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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18/11/2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO. 12984 OF 2017

1. M.Kavitha

2. M.Santhamani

...Petitioners

Vs

1. State
rep. By the Inspector of Police
District Crime Branch
Coimbatore
Coimbatore District.

2. L.Prakash

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.113 of 2017 pending on the file of the Judicial Magistrate, Mettupalayam, Coimbatore District and quash the same as illegal.

For Petitioner ... Mr.A.V.Raja

For Respondent ... Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)
for R.1.

Mr.I.Abrar Md.Abdullah
for R.2.

O R D E R

This Criminal Original petition has been filed to quash C.C.No.113 of 2017 pending on the file of the Judicial Magistrate, Mettupalayam, Coimbatore District.



2. It is the case of the prosecution that defacto complainant has executed a Power of Attorney, dated 11/6/2009 in favour of A.2, for sale of property, to an extent of 96 cents of land at Annur SRO, situated at Kattampatti Village, Annur Taluk, Coimbatore District. Pursuant to the said Power of Attorney, A.2 has entered an agreement for sale with A.3. Thereafter, cancelled the same and sold the property to A.4 to A.6.

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

4. It is the main grievance of the defacto complainant that the power agent has not submitted the accounts. Police has filed a report based on the statement recorded from the witnesses.

5. It is the contention of the learned counsel appearing for the petitioners that the entire case is a result of FIR lodged against the defacto complainant, in respect of the trespass and criminal intimidation, in Crime No.167 of 2015 for the offences punishable under Sections 294 (b), 341, 427, 447, 506 (ii) of the Indian Penal Code. On 13/4/2015, FIR in Crime No.32 of 2015 came to be lodged by the defacto complainant against the petitioners. The entire transaction is civil in nature. Even assuming that the Power Agent has not submitted his accounts properly, the remedy lies elsewhere and not by way of criminal prosecution. Hence prayed for quashing the final report.

6. Learned Government Advocate (Criminal Side) submitted that the case has been investigated.

7. Learned counsel appearing for the defacto complainant submitted that power agent has not submitted any accounts. Having received the amount from the purchaser he has neither submitted the accounts nor paid the amount to the defacto complainant. Therefore, offence under Section 420 of IPC is attracted.

8. Statements recorded from the witnesses and final report shows that the only grievance of the defacto complainant is that the power agent having sold the property not submitted any accounts, thereby committed an offence. It is relevant to note that power of attorney was executed by the defacto complainant in favour of Santhamani, A.3 on 11/6/2009. On 18/7/2012, the third accused, power agent sold part of the property in favour of Munavar Sheriff for a total sale consideration of Rs.12 lakhs. Thereafter, another sale deed was executed by the power



Similarly, in this case, the entire materials unearthed would not constitute an offence under Sections 409 and 406 of the Indian Penal Code. It is not the case that the accused has dishonestly misappropriated or converted the property to his own use. The main grievance appears failure to submit the accounts. Therefore, civil dispute cannot be given the colour of criminality. Hence this Court is of the view that it is a fit case where the complaint has been lodged with the oblique motive in a civil dispute.

12. In the result, this Criminal Original Petition is allowed. Proceedings in C.C.No.113 of 2017 is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Judicial Magistrate,
Mettupalayam,
Coimbatore District.
2. -do- through The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
District Crime Branch, Coimbatore
Coimbatore District.
4. The Public Prosecutor,
Madras High Court, Chennai.

Cr1. O.P. No. 12984 of 2017

BP(CO)
RLP(20/12/2021)