IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2022

Pronounced on : 18.08.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.9770 of 2015
and
Crl.M.P.No.1 of 2015

1.Abraham Thomas

2.The South India Assemblies of God,
Rep by its General Superintendent,
Rev.P.S.Rajamani, ... Petitioners / A5 & A6

Vs.

D.Malliga ... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, calling for the records in C.C.No.1057 of 2014, now pending on the file of the learned Judicial Magistrate at Tambaram and quash the same sofar as it relates to the petitioners / Accused 5 & 6 herein.

For Petitioners	:	Mr.R.Ganesh Kumar
For Respondent	:	Mr.P.V.Balasubramanian For M/s.BFS Legal

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1057 of 2014, pending on the file of the learned Judicial Magistrate at Tambaram sofar as it relates to the petitioners / A5 & A6 herein.

2. The brief facts, leading to filing of the present Criminal Original Petition, are as follows:-

(i) The respondent preferred a private complaint against the petitioners and four others, for offence under Sections 120-B, 405, 417 and 468 of IPC., which is pending in C.C.No.1057 of 2014, on the file of the learned Judicial Magistrate at Tambaram.

(ii) The respondent is the sole and absolute owner of the property, having an extent of 78 cents, comprised in Survey No: 97/1, Block No. 29, Ward 'C' in Zamin Pallavaram Village, Tambaram Taluk, Kanchipuram District. The above property was purchased by the complainant's father Late Srinivasa Pandithar from one Munusamy and his family, by way of a Registered Sale Deed, dated 06-05-1939, which was registered as Document Number 479 of 1939 in the office of Sub-Registrar, Pallavaram. After the demise of her father, the complainant and her brothers entered into a Deed of Partition, the above mentioned property partitioned vide Document Number: 1851 of 1972 and allotted to her. As a result, the complainant become the sole and absolute owner of the said property. At the time of partition, the complainant was only 18 years old and after her marriage, she started living in her matrimonial home and as such, the above property belonging to her remained as a vacant land. As the complainant did not have sufficient funds, she could not develop the property and she hoped her son could develop the same and retain it for his use.

(iii) During the lifetime of the complainant's husband in or around 2010, one person approached her late husband stating that he is going to construct a Church in the property, adjacent to her vacant land. The complainant's husband was suffering from cancer. The said person informed the complainant's husband that he needed some letters to be signed by the complainant that he has no objection for constructing a Church, neither the complainant nor her late husband had any reason to suspect. In the guise of obtaining no objection for construction of the church, the said persons informed the complainant and her husband that the signatures had to be made in the presence of the Government officials for ascertaining complainant's identity and give him permission to construct the Church. Believing him and his representations, the complainant signed and affixed thumb impressions and also provided her identification documents. Subsequently, the complainant's husband passed away due to Cancer.

(iv) While that being is so, the complainant had received a Notice, dated 21-01-2014, from the Income Tax Department calling her for enquiry. The complainant attended the enquiry on 30-01-2014 and was questioned why she had not disclosed the sale of 78 Cents belonging to her and why she had not paid the Tax on the same. She was shown a Sale Deed document by the Enquiry Officer, as if she sold the property to the petitioners herein. The Sale Deed showed as if the property was sold by her for a whopping Rs.2,04,04,800/-. She noted the Sale Deed Document Number: 4147 of 2010, and applied for a Certified Copy and then she learnt that the Sale Deed showed, as if she executed Power of Attorney, dated 25-01-2010, in favour of the Thirunavukarasu, A.B.Gnanasekar, P.S.Rathinam and R.Sivamuthukumaran, who arrayed as A1 to A4 in this case. A1 to A4, as power of attorney of the complainant, executed the Sale Deed, dated 02-08-2010, registered as Document No: 4147 of 2010, in favour of the petitioners herein and that she was not paid any consideration.

(v) From the photos in the power of attorney, she was able to find out the person, who came to her house asking 'No Objection Certificate' was the Second Accused Gnanasekar. Thereafter, she lodged a Complaint, dated 25-07-2014, before the Commissioner of Police, Chennai, against all the accused persons stating that the all the accused colluded and conspired and in the guise of obtaining a no objection, made her execute a power of attorney, thereafter, the accused illegally executed a sale deed, and that she was not paid any consideration. After receiving the Complaint, it was forwarded to the Sub-Inspector of Police, Land Grabbing Cell, on enquiring the complainant and taking her statement, the Sub-Inspector of Police forwarded the complainant to the Central Crime Branch. The Inspector of Police, Central Crime Branch once again recorded the complainant's statement, conducted enquiry, closed the complaint stating that "Criminal Offense is not made out" and also directed the complainant to file a Suit for the appropriate relief. After conducting enquiry, the Inspector of Police, Central Crime Branch, filed closure report on 26-09-2014. The complainant's husband signed as a witness in the Power of Attorney and that the name of her father was shown as that of her husband's father and that was not investigated properly by the Police. Thereafter, she had filed the private complaint against the petitioners and four other persons before the Learned Judicial Magistrate at Tambaram, on 13-11-2014, for offences U/s. 120-

B, 405, 417 and 468 IPC, which was taken cognizance in C.C.No.1057 of 2014, issued summons to the petitioners for appearance.

3. Mr.R.Ganesh Kumar, the learned counsel for the petitioners submits that the petitioners are running a Church named "New Life Assemblies of God" in Chennai. They were on the lookout for larger tracts of land for construction of buildings for their religious activities. They were in the process of acquiring lands from several land owners from the year 2002. They identified larger chunks of land through real estate agents in Block Nos.26 and 29 of Ward 'C' Zamin Pallavaram Village and so far they have purchased about 30 Acres of land from the year 2002-2003 to till date. During the year 2008, one Jayaraj, who is a real estate agent, who negotiated several other transactions, offered to identify the owner of Survey No: 97/1 in Block No. 29 Ward 'C' in Zamin Pallavaram Village, which lying between the other lands already purchased, agreed to negotiate for the purchase of the property, he introduced A1 to A4 to the petitioners society saying that they were in agreement with the owners of the land and that they given power of attorney to deal with the property. The petitioners agreed to purchase the property for the reason that it was lying between the lands already purchased by the petitioners Society. At the time of purchase the original partition deed and copies of documents were not furnished to

them. However placing reliance and believing the Patta shown to them granted in favour of the complainant and the Encumbrance Certificate submitted by A1 to A4, the petitioners purchased the property. As instructed by the power holders, the consideration in respect of purchase of the property was made through eight pay orders, bearing numbers 936815 to 936822, all dated 20.01.2010, drawn on South India Bank, T.Nagar Branch, favour the power holders for Rs.1,73,76,000/- from the account of the "New Life Assembly of God Church". After purchase, the petitioners took possession of the property. Subsequently, the petitioners received a Notice from the Income Tax Department relating to the transaction under Section 133(6) of the Income-Tax Act. The 1st petitioner appeared and produced all documents relating to the payments made towards consideration and also produced the relevant statement of the Bank to show that the consideration of Rs.2,04,04,800/- paid to the power agents of the complainant. Thereafter, the petitioners summoned by the CCB Police for enquiry, after enquiry, the complaint was closed as mistake-of-fact.

4. It is further submitted that during the enquiry, it was revealed that the motive of the complainant was to pretend before the Income Tax Authorities, as if she had not received any amounts from her Power Agents and thereby, to escape from payment of statutory taxes to the

Income Tax Department, she gave this false complaint. However having some suspicion, the petitioners applied for fresh Encumbrance Certificate and copies of documents on 04-03-2015, they came to know that the property in Survey No.97/1, Block No.29, Ward 'C' in Zamin Pallavaram Village, Tambaram Taluk, Kanchipuram District, which the complainant claims to be the owner does not even belong to her whereas, it belonged to one of her brothers P.S.Sigamani, pursuant to the family partition deed entered into between the complainant and her brothers on 27-09-1972, registered as Document No.1851 of 1972 and that she and her husband colluded with the other accused, cheated the complainant, as if the land belonged to her based on a patta stated to be issued in her favour and the Encumbrance Certificate obtained by them without any encumbrance. Adding further, the learned counsel submitted that when the petitioners applied for fresh Encumbrance Certificate, they were further shocked to find out that the property had already been sold to Prakash Bansali and Surendrakumar Bansali Jain by the brothers of the complainnt namely, PS.Sigamani, P.S.Gunalan and P.S.Sivaraman as early as 15-12-1994, by Document Number 5907/1994.

5. The Accused 1 to 4 and the complainant suppressing the earlier details and transactions misrepresented the facts, based on Patta obtained by her by fraud and concealment made the petitioners society

to believe them and part with Rs.2,04,04,800/- thereby, she cheated the petitioners. The complainant in order to escape from her Criminal Act and in order to escape from the proceedings taken by the Income Tax Department is now feigning ignorance and attempting to show as if she is innocent and she is not aware of what happened at the Sub Registrar's Office and that she has not received any consideration. As per the registered power of attorney, the complainant and her husband appeared in person before the Sub Registrar Office, executed the Power of Attorney in favour of A1 to A4, her husband stood as a witness to the execution of the Power of Attorney document. The petitioners genuinely believed the Power of Attorney and parted with the consideration amount to A1 to A4 through Pay Orders drawn in their names. It is pertinent to submit that A1 to A4 were introduced by one Jeyaraj, a real estate broker, who earlier dealt with and acquired certain lands of the petitioners' society. The learned counsel further submitted that learned Judicial Magistrate at Tambaram, even without verifying the documents and based on the statement taken cognizance issued summons to the petitioners. The complainant is the person, who along with the other accused cheated the petitioners and she has not come to the court with clean hands. In support of his contentions, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***Amar Nath vs. Gian Chand and Another*** reported in ***(2022 SCC Online SC***

102), wherein, the principles regarding Section 34 of the Registration Act has been clearly recorded. Further, the learned counsel relied on the Judgment of the Apex Court in ***Mohammed Ibrahim and Others Vs. State of Bihar and Another*** reported in ***(2009 (8) SCC 751)***, wherein it has been held as follows:-

> "This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

Thus, the learned counsel submitted that the petitioners arrayed as accused only to cause harassment and for oblique reasons. Hence, seeks quashing of the proceedings.

6. Mr.P.V.Balasubramanian, the learned counsel appearing for the

respondent/complainant would submit that on the face of it, the documents would show that the power of attorney is forged one. The respondent's father had some property in Zamin Pallavaram, who settled the property in the name of respondent and her brother in the year 1972. At that time, the respondent was aged about 18 years. She has not got much educational qualification. Taking advantage of the same, the petitioners played a fraud along with other accused viz., A-1 to A-4. Using the power of attorney, a sale deed executed eight months thereafter. The documents produced by the petitioners that a sum of Rs.10 lakhs had been paid in advance to one Jeyaraja pertains to this property during May, 2008, which is months before the power of attorney executed in favour of A-1 to A-4.

7. It is further submitted that the bank statement produced by the petitioners would show that the demand drafts taken much before the power of attorney was executed. The admitted case of the petitioners is that they scouting for various places through Jeyaraja. For the payments made to Jeyaraja to some other property, has been projected as though the money paid to the respondent. The plaint filed in the civil suit is for the purpose of seeking civil remedy and that may not be projected against the respondent as though she is agreeing to the power of attorney executed. The specific case of the respondent is that power of

attorney has been obtained through fraud. Respondent's father name is Srinivasa Pandithar, her husband name is Dhandapani, who shown as witness to the power of attorney. In the power of attorney, Dhandapani's father name has been shown as Srinivasa Pandithar as well as to the another witness to the document. Further the same PAN Number given to three of the witnesses in the document. Thus, on the face of it, it is seen that fraud has been committed by petitioners/A5 and A6. The petitioners, right from inception, through A1 to A4, conspired and cheated the respondent/complainant using forged documents. The petitioners claim of having the original document may not be true for the reason that family property partition had taken place, in between the respondent and his father in the year 1972, wherein several of the properties partitioned and it might have been used in some other transaction. Hence, the learned counsel, by relying on the following Judgments of the Apex Court, prayed for dismissal of the petition. The Judgments of the Apex Court in ***Veera Singh Vs. District Registrar / Additional Collector and Anr*** reported in ***(2002) 7 SCC 1***; ***R.Kalyani Vs. Janak C.Mehta & Ors*** reported in ***(2009 (1) SCC 516)*** and ***Sudhir Shantilal Mehta Vs. Central Bureau of Investigation*** reported in ***(2009 (8) SCC 1)***

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. According to the respondents, the respondent signed certain documents for the purpose of giving no objection for construction of the Church in the adjacent property, which was the representation made by A1 to A4 and one Jeyaraja. In the year, 2014, the respondent received a Notice from the Income Tax Department, thereafter, she came to know about the sale deed executed using the power of attorney for a sum of Rs.2,04,04,800. Thereafter, she lodged a police complaint, which was not acted upon and finally filed the private complaint, which is not sustainable both on facts and law for the reason, till date, the respondent admits that A1 to A4 acted as power of attorney. She has also filed a civil suit in O.S.No.186 of 2017, which is pending before the District Judge, Chengalpet, wherein, the relationship between the respondent and A1 to A4 as power of attorney not disputed. If at all the respondent has got any grievance, it is for her to proceed against A1 to A4 and not against the petitioners/A5 and A6. As per Section 34 of the Registration Act, duty is cast upon the Registrar to question, enquire about the veracity of the transaction and thereafter register the documents. In this case, the documents have been executed before the Registrar and all are registered documents.

10. It is seen from the records that A1 to A4 acted as Power of

Attorneys to the respondent/complainant and executed a General Power of Attorney on 25.01.2010. Thereafter, the property of the respondent to an extent of 78 cents comprised in Survey No.97/1 in Zamin Pallavaram was sold and sale deed was executed on 02.08.2010 in favour of A5 and A6. The Power of Attorney was registered as Document No.68 of 2010 and sale deed as Document No.4147 of 2010. For the above transaction, A6 paid the amount to the power of attorneys of the respondent, by way of demand draft and cheques. Thereafter, sale deed executed. Even accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the transaction neither been expressly stated nor indirectly suggested in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant / respondent is not made out even accepting all the averments in the complaint on their face value.

11. The undisputed facts in this case is that Power of Attorney Document No.68 of 2010 executed by the respondent in favour of R.Thirunavukarasu, A.B.Gnanasekar, P.S.Rathinam and R.Sivamuthukumaran, on 25.01.2010 not disputed. Complainant's husband witnessed and signed the document. The power executed authorizing complainant's agent, to sell the property, to enter into agreement for sale with 'South India Assemblies of God' Church, to give

formal possession and to hand over vacant possession and complainant agreed to ratify all lawful acts done by her attorneys. The only condition is that to keep true and correct accounts and produce the accounts to the principal. The grievance of the complainant is that neither she authorized sale nor paid any sale consideration, hence disputing the sale. For this reason, she had lodged a police complaint. Central Crime Branch, Chennai, enquired and closed the complaint, as civil in nature, hence, she filed the above complaint. Added to it, she has filed a civil Suit in O.S.No.186 of 2017, before the District Court, Chengalpet, to declare power of Attorney Document No.68 of 2010, dated 25.01.2010, as null and void, consequently, cancel the sale deed Doc.No.4147 of 2010, dated 02.08.2010, alternatively the complainant seeks rendition of accounts for the sale deed and its proceeds, sum of Rs.2,04,04,800/-, along with interest. Both in the complaint and civil suit, the only allegation against the petitioners / A5 & A6 is that they colluded with A1 to A4, for which, there is no required averments or any materials even to remotely suggest about any collusion. On the other hand, payments have been made to A1 to A4 through Bank, which is not seriously objected, except for stating that payments have been made even before execution of Power of Attorney, it might not gain credence, in the absence of any contra stand disputing receipt of money by A1 to A4. Whether complainant was paid or not by A1 to A4 it is a different matter, which A1 to A4 to answer. Further, complainant's contention that she had little or no knowledge of English will not hold water. The complainant's partition deed Document No.1851 of 1972, is in English. After partition it has been acted upon. Now, the complainant cannot make a turn around. The Power of Attorney Doc No.68/2010 is not disputed, except for a different interpretation by the complainant. The Power of Attorney not cancelled. In view of the above this court finds no collusion by petitioners / A5 & A6 with the other accused. The complainant has now initiated civil proceedings against the petitioners and others, in O.S.No.186 of 2017, which can take care, safe guard, complainant's rights and interest. The petitioners purchased the property, when there was nothing to doubt the registered power of attorney.

12. In the case on hand, the purchasers are made as co-accused. It is not the case of the complainant that petitioners tried to deceive her either by making a false or misleading representation or by any other action or omission, nor is it her case that they offered her any fraudulent or dishonest inducement or to intentionally induce her to do or omit to do anything. No doubt, the opinion of the court would certainly depend on the factual matrix of each case. The instant dispute certainly involves civil nature. In such a situation continuing the criminal proceeding

against the petitioners will be, an abuse of process of the court. At this juncture, it is relevant to refer the Judgment of the Hon'ble Apex Court in the Judgment in ***G. Sagar Suri and another vs. State of U.P. and others***, reported in ***((2000) 2 SCC 636)***, wherein it has been held as follows:-

> "8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a **civil nature**, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

13. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.1057 of 2014, pending on the file of the learned Judicial Magistrate at Tambaram. sofar as it relates to the petitioners / Accused 5 & 6 alone herein, stands quashed. Consequently, the connected miscellaneous petition is closed.

14. Needless to state that the observations made in this petition is only for deciding the present case on hand, and it is left open to the trial Court to decide the issue in respect of other accused, at the appropriate stage, in accordance with law, without being influenced by the observations made herein.

18.08.2023

Index : Yes/No
Internet : Yes / No
mpk/vv2

To

1.The Judicial Magistrate,
Tambaram

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

MPK/VV2

Pre-Delivery Order made in

CRL.O.P.No.9770 of 2015

18.08.2023