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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2022

PRONOUNCED ON : 13.04.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.12211 of 2016
and Crl.M.P.No.6279 of 2016

S.Rajasekaran

...Petitioner

Vs.

1.The State Represented by,
The Inspector of Police,
CBCID,
Puducherry - 605 001.

2.P.Shanthi

3.K.Selvi

...Respondents

Prayer:- Criminal Original Petitions are filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to C.C.No.3 of 2016 on the file of the learned Chief Judicial Magistrate, Puducherry and quash the same.

For Petitioner : Mr.R.Natarajan

For Respondents: Mr.Balamurugane,
Public Prosecutor, Puducherry for R1.
Mr.V.Raghavachari for R2.
R3 - No appearance.

ORDER

This petition is filed to call for records in C.C.No.3 of 2016 on the file of the learned Chief Judicial Magistrate, Civil Judge (Senior Division), Puducherry and quash the same.

2.Respondents 2 and 3 gave a complaint against the petitioner on 14.02.2011, alleging that they are the daughters of Balabaskaran. Their father died in 1992 and their mother died in 2005. Their parents possessed large extent of properties.



Father Balabaskaran, executed deed of power in favour of Rajasekar to look after and manage their properties. Their father also executed a registered Will bequeathing his properties in their favour. On his death, the Will had come into effect. The power of attorney Rajasekar is their cousin brother and they demanded him several times the accounts relating to the properties. On 31.01.2011, they came to Villianur and met him in this regard. He evaded the issue and then they came to know that he sold some of the properties by plotting it out to several persons using the power of deed executed by their father, that too after the death of their father. He invested the money in construction of cinema theatre in the name and style of Ashok Theatre and in automobile sector in the name of Akash Bajaj and Akash Autos. The sale deed executed by Rajasekar as power agent after the death of Balabaskaran are all invalid. Rajasekar, Shanmugasamy and his sons have together cheated the defacto complainants by illegal means to grab their properties. Therefore, the complaint was given.

3. After investigation on this complaint, the first respondent filed final report against the petitioner and Shanmugasamy under Sections 420, 467, 468 and 471 I.P.C. r/w. 34 I.P.C. This final report was taken cognizance in C.C.No.3 of 2016. Challenging the taking cognizance of the case, this quash petition is filed.

4. Learned counsel for the petitioner submitted that power of attorney deed was executed not only by Balabaskaran, but also, by other sharers in the property in favour of the petitioner. Even prior to the execution of power of attorney deed in favour of petitioner on 11.07.1991, there had been a power of attorney deed executed on 01.02.1989 in favour of Ananda Baskaran. On the basis of the power of attorney in favour of Ananda Baskaran, he had executed a registered a gift deed in favour of Villianur Commune Panchayat for forming the road. Then plan approval was obtained for plotting out the land. On the basis of the power of attorney deed, several developmental activities had taken place, land was plotted out and sold to several persons. It is not open to the respondents 2 and 3 to challenge the power of attorney deed now, especially when the power of attorney deed was executed by their father along with others. He relied on the judgments reported in AIR 1918 Mad 279 M.Ponnusami Pillai and another Vs. Chidambaram Chettiar and others and AIR 1917 Calcutta 436 Badrinarain Agarwalla Vs. Brijnarayan Roy and another, for the proposition that, in case of joint power of attorney deed, death of one principal will not extinguish the life of power of attorney deed. A civil dispute sought to be converted into a criminal dispute. Therefore, he prayed for quashing the C.C.No.3 of 2016.



5.Per contra, learned counsel for the respondents 2 and 3 submitted that respondents 2 and 3 are widows and have no support. Their father had bequeathed his properties through a Will in their favour and they are entitled for the properties bequeathed. Petitioner is not stranger to the respondents 2 and 3, but a close relative and a cousin. He knew well that respondents 2 and 3's father died. The sale of the properties after knowing the death of their father is nothing but cheating the respondents 2 and 3 of their properties. The power of attorney deed executed by their father comes to an end with the death of their father. Therefore, the sale deeds executed after the death of their father or any other alienation made are against law and an offence. The first respondent after investigation found prima facie case had been made out against the petitioner and co-accused and filed final report. Thus, he prayed for the dismissal of the petition.

6.Considered the rival submissions and perused the records.

7.From the case set out and materials produced, it is not in dispute that on 01.02.1989, power of attorney deed was executed by 1.Balabaskaran, 2.Shanmugasamy, 3.Natarajan and 4.Rajasekar in favour of one Ananda Baskaran. Absolute power was given to deal with the properties of the principal to sell, mortgage, exchange, buy new property etc. In pursuance of the said power of attorney deed Ananda Baskaran had on 05.11.1990, executed a gift deed in favour of Commissioner of Villianur Commune Panchayat. A plan approval was obtained for plotting of the land on 17.01.1991. The power of attorney deed was executed on 11.07.1991 by 1.Balabaskaran, 2.Shanmugasamy, 3.Ananda Baskaran and 4.Natarajan in favour of petitioner Rajasekar. It is again an absolute power given in favour of Rajasekar to sell, mortgage, exchange etc., in respect of the properties mentioned in the power of attorney deed. Respondents 2 and 3 have not disputed the execution of this power of attorney deed by their father and others in favour of petitioner. Their contention is that, after the death of their father, the power comes to an end. Their father executed a Will in respect of his properties in their favour and therefore sale deeds executed by the petitioner, after the death of the father was intended to cheat their claim and therefore, it is an offence.

8.No doubt, that the power of attorney executed in favour of power agent by a principal, come to an end on the death of the principal. In the case before hand, petitioner is not a stranger to respondents 2 and 3, but he is cousin. Even in the affidavit filed in support of the quash petition, it is claimed that after demise of Balabaskaran, petitioner and other paternal uncles, arranged for the marriage of third respondent. Therefore, it is clear that petitioner knew well about the death of Balabaskaran,



father of respondents 2 and 3.

9. When deciding the question as to whether power of attorney given by two members of Hindu family must be deemed to be terminated by the death of one of the members. It was observed in AIR 1918 Mad 279 M. Ponnusami Pillai and another Vs. Chidambaram Chettiar and others, that uncle Venkatachallam Chetty died without other heirs than his nephew Chidambaram Chetty, with whom he was joint till the day of his death. The whole of his interest therefore, devolved on the survivor whose authority to the agent contained in the power of attorney remained unaffected by the death of one of the principals.

10. In the case before hand, respondents 2 and 3 are the daughters of one of the principals of Balabaskaran. After the death of Balabaskaran, his daughters are entitled to succeed to his properties. Properties will not devolve on other principals or agent in power deed dated 11.07.1991. Therefore, this judgment is not applicable to the facts and circumstances of this case.

11. In the judgment reported in AIR 1917 Calcutta 436 Badrinarain Agarwalla Vs. Brijnarayan Roy and another, a similar question arose for consideration. In this case also one of the principals Ram Sunder Lall died without issue and his interest in the property devolved on other principals by survivorship. In that circumstances, it was found that the validity of the mortgage deed executed by other principal cannot be impeached.

12. The factual situation in this case is totally different. Here, respondents 2 and 3, the legal heirs of Balabaskaran are available to succeed to his property through Will executed by Balabaskaran. Therefore, both these judgments are not useful to the case of the petitioner. The intention of the parties have to be ascertained from the terms of the power of attorney. One of the terms of the power of attorney deed is that as and when the properties are sold, the sale consideration should be settled to the principals. It is not known whether the sale consideration was paid by Rajasekar, to the principals, especially to Balabaskaran. The main allegation against the petitioner is that despite demanding accounts for the income derived from the properties of their father, petitioner had not given accounts. It is not disputed by the petitioner that the plots had been sold even after the death of Balabaskaran. Section 201 of Indian Contract Act, makes it abundantly clear that an agency gets terminated by the death of principal or agent. Any action taken on the basis of power of attorney deed, after the death of principal, no doubt is an illegal act. Thus, this Court finds that there are materials available to frame charges against the petitioner under appropriate provisions of law and proceed with the trial.



13.The learned counsel for the petitioner relied on the judgments reported in (2009) 8 Supreme Court Cases 751 Mohammed Ibrahim and others Vs. State of Bihar and another, and (2019) 2 Supreme Court Cases 401 Vinod Natesan Vs. State of Kerala and Others, for the proposition that the disputes, especially civil in nature cannot be converted as criminal dispute and the criminal Court should avoid entertaining those complaints. He also relied on the judgment reported in (2019) (6) CTC 442 Nisan Motors Corporate Office Vs. S.Giri Prasad, for the proposition that the Court taking cognizance of the cases mechanically without verifying the materials before taking cognizance is illegal. In the case before hand, it is submitted that the learned Chief Judicial Magistrate had not applied his mind before taking cognizance, because there was no speaking order passed for taking cognizance and only a seal was affixed.

14.It is already discussed that the power of attorney deed executed by principal comes to an end on his death and any transaction made on the basis of the power of attorney deed after the death of principal is an illegal transaction. Therefore, we cannot say that the dispute involved in this case is civil in nature. There is a criminal element involved in selling the property after the death of the principal, especially after knowing that principal is dead. The intention of the parties can be gathered only after examination of witnesses and scrutinising the documents. Prima -facie case is made out against the petitioner for framing charges. It is true that there was no speaking order passed before taking cognizance. However, materials produced, as indicated earlier made out a prima - facie case to proceed further against the petitioner. Therefore, this Court finds that aforesaid rulings relied by the learned counsel for the petitioner are not applicable to the facts and circumstances of this case.

15.In fine, Criminal Original Petition in CrI.O.P.No.12211of 2016 is dismissed. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Ep



To

1.The State Represented by,
The Inspector of Police,
CBCID,
Puducherry - 605 001.

2.The Chief Judicial Magistrate,
Puducherry.

3.The Public Prosecutor,
Puducherry.

+1cc to Mr.V.Raghavachari, Advocate SR.No.25383

+2ccs to Mr.R.Natarajan, Advocate SR.No.26190

CRL.O.P.No.12211 of 2016
and CrI.M.P.No.6279 of 2016

SSV(CO)
GMY(27/04/2022)