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CRL.O.P.No.17221 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.17221 of 2016
and Crl.M.P.No.8248 of 2016

1.A.D.Satyanarayanan
2.K.Sudha
3.Shyamala
4.E.Laksmipathy Naidu

... Petitioners

Vs.

Rajammal

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in respect of C.C.No.5 of 2016 on the file of Judicial Magistrate, Katpadi and quash the same.

For Petitioners : Mr.D.Rajagopal

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed calling for the entire records in respect of C.C.No.5 of 2016 on the file of the learned Judicial Magistrate, Katpadi and to quash the same.

2. Heard the learned counsel for the petitioners and perused the materials



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available on record.

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3. The respondent lodged a private complaint under Section 200 Cr.P.C alleging that she had borrowed a sum of Rs.50,000/- from the first accused. However, she could not able to return the amount. Further, she had borrowed another sum of Rs.1,00,000/- and she agreed to execute a mortgage deed in respect of the subject property for a sum of Rs.1,50,000/-. Accordingly, she was asked to come to the Register Office on 29.01.2009, where all the accused were present. Under the guise of mortgage deed, they prepared some documents in the stamp papers and obtained signature from the respondent and her sons as witnesses and registered a Power of Attorney in favour of the first accused on 29.01.2009. On the very same day, the first accused had executed a sale deed in favour of the fourth accused, who is none other than the father-in-law of the first accused. That apart, utilizing the signature obtained in the stamp papers, created an agreement for sale and also sale deed in favour of the third accused in respect of other properties. Thereafter, she came to understand that the entire property of the respondent has been grabbed by the petitioners. Hence, the complaint.

4. On receipt of the complaint, the Trial Court had taken cognizance in



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C.C.No.5 of 2016. The learned counsel for the petitioners would submit that the respondent's husband was a retired Post Master and her sons also signed as witnesses in the Power of Attorney dated 29.01.2009. Therefore, after a period of four years, the respondent cannot say that she was cheated by the petitioners and executed a Power of Attorney instead of mortgage deed. Further, after a period of five years, the respondent lodged a complaint. In fact, the complaint lodged by the respondent before the concerned jurisdictional Police Station was enquired and closed as civil in nature. He further submitted that even assuming that the petitioners dragged the respondent to Register Office and registered the sale deed, it would not attract the offences under Sections 464 and 467 of IPC, since the petitioners never committed any forgery.

5. A perusal of the complaint and documents filed along with the complaint revealed that the respondent borrowed a sum of Rs.50,000/- and she could not repay the same. Further, she borrowed a sum of Rs.1,00,000/- and agreed to execute a mortgage deed in favour of the first petitioner. However, instead of execution of mortgage deed, the petitioners obtained signature of the respondent and from her sons as witnesses and executed a Power of Attorney in their favour. On the very same day on 29.01.2009, the first accused had executed a sale deed in favour of the fourth petitioner herein. If at all the



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respondent agreed to execute the Power of Attorney, she could have very well executed directly in favour of the fourth petitioner. That apart, there is another agreement for sale and sale deed in favour of the third petitioner herein. All the petitioners are close relatives and in order to grab the entire property, they dragged the respondent to the Register Office and made her believe that she had executed only mortgage deed and they executed a Power of Attorney, sale agreement and sale deed in their favour. In fact, immediately after coming to knowledge about these deeds, the husband of the respondent died. Though, the respondent lodged a complaint before the jurisdictional Police Station, it was not enquired and as such, the respondent was constrained to file a private complaint.

6. Now, the learned Magistrate after considering the materials and sworn statement of the respondent had taken cognizance in C.C.No.5 of 2016 for the offences punishable under Sections 107, 210A, 120B, 464, 467 and 420 IPC. Therefore, the learned Magistrate had rightly taken cognizance and this Court finds no grounds to quash the proceedings in C.C.No.5 of 2016 on the file of the learned Judicial Magistrate, Katpadi. Considering the age of the fourth petitioner, the personal appearance of the fourth petitioner alone is dispensed with and she shall be represented by a counsel after filing appropriate



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application. However, the fourth petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C and at the time of passing judgment.

7. Accordingly, this Criminal Original Petition is dismissed.
Consequently, connected Miscellaneous Petition is closed.

18.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
mn

To

The Judicial Magistrate, Katpadi.



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G.K.ILANTHIRAIYAN, J.

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