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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-12-2023

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl. OP No.2887 of 2023

And

Crl.MP No.1697 of 2023

1.Mathiyalakan
2.Vennila
3.Vignesh
4.Hemalatha

... Petitioners/Accused 1 to 4

Vs.

The State Represented by
The Inspector of Police,
Mecheri Police Station,
Salem District.
(Ref.Crime No.738 of 2022 dated
27.12.2022)

... R-1/Complainant

M.Sekar

... R-2/Defacto Complainant



Prayer: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to quash the First Information Report in connection with Crime No.738 of 2022 on the file of the respondent-Police for offences under Sections 120-B, 420 and 506 (i) of IPC.

For Petitioners	: Mr.C.Arun Kumar
For Respondent-1	: Mr.Leonard Arul Joseph Selvam, Government Advocate (Criminal Side).
For Respondent-2	: Mr.S.Kalyanaraman

ORDER

The present Criminal Original Petition has been filed to quash the criminal complaint registered in Crime No.738 of 2022 dated 27.12.2022.

2. The allegation as found in the FIR is that the petitioners herein, who are the owners of the property of a piece of land, have given a



Power of Attorney to the defacto complainant and also entered into Varthaman Deed. As per the Power of Attorney, complainant was authorised to deal with the said property and as per the Varthaman Deed, a sum of Rs.12 lakhs been received from him towards sale consideration, the petitioners promised to allow the defacto complainant to act on the Power of Attorney.

3. Contrary to the agreement, it is alleged that the petitioners had unilaterally issued notice of cancellation of Power of Attorney and also filed suit and as a result, the complaint been enquired. Pending investigation, the petitioners have approached this Court by filing the present Crl.OP No.2887 of 2023 alleging that the civil suit pending been suppressed by the complainant and had sought the directions of the learned Magistrate to register the complaint and investigate. Accordingly as per directions of the Judicial Magistrate, the police has registered the complaint and proceeding with the investigation.

4. This Court at the time of admission of the quash petition found prima facie material and had passed the following order:-



“In the light of the submission made by the learned counsel for the petitioners that already there is a civil suit pending in respect of the disputed property, this Court orders notice to second respondent, returnable in three weeks. Investigation shall go on in this case, however, filing of final report is to be deferred till then.”

5. When the matter came up for hearing on the subsequent date i.e., on 01.12.2023, the learned Government Advocate submits that enquiry completed and Final Report been uploaded through e-filing on 30.11.2023. Since the act of the respondent-police filing the Final Report, when there is a specific order to defer filing Final Report, the violation of the order Final Report alleged to have been filed. Therefore, this Court directed the Investigating Officer (IO) to explain under what circumstances the Final Report was filed.

6. The learned Government Advocate (Criminal Side), appearing on behalf of the first respondent-Police, after verification of the records submitted that due to inadvertence, on the enquiry by the



Prosecutor's Office, the Final Report has been filed. However, a letter has been given to the concerned learned Magistrate not to take the complaint on file. The explanation given by the State Government Advocate is accepted and the Court is not inclined to go further into the violation of interim orders and proceed with the merits of this petition.

7. The learned counsel appearing on behalf of the petitioners submitted that the dispute is purely of a civil nature. The Power of Attorney was given in favour of the defacto complainant but later it was cancelled. Also suit is filed to declare the Power of Attorney as null and void as well as injunction to restrain the defacto complainant from dealing with the property through the Power of Attorney Deed. The petition filed by the defacto complainant to reject the plaint also dismissed and the civil suit is pending for adjudication. While-so, suppressing the facts about the pendency of civil suit, the complaint under Section 200 read with Section 156(3) of the Cr.P.C., was presented before the learned Judicial Magistrate and the same has been forwarded to the respondent-police to investigate and to file a report. The Varthaman Deed alleged to have been executed upon the petitioners, is not genuine and the petitioners have not received any



consideration in support of the Power of Attorney given to the defacto complainant.

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8. The learned counsel appearing on behalf of the second respondent-defacto complainant submitted that it is the clear case of deception and cheating. After receiving money and executing the Power of Attorney Deed, the petitioners attempted to cancel the Power of Attorney and sell the property to third parties. When that the complainant questioned the petitioners, they threatened with dare consequences. Since the respondent-police did not take up their complaint for investigation, the defacto complainant resorted to alternate remedy available under Section 156(3) of Cr.P.C..

9. The learned Government Advocate (Criminal Side), appearing on behalf of the first respondent-police, verifying the records in the CD file, submitted that the Varthaman Deed between the parties indicate that the petitioners herein had received a sum of Rs.12 lakhs as part sale consideration for the property to which they have also executed the Power of Attorney in favour of the defacto complainant. The complaint forwarded to



the respondent-police for investigation and based on those materials, the respondent-police has completed the investigation and the charge sheet is ready.

10. The learned counsel appearing on behalf of the petitioners relying upon the two judgments. One reported in **2014 SCC Online Madras 7235 [R.Robert Denson vs. State and another]** and another unreported judgment of this Court delivered on 31.01.2022 in Crl.OP No.27431 of 2015, submitted that the matter relating to Power of Attorney and revocation of Power of Attorney after intimating to the Agent, are disputes civil in nature and no criminal offence will be made out by revoking the Power of Attorney or cancelling the Power of Attorney Deed.

11. On perusing the abovesaid two judgments cited by the learned counsel appearing on behalf of the petitioners, this Court finds that both the judgments cited above had made it clear that there is distinction between the breach of contract and cheating. To attract offence under Section 420, the ingredients of intentional deception at the inception is necessary and the cases cited, the Courts have found that there was no



intentional deception, therefore, quashed the complaint. Whereas in this case, the Varthaman Deed makes the difference.

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12. The Power of Attorney withdrawn or cancelled whether unilateral, bilateral or after notice may be a civil dispute which shall be decided by the Civil Court, but when the Power of Attorney alleged to have been coupled with a Varthaman Deed and receipt of part consideration in respect of the Power of Attorney, the subsequent withdrawal or cancellation of Power of Attorney without the knowledge or consent of the Agent requires probe. Whether the Power of Attorney was revoked or cancelled with bona fide intention or with mala fide intention, to cheat the Agent who had paid part sale consideration are all matter for investigation. In this case, the respondent-police has investigated and made ready with the Final Report.

13. Hence, the respondent-police is directed to file the Final Report along with the copy of the documents and the statements of witnesses. On receipt of documents under Section 207 Cr.P.C., if the petitioners are of the view that there is no material to prosecute them, they



are at liberty to approach the Court for necessary relief.

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14. With the above directions, the present Criminal Original Petition stands disposed of. Consequently, the connected Criminal Miscellaneous Petition is closed.

15-12-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The Inspector of Police,
Mecheri Police Station,
Salem District.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



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DR.G.JAYACHANDRAN, J.

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Crl. OP 2887 of 2023

15-12-2023