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Crl.O.P.No.19013 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2023

PRONOUNCED ON: 19.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.19013 of 2022

Micheal Arokiyam

...

Petitioner

/vs/

Murugesan

...

Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records made in Crl.R.C.No.51 of 2019 order dated 23.06.2022 on the file of Principal Sessions Judge, Chennai, confirming the order in Crl.M.P.No.422 of 2019 dated 05.03.2010 on the file of the Metropolitan Magistrate Court for CCB and CBCID Cases, Egmore, Chennai .



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For Petitioner ... Mr. R. Sankarasubbu
For Respondents ... Mr. M.S.Velusamy

ORDER

Challenging the order passed in Crl.Revision Petition 51 of 2017, dated 23.06.2022 on the file of the Principal Sessions Judge, Chennai confirming the order in Crl.M.P.No.422 of 2009 dated 05.03.2019 on the file of the Metropolitan Magistrate, CCB and CBCID cases, Egmore, Chennai.

2. The fact of the case is that :-

The petitioner had purchased a property to an extent of 4000 sq.ft compromised in Survey Nos.186, 187, 190/1, 190/2, 191(part) situated at No.2, Arcot Road, Chennai 600 092 by way of a registered sale deed in the year 1980. Thereafter, he executed a power of attorney in favour of the respondent, who is the real estate broker to sell the property. But, the respondent without any valid consideration executed a sale deed in favour of his wife N. Sivanthi and further executed rectification deed during the



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year 1984 bearing registration No.1317 of 1984 and further registered sale deed bearing registration document no.940 of 1986 without the knowledge of the petitioner. When the petitioner insisted the respondent to render account, he has not given the account. Hence, the petitioner filed a complaint under Section 200 Cr.P.C. before the Metropolitan Magistrate for CCB and CBCID case, Egmore, Chennai and the same was dismissed by the learned Magistrate on 05.03.2019. Aggrieved by this Order, he preferred a Criminal Revision in CrI.R.C.No.51 of 2019 before the Principal Sessions Court, Chennai and the learned Judge, by its order dated 23.06.2022 dismissed the revision by confirming the order of learned Magistrate. Aggrieved over the same, the present petition has been filed.

3. The learned counsel for the petitioner submitted that the allegation in the complaint is that the respondent has created forged documents to grab the property of the petitioner. In order to point out the forgery, the Magistrate failed to conduct enquiry under Section 202 Cr.P.C. Without holding any enquiry, the complaint of the petitioner has been dismissed on the ground of civil in nature. The said order is a perverse one. The



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Revision Court also, without considering the contention of the petitioner confirmed the order of the learned Magistrate, which is un-sustainable and thus, prayed to allow the criminal original petition.

4. To support his argument, the learned counsel relied upon the following judgments (i) 1975(2) SCC 406 (Nadir Khan /vs/ The State (Delhi Administration), (2) 1977 (4) SCC page 551 (Madhu Limaye /vs/ State of Maharashtra,(3) AIR 1979 Andhra Pradesh 146 (In re puritipali Jagga Reddy).

5. The learned counsel for the respondent supported the impugned order and submitted that there is no ground to interfere with the impugned order. He further submitted that the petitioner herein had purchased the disputed property from one Paul Christudoss in the year 1980 and mortgaged the same in the year 1983. In order to sell the property, he voluntarily executed the registered Power of Attorney, dated 28.12.1983 vide document no.273 of 1983 in favour of the respondent herein. As a power agent , the respondent had executed a registered sale deed in favour



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of Sivanthi, vide document no.1317 of 1984 , dated 30.04.1984 and also executed the registered Rectification Deed vide document no.9401 of 1985 in favour of Sivanthi. Thereafter, in the year 1993, the petitioner preferred a criminal complaint against the respondent and his wife and others before the Magistrate, who referred the complaint into Central Crime Branch, Chennai for investigation and Central Crime Branch filed the charge sheet against the respondent and others before the learned XI Metropolitan Magistrate, Saidapet, in CC No.7617 of 1993 for the offences under Sections 420, 409, 441 r/w. 109 IPC and other offences. In the year 1994, the respondent herein and the said Sivanthi filed a discharge petition in M.P.No.689 of 1994 and the learned Magistrate, by his order dated 07.06.1994, discharged the Sivanthi from all the charges and discharged the offence under Section 420 IPC only against the respondent herein and dismissed the petition with regard to other offences. Aggrieved against the same, the respondent herein filed Crl.R.C.No.393 of 1994 before this Court and the same was allowed on 04.04.1997 on the ground that it is a civil dispute and accordingly, the respondent was discharged from the above said criminal case. In the meanwhile, the petitioner herein had filed



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the Civil Suit as pauper in application no.656 of 1996 (pauper) before the Hon'ble High Court, for grant of prayer of treating and declaring the sale deed and rectification deed is sham, nominal, fraud and invalid and also recovery of possession and other relief against the respondent herein. The said Pauper Application was dismissed and the petitioner was directed to pay necessary court fees for the said suit. Hence, after paying the Court fee, the suit was numbered as C.S.No.430 of 2000. Thereafter, in the year 2010, in view of the change of pecuniary jurisdiction, the said C.S.430 of 2000 was transferred into the City Civil Court, which is renumbered as O.S.No.12136 of 2010 and allotted the same into learned V Additional Judge, City Civil Court and the same was dismissed. Subsequently, on 04.01.2012, the petitioner preferred the complaint against the respondent before the District Registrar, South Madras. Thereafter, in the year 2014 the petitioner herein filed a petition in W.P.No.25894 of 2014 seeking a direction directing the authority to conduct enquiry on the complaint given by him and the same was dismissed on 05.03.2015. Against which, the petitioner filed a Writ Appeal No.1598 of 2015 and a direction was given to conduct enquiry on the allegations regarding to the said documents. On



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06.06.2016, after conducting elaborate enquiry, the District Registrar, South Madras held that the Sale deed and the rectification deeds are duly executed and registered and there is no illegality in it and found that the allegations are false.

6. He further submitted that after failing in all the proceedings, the petitioner herein filed the private complaint against the respondent under Section 200 Cr.P.C in Crl.M.P.No.422 of 2019 and the same was dismissed by the learned Metropolitan Magistrate for CCB and CBCID cases on 05.03.2019. Against which, he filed Crl.R.C.No.51 of 2019, which was dismissed by the learned Principal Sessions Judge, City Civil Court, Chennai on 23.06.2022, against which, the present petition has been filed and thus, prays for the dismissal of the petition.

7. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.



8. The point for consideration is whether it would be open to the party, who already chosen to file a revision before the Sessions Court under Sub Section (1) of 397Cr.P.C, the same person can prefer a further application to the High Court under Section 482 of Cr.P.C.

9. In the instant case, the petitioner had already filed a revision before the Court of Sessions against the order passed by the learned Magistrate and the said revision was dismissed by the Sessions Judge, thereafter, this Criminal Original Petition under Section 482 of Cr.P.C has been filed putting forward the same contention. No doubt, bar under Section 397(3)Cr.P.C. does not operate for petition under Section 482 Cr.P.C, if there is abuse of process of Court or other external situation. Inherent powers under Section 482 of Cr.P.C has to be exercised to prevent abuse of process of Court and to meet the ends of justice. It is also to be taken into consideration that the bar put under the Section 397(3) Cr.P.C on the revision of the order cannot normally be allowed to circumvent when resorting to inherent powers of the High Court under Section 482 of Cr.P.C. The bar of Section 397(3) applies in case of further revision



petition by the same person. It is well settled by the **Hon'ble Supreme Court in 1979(1) SCC 460(Jaginsingh /vs/ Ranbir singh)**, the Honble Supreme Court has held that if an application for revision has been made by any person either to the High Court or to the Sessions Judge, then according to Section 397 (3) , no further application by the same person shall be entertained by the other of them. The decision of the Sessions Judge, if he has approached first, is made final and conclusive. A person aggrieved by decision of the Sessions Judge in a revision would have no right to approach the Hon'ble High Court again in a revision under Section 482 of Cr.P.C.

10. The Object of Section 397(3) is to prevent the multiple exercise of Revisional powers and to secure early finality to the orders.

11. Further the Andhra Pradesh Court in case of ***In re-Puritipati Jagga Reddy reported in AIR 1979 AP 146*** observes as follows :

” The language of sub-section (3) of Section 397 contains no ambiguity. IF any person has already chosen to file a revision before the High Court or to the Sessions Court under Sub-section (1), the same person cannot prefer a further application to the other court. To put it in other words, sub-sections(1) and (3) make it clear that person,



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aggrieved by any order or proceeding, can seek remedy by way of a revision either before the High Court or the Sessions Court. Once he has availed himself of that remedy, he is precluded from approaching the other forum. It is equally manifest from the provisions of sub-sec. (3) that this bar is limited to the same person who has already chosen to go either to the High Court or to the Sessions Court seeking a remedy and that it does not apply to the other parties or persons. “

12. Further, the reliance placed by the leaned counsel for the petitioner is not helpful to the present case of the petitioner. Further on fact there is no forgery and creation of false document when admitting the registered General Power of Attorney by the petitioner. Hence, I find no merit in the criminal original petition and hence, it is liable to be dismissed.

13. Accordingly, this Criminal Original Petition is dismissed.

Index : Yes/No
Internet : Yes/No

19.09.2023

mrp



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To

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1. Metropolitan Magistrate,
Metropolitan Magistrate Court for CCB & CBCID Cases,
Egmore.
2. The Principal Sessions Judge,
City Civil Court,
Chennai.



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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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