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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.6502 of 2021

And

Crl.M.P.No. 4300 of 2021

Mrs.Athayi

... Petitioner/2nd Accused

Vs

1. The State
Represented by the Inspector of Police
Anti-Land Grabbing Special Cell
Dharmapuri District, Dharmapuri
Crime No. 32 of 2011. ... 1st Respondent/Complainant
2. Mr.P.G.Prabhakar
3. Mrs.Vaijyanthi ... 2nd and 3rd Respondents/De-facto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records culminating in the impugned C.C.No. 162 of 2020 now pending on the file of learned Judicial Magistrate No.I, Dharmapuri, quash the same.

For Petitioner : Mr. A.Arun Anbumani

For 1st Respondent : Mr. Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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For RR 2 & 3 : No appearance

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ORDER

The petitioners seek to quash the final report in C.C.No. 162 of 2020 for the alleged offences under Sections 120-B, 420, 465, 468 & 471 of IPC. The petitioner has been arrayed as second accused.

2. It is alleged in the charge sheet that one Vaijayanthi, who is arrayed as third respondent in the quash petition, had executed a power of attorney in favour of one Varadappan, who is no more. Based on the said power, the said Varadappan had sold the property in favour of the petitioner herein/ his wife. Subsequently, the petitioner sold the said property in favour of third accused /Ravi. It is further alleged that the said Vaijayanthi had cancelled the power executed in favour of Varadappan even prior to his executing the sale deed in favour of the petitioner and had executed another power in favour of the defacto complainant / second respondent. The second respondent hence had given the complaint which was registered in Crime No. 162 of 2020. On investigation, the respondent filed the final report for the above said offences, which is impugned.



3. The learned counsel for the petitioner would submit that subsequent to the power executed by the third respondent in favour of the petitioner's husband, he had entered into a sale agreement with the petitioner and therefore, the power was acted upon. In such circumstances, the third respondent had no authority to revoke the power in favour of the said Varadappan. Therefore, the petitioner had acquired the property through a valid power of attorney executed in favour of her husband and she had right to execute sale deed in favour of the third accused. In any case, the second respondent/defacto complainant claims that the power was cancelled and is a rival claimant to the property. Even assuming without admitting that the petitioner had made a false claim of title, it would not attract any of the offences mentioned in the final report. He further submitted that the third accused in whose favour the petitioner executed the sale deed, approached this Court in CrI.O.P.No. 19813 of 2014 at the FIR Stage and this Court had quashed the proceedings against him. He would submit that the reasons given by this Court for quashing the FIR against the third accused would apply to the petitioner's case as well.



4. The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that the impugned final report and the documents filed in support of the final report would substantiate the case of the prosecution and the points raised by the petitioner has to be adjudicated only before the trial Court and prayed for dismissal of the quash petition.

5. Though notice was served on the second respondent and the original owner of the property, namely, the third respondent, both have not entered appearance.

6. This Court finds that this is a civil dispute which is sought to be given a criminal colour. The sale deed executed in favour of the petitioner and the third accused are sought to be challenged by way of the impugned proceedings. This has to be adjudicated only before the Civil Court. The observations made by this Court while quashing the proceedings against the third accused are as follows:-

“6. At this juncture, it would be relevant to refer to Section 204 of the Indian Contract Act, 1872, which reads thus:



“204. Revocation where authority has been partly exercised, - The Principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency”.

7. From the aforesaid provision, it is clear that the principal cannot revoke the authority given to his agent after admittedly the first accused being the agent has acted upon the power of attorney and entered into a registered sale agreement with the second accused on 17.04.2003. In such a case, the said agreement would bind upon the principal namely the third respondent herein. But, the third respondent ignoring the aforesaid agreement, has cancelled the power of attorney which was executed in favour of the first accused. Further, before cancelling the said power of attorney, she has not issued any notice to the first accused. Under the said circumstances, the third respondent cannot revoke the power of attorney which was executed in favour of the first accused.



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8. *As per the sale agreement entered by the first accused in favour of the second accused, the first accused as well as the principal namely the third respondent area bound to execute the sale deed in favour of the second accused. If the third respondent is disputing the powers of the first accused, she should have filed a suit against the first accused and also the second accused. Instead of that, she cannot cancel the power of attorney without issuing notice to the first accused. The petitioner herein, being the subsequent purchaser from the second accused, cannot be prosecuted. He is a bona fide purchaser. Therefore, the FIR against the petitioner herein has to be quashed.”*

7. This Court finds that the above said observations are applicable to the petitioner's case also. There is no allegation in the impugned final report to show that any document was forged or any misrepresentation was made to anybody so as to attract offences of forgery and cheating.



8. The Hon'ble Supreme Court in *Mohammed Ibrahim Vs. State*

of Bihar and another (2009) 8 SCC 751 had held that even if there is a false claim of title, it would not amount to forgery and it would not amount to creating a false document so as to attract the forgery unless the signature of any individual has been forged.

9. The relevant portions of the said Judgment is extracted hereunder:-

“11. Section 470 defines a forged document as a false document made by forgery. The term “forgery” used in these two sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. ”

10. So far as the offence of cheating is concerned, the relevant observations of the Hon'ble Supreme Court in the very same case is as follows:-



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“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the



first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. ”

11. The above observations squarely apply to the facts of the present case. Further, as stated earlier, this Court had quashed the proceedings against the co-accused.

12. In view of the above, this Criminal Original Petition is allowed and the impugned final report in C.C.No. 162 of 2020 on the file of learned Judicial Magistrate No.1, Dharmapuri, is quashed. Consequently, connected Miscellaneous Petitions are closed.

17.03.2023

vsg

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN. J.

vsg

To

1. Judicial Magistrate No.I, Dharmapuri.
2. The Inspector of Police
Anti-Land Grabbing Special Cell
Dharmapuri District, Dharmapuri
3. The Public Prosecutor,
High Court, Madras.

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