IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.27431 of 2015
and
M.P.No.1 of 2015

1. Seenivasulu Naidu

2. Ranganathan

3. Kalamani ... Petitioners/Accused 1 to 3

Vs

1. The State rep. by
Sub-Inspector of Police,
District Crime Branch,
Coimbatore District.

2. Backiyam,
W/o. Rajarathinam ... Respondents

(the 2nd respondent is impleaded as per
the order of this Court made in
M.P.No.3 of 2015, dated 27.11.2015)

The Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the complaint in C.C.No.310 of 2015 on the file of the Judicial Magistrate No.VII, Coimbatore and quash the same as far as the petitioners are concerned.

For petitioners ... Mr. M.S.I. Abrar Md Abdullah

For respondents ... Mr. C.E.Pratap,
Government Advocate,
for R1

... Mr. S. Thangavel,
for R2

ORDER

The Criminal Original Petition has been filed to quash the criminal proceedings in C.C.No.310 of 2015 pending on the file of the learned Judicial Magistrate No.VII, Coimbatore, against the petitioners.

2. Totally, there are 4 accused and the petitioners are arrayed as A1 to A3 and they stood charged for the offences under Sections 120(b), 420 and 424 of IPC.

3. The case of the prosecution is that, one Seenivasulu Naidu, who is arrayed as A1, is the original owner of the property in Survey Nos.478/3A1, 478/2, 476, 477/2, to an extent of 5.61 acres in Appanaiyakkanpatti Pudur, Sulur, and other accused are legal heirs of A1. On 14.11.1997 and 29.10.2001, all the accused executed two power of attorneys in favour of the de-facto complainant and the same was also registered. Along with the power of attorney, they have also given an undertaking affidavit stating that they will not cancel the power of attorney, also stated that they have received the entire value of the property to the tune of Rs.3,70,260/-. Thereafter, with an intention to cheat the de-facto complainant, the accused persons have cancelled the above said power deeds on 22.05.2008 without her knowledge. Alleging that all the accused conspired together and in furtherance of the conspiracy, they have cancelled the power of attorney, and they committed the offence. Based on a complaint, the crime was registered and after investigation, final report has been filed for the above said offences and the same was also taken cognizance by the concerned Magistrate. Now, to quash the same, the present petition has been filed.

4. Mr.I.Abrar and Abdullah, learned counsel appearing for the petitioners/accused submitted that admittedly, the petitioners are the owners of the property and they have executed a power of attorney in favour of the defacto complainant. Since the power of attorney holder has violated some of the conditions in the power deed, they have cancelled the same, after duly informing the same to the defacto complainant. After cancellation of power deed the de-facto complainant sold the property in favour of third party and thereby she had committed offence. In order to get away from the same, the present complaint has been filed.

5. The learned counsel further submitted that, all the petitioners have filed a suit in O.S.No.50 of 2011, on the file

of the District Munsif Court, Palladam, for declaration declaring that the sale deed dated 10.12.2010 registered as document no.11272/2010 on the file of the Sub Registrar's office, Sulur, is void ab-initio and also consequential declaration that the petitioners are the absolute owners of the property. Likewise, one Rajarathina, husband of the defacto complainant also filed a suit in O.S.No.967 of 2013 on the file of the District Munsif, Coimbatore, for declaration that he is the owner of the property and also for permanent injunction, but the same was dismissed for non prosecution. It is only a civil dispute between the parties, but a criminal colour has been given to it. Hence, to quash the same, the present complaint has been filed.

6. He further submitted that the petitioners have not received any consideration at the time of executing the power of attorney and they have not executed any understanding affidavit in favour of the de-facto complainant. Even assuming that, any such undertaking affidavit is there, and any breach will not gives rise to a criminal offence. No primafacie case is made out against the petitioners and the complaint has been filed in total abuse of process of law.

7. The learned counsel appearing for the respondent/de-facto complainant, submitted that, the petitioners, being the owners of the property, after receiving the entire sale consideration for the property, executed two power of attorneys in her favour and along with the power of attorney, they have also executed a deed of undertaking stating that they will not cancel the power and also admitting that they have received the entire value of the property. Thereafter, without any notice to the defacto complainant, with an intention to cheat the petitioners, accused unilaterally cancelled the power of attorney. Without knowing the fact that the power of attorney was cancelled, the defacto complainant sold the property to third party. According to the defacto complainant, it is not a civil dispute between the parties. The petitioners have executed a power of attorney only with an intention to cheat the defacto complainant. The materials available on records clearly makes out the offence, and, the learned Judicial Magistrate rightly taken cognizance and issued process .

8. The learned Government Advocate (crl. side) appearing for the petitioners submitted that the materials available on records clearly makes out an offence under Sections 120(b), and 420 IPC, and there is no ground made out to prove the same.

9. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

10. There is a clear distinction between a breach of contract and the offence of cheating. To establish the cheating, there must be materials to show that the accused have fraudulent and dishonest intention right from the beginning to cheat the defacto complainant and mere cancellation of power of attorney, without any intention to cheat the complainant, will not give rise to offence under Section 420 of IPC.

11. The Hon'ble Supreme Court in the case of Hridaya Ranjan Prasad Verma and others /vs/ State of Bihar and another reported in 2000(4) Supreme Court Cases 168 has held as follows :

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. "

12. Keeping the above principle in law, this Court considered the instant case. The power of attorney has been executed as early as on 14.11.1997 and 29.10.2001. It is the case of the de-facto complainant that at the time of executing the power of Attorney, he has paid the entire value of the property. That apart, the accused have also given an affidavit of undertaking that they will not cancel the power and also admitted that they have received the entire consideration. After receipt of the entire sale consideration and also executing the

undertaking, all the accused unilaterally cancelled the power with an intention to cheat him. Admittedly, after cancellation of the power of attorney, the de-facto complainant also executed a sale deed in favour of the third party. From the materials available on records including the complaint and sworn in statement statement of the defacto complainant, nothing available to show that, the petitioners had dishonest and fraudulent intention to cheat the defacto complainant, right from the execution of the power of attorney. Apart from that, it is also pertinent to note that, the power of attorney was executed in the year 1977, and the same was cancelled in the year 2008, after 30 years of the execution of the power of attorney. That apart, now both the parties are also before the Civil Court, the accused filed a suit to set aside the sale deed and the de-facto complainant also filed a suit for declaration of title and the cancellation of the power of attorney despite the undertaking is valid or not should be decided by the Civil Court.

13. The learned counsel for the de-facto complainant relied upon number of judgments to show that when the fact of the case give rise to the civil liability as well as the criminal offence, there is no bar to initiate criminal proceedings. However, absolutely, there is no materials to show that the petitioners have an intention to deceive the de-facto complainant. Hence, it is purely civil dispute and it should be resolved by the civil Court.

14. So far as the offence under Section 420 of IPC is concerned, this Court already finds that there is no materials available on record to show that the petitioners had intention to cheat the de-facto complainant right from the inception. Hence, no case has been made out to bring home the offence under Section 420 of IPC.

15. To bring home an offence under Section 120(b) of IPC, there must be some materials to show that there was a meeting of mind between the parties to commit any illegal act and in furtherance of the same, they have committed illegal act. But, absolutely there is no materials for the same and hence, the charge under Section 120(b) IPC is also liable to be quashed.

16. Considering the facts and circumstances, this Court is of the view that primafacie case is not made out as against the petitioners and hence, the criminal proceedings are liable to be quashed.

17. Accordingly, this Criminal Original Petition is allowed and the case against the petitioners in C.C.No.310 of 2015 on the file of the Judicial Magistrate No.VII, Coimbatore, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate No.VII,
   Coimbatore.

2.-do-Thro Chief Judicial Magistrate,
   Coimbatore.

3.The Sub-Inspector of Police,
   District Crime Branch,
   Coimbatore District.

4.The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.I.Abrar Md.Abdullah, Advocate SR.No.5987
+1cc to Mr.S.Thangavel, Advocate SR.No.5749

Crl.O.P.No.27431 of 2015

GPL(CO)
CB(17/03/2022)