



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31/03/2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P (MD) No.1551 of 2020

and

Crl.M.P (MD) Nos.723 and 725 of 2020

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T.Lawrence

... Petitioner/Accused No.2

Vs.

1.State of Tamilnadu rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District,
(Crime No.45 of 2009)

... Respondent/Complainant

2.Dr.K.M.Mohammed Habib Nijjar

... Respondent /
Defacto Complainant

PRAYER: Petition filed under Section 482 of Cr.P.C., to call for the entire records relating to the proceedings in C.C.No.1411 of 2019 on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases at Tirunelveli and quash the same.

For Petitioners	: Mr.S.Haja Mohideen Gisthi,
For R-1	: Mr.T.Senthil Kumar, Additional Public Prosecutor
For R-2	: Mr.B.N.Raja Mohammed

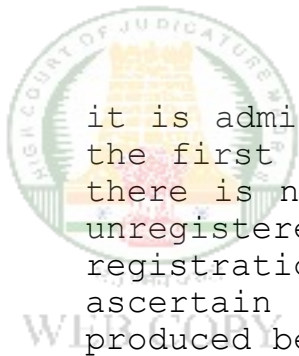
ORDER

This Criminal Original Petition has been filed to quash the final report filed against the petitioner in C.C.No.1411 of 2019 on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases at Tirunelveli. The petitioner is arrayed as second accused in the final report for the offence under Sections 406, 465, 467, 468, 471, 420 r/w 34 of I.P.C.

2. The crux of the allegation in the final report is that the defacto complainant is the owner of the property in various survey numbers and he has executed a Power of Attorney in favour of the first accused. However, the first accused has sold an extent of 21 acres and 31 cents and he has not paid the amount to the principal. Hence, the final report has been filed.

3. The second respondent / defacto complainant has also filed a counter affidavit opposing the quash petition. In paragraph No.6,

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it is admitted that the Power of Attorney was executed in favour of the first accused. Since it is an unregistered Power of Attorney, there is no need to cancel. It is further stated that even if the unregistered Power of Attorney Deed is produced at the time of registration of the document, the Registering Authority will have to ascertain the truth of execution only after the principal is produced before him for enquiry. Hence, opposed the quash petition.

4. The learned counsel for the petitioner would submit that the Power of Attorney is still in force. Therefore, there cannot be any prosecution for mere purchase of the property from the Power of Attorney. Hence, submitted that absolutely there is no materials on record to constitute an offence against the petitioner.

5. The learned counsel for the second respondent would submit that the Power of Attorney is an unregistered Power of Attorney. Therefore, at the time of registration of the document, consent of the principal has not been taken.

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

7. At the outset, I am unable to countenance the submissions made by the learned counsel for the second respondent as the registration of Power of Attorney is made mandatory only from the year 2012 by way of amendment in the Tamil Nadu Act 29 of 2012. Prior to that, registration was optional not mandatory. Execution of the Power of Attorney by the defacto complainant in favour of the first accused is not in dispute. General Power of Attorney is given to the first accused to deal with the properties owned by the defacto complainant in various survey numbers. Only on the basis of the Power of Attorney executed in favour of the first accused, he has sold the property to the second accused. Therefore, any act done by the Power Agent will certainly bind the principal. If the amount has not been paid by the Power Agent, it is for the principal to take action against the Power Agent for recovery of money received as sale consideration.

8. Normally, when the final report is filed after proper investigation and it discloses commission of cognizable offence, the Court will not quash the criminal proceedings while exercising the power under Section 482 Cr.P.C. At the same time, the Court will not go into the evidence as that of the trial Court. At the same time, when the allegations found in the final report do not constitute any offence, there is no bar for the Court to exercise the power under Section 482 Cr.P.C.

9. In **State of Haryana and Others vs. Ch.Bhajan Lal and Ors.** reported in **AIR 1992 SC 604**, the Honourable Apex Court has held as follows:

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"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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10. Admittedly, the power given in favour of the first accused is in force and it is not been revoked. As per Section 208 of the Indian Contract Act, 1872. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to him.

11. It is not the case of the defacto complainant that he had already terminated the Agency. Though the agent is bound to render proper accounts to his principal on demand as per Section 213 of the Indian Contract Act, in the event the Agent deals on his own and fails to pay the amount to the principal and use the money for his business, the remedy lies under Sections 215 and 216 of the Indian Contract Act.

12. Such being a position, having executed a Power of Attorney to deal with the properties, now the Principal cannot complain as against the sale of the property, further, no suit whatsoever filed to cancel the sale deed so far. Therefore, setting criminal law in motion to cancel the sale deed, cannot be permitted, when the power executed in favour of the first accused has not been terminated. Such being the case, the offences alleged would not be constituted over entire materials collected by the prosecution even taken in face value.

13. In such view of the matter, this Criminal Original Petition is allowed and the final report filed against the petitioner C.C.No.1411 of 2019 on the file of the learned Judicial Magistrate, Special Court for Land Grabbing Cases at Tirunelveli, stands quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

To:

1.The Judicial Magistrate,
Special Court for Land Grabbing Cases,

<https://hcservices.courts.gov.in/hcservices/>

TIRUNELVELI.



2. The Inspector of Police,
District Crime Branch,
Tirunelveli District,

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.HAJAMOHAIDEEN GISTHI, Advocate (SR-16157[F] dated
01/04/2022)

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31/03/2022

MGJ(19.04.2022) 5P 5C