/- and ration card to the defacto complainant, thereby the accused committed an offence punishable under Sections 468, 471 and 420 of the Indian Penal



Code.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

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4. It is relevant to extract Section 415 of the Indian Penal Code.

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

5. On a careful perusal of the above, what comes to be known is that a dishonest concealment of facts is a deception. The very allegation is that the accused has induced the de facto complainant and obtained Power of Attorney. But the fact is that the de facto complainant himself gave Power of Attorney to the accused. Pursuant to the Power of Attorney only, sale has been executed. The only grievance of the defacto complainant is that the power agent has not accounted properly, but the same would not fall under the category of cheating. By way of criminal proceedings, the defacto complainant cannot seek for demand of money and the account details. In such a view of the matter, continuing of the prosecution against the accused is nothing but an abuse of process of law.

6. In the result, this Criminal Original petition is allowed. C.C.No.309 of 2013, pending on the file of the learned Judicial Magistrate No.V, Coimbatore is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

psa/mvs



To

1. The Judicial Magistrate No-V,
Coimbatore.
2. The Inspector of Police,
Central Crime Branch,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

Cr1. O.P. No. 20034 of 2017

GPL (CO)
CT/17/12/2021