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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.27951 of 2018
and Crl.M.P.Nos.16221 of 2018
and 10928 of 2019

Manickam

...Petitioner

Versus

1.State Rep.by
The Inspector of Police,
District Crime Branch(DCB),
Kanchipuram
(Crime No.40 of 2010)

2.Varadhan

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.225 of 2015 pending on the file of the Judicial Magistrate-II, Kanchipuram and quash the same.

For Petitioner : M/s.K.M.Balaaji

For Respondents : Mr.S.Vinoth Kumar for R1
Government Advocate(Crl.side)
Mr.K.S.Senthil Kumar for R2

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.225 of 2015 pending on the file of the Judicial Magistrate-II, Kanchipuram and quash the same.

2. The crux of the charge in the final report is that A1 is the absolute owner of the immovable property to the extent of 4.79 acres in Survey Nos, 61, 156/4, 157/2, 155/1A and originally, she has appointed an agent one Jeyachandran/A2 by a registered Power of Attorney dated 17.05.1998. In pursuant to the above power of attorney, A2 has obtained DTCP and developed the land. Thereafter, on 10.12.2001, Power of Attorney executed in favour of A2 was cancelled by A1 with the



consent of A3/petitioner, for which, certain amount has been agreed to be paid by A1 to A2. On the same day, the Power of Attorney was executed in favour of A3 by A1, whereas, A2 has sold the property to the defacto complainant in the year 2008. Thereby, all of the accused committed offences under Sections 465, 468, 471, 420 r/w 34 of 1PC.

3. The learned counsel for the petitioner would contend that the defacto complainant has purchased the property in respect of Survey Nos. 155/1A, 54A, 156/4 from A2, which is much after the cancellation of Power of Attorney. Whereas, the subsequent Power of Attorney was executed by A1 in favour of A3 for the entire immovable properties. Merely because the entire power has been given, A3/petitioner cannot be prosecuted. Moreover, there is no other materials available on record in the final report and the statements would not attract any offence under Sections 465, 468, 471, 420 of 1.P.C r/w 34 of IPC. Hence, he prayed to quash the proceedings.

4. The learned counsel for the defacto complainant would contend that A3 is also a witness and the cancellation of Power of Attorney was executed on 10.12.2001. On the same day, A3 has given Power of Attorney in respect of Schedule 'A' property, whereas the property was sold by A2 in the year 2008. Schedule 'A' of the property reads as follows:

"All that piece and parcel of lands No.58 situated at Sevilimedu village, Kanchipuram Taluk, Chengalpet District, comprised in Survey Nos.61, 156/4, 157/2, 155/1A measuring 3.54 acres, 96 cents, 8 cents, 21 cents respectively totallly measuring 4.79 acres situate within the Registration Sub-District of Kancheepuram, and Registration District of Chengalpet."

He further contended that the materials collected by the prosecution clearly shows that all the accused were in hand in glove. Hence, he opposed to quash the proceedings.

5. Learned Government Advocate(Crl.side) submitted that the final report has already been filed.

6. At the outset, it is well settled that when the materials unearthed by the prosecution agency shows that there are prima facie materials to proceed against accused, this Court cannot exercise its power under Section 482 of Cr.P.C to interfere with the final report and at the same time when the entire materials unearthed by the prosecution taken in the face value do not



constitute any offence and still forcing the party to face the ordeal of the trial is nothing but abuse of process of law. Therefore, this Court can very well interfere and quash the proceedings.

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7. It is not in dispute that the final report itself indicate that originally, A1 who is the owner of the property has appointed A2 as his agent to develop the property. Thereafter, the Power of Attorney was executed in favour of A2 and later it was cancelled on 10.12.2001 with the consent of A3. It appears that A3 is also one of the witnesses to the said Power of Attorney and A2 has agreed to receive a sum of Rs.23 lakhs towards the development of the land. On the same day, another Power of Attorney was executed by A1 in favour of A3 to the total extent of 3.54 acres, 96 cents, 8 cents, 21 cents totaling to 4.79 acres in Survey Nos.61, 156/4, 157/2, 155/1A.

8. The main allegation of the defacto complainant is that he has purchased certain portion of land in Survey Nos.155/1A, 54A, 156/4 on 20.08.2008 from A2, which is much after the cancellation of the Power of Attorney. The very allegation itself indicate that after the Power of attorney was cancelled, which was executed in favour of A2, A1 has executed another Power of Attorney with A3. Therefore, A3 has dealt with the property on the basis of original Power of Attorney executed by A1. Merely because the defacto complainant has purchased the defective title or purchased the property from A2 who has no title or authority, A3 cannot be prosecuted for any offence and the entire materials would not constitute any offence against A3. In such view of the matter, continuing the prosecution as against A3 is nothing but abuse of process of law, the same is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1.The Judicial Magistrate-II,
Kanchipuram.



2.The Inspector of Police,
District Crime Branch(DCB),
Kanchipuram.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.M.Balaji, Advocate Sr.1869

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