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Crl.R.C.No.1104 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2022

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1104 of 2015

and

M.P.No.1 of 2015

S.Suresh

.. Petitioner

Vs.

1.State represented by
The Inspector of Police,
S-15, Selaiyur Police Station,
Chennai-73.

2.Robert Denson

..Respondents

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order passed by the learned Judicial Magistrate, Tambaram in Crl.M.P.No.9052 of 2014 consequences in Cr.No.1847 of 2014 on the file of the 1st respondent/The Inspector of Police, Selaiyur Police Station.

For Petitioner : Mr.R.Karthikeyan

For R1 : Mr.N.S.Suganthan
Government Advocate (Crl.Side)

For R2 : No appearance



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ORDER

This Criminal Revision Case is filed to set aside the order passed by the learned Judicial Magistrate, Tambaram in Crl.M.P.No.9052 of 2014.

2. The case of the petitioner herein who was arrayed as an accused is that, in a private complaint taken cognizance against him passed by the learned Judicial Magistrate under Sections 156(3) of Cr.P.C., directed the respondent police to register the First Information Report and investigate the facts mentioned in the petition and file final report.

3. The said order is challenged on the ground that the learned Magistrate has not applied his mind while passing the impugned order, but just acted as a post office and forwarded the complaint to the respondent police to register and investigate.

4. According to the learned counsel for the petitioner, graveness of the complaint is that the Power of Attorney Deed executed



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in favour of the accused on 30.12.2009 and executed the sale deeds dated 08.07.2010 and 04.10.2010. However, the accused has not rendered the accounts as per the recital of the Power of Attorney Deed.

5. The learned counsel for the petitioner submitted that the said allegations is purely civil in nature and if at all, the respondent is aggrieved by any breach or violation of the terms of the Power of Attorney Deed, his remedy is to approach the Civil Court and in fact the respondent/complainant caused notice dated 26.09.2019, the counsel alleging that the accused has been appointed as an agent to deal with the property had not rendered the accounts for the sale of the property to the third parties for meager amount.

6. Further, the learned counsel submitted that the Power of Attorney Deed is of the year 30.12.2009. The sale deeds were registered on 08.07.2010 and 04.10.2010 and due accounts rendered. However, after three years, the respondent thought fit to cause notice alleging that the accounts was not rendered and thereafter the private complaint under



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Section 156(3) of Cr.P.C., was filed on 02.12.2014 without applying the mind and without stating the reason to take cognizance. After the time barred litigation, the learned Magistrate has forwarded the same to the police.

6. The learned counsel for the respondent submitted that due to trust and friendship, the Power of Attorney of the property was given to the petitioner which was misused by him and the money was misappropriated by him. Hence the complaint.

7. This Court, on considering the facts which clearly indicate that the Power of Attorney dated 30.12.2009 has been acted upon by the petitioner and he has executed two sale deeds dated 08.07.2010 and 04.10.2010, alleging that the accounts not rendered, the private complaint dated 27.10.2014 has been filed and the learned Magistrate has passed cryptic order stating that the allegations made out cognizable offence and has directed the police to register the F.I.R. In the complaint. It is stated that the petitioner has alleged to have committed the offences under Sections 406, 419, 420 and 506(ii) of I.P.C.



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8. However on reading of the complaint and the notice issued by the complainant as early as 26.09.2013, one year prior to filing of the complaint before the learned Magistrate clearly indicates that the transaction between the petitioner and the *de facto* complainant is civil in nature and there was no deception at the time of inception. Hence the Criminal Original Petition is allowed. The direction of the learned Magistrate to register the complaint and investigate is hereby set aside.

20.09.2022

Internet : Yes/No

Index: Yes/No

rpl

To

1. The Judicial Magistrate, Tambaram.

2. The Inspector of Police,
S-15, Selaiyur Police Station,
Chennai-73.

3. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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