



Crl.O.P.No.18687 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

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

Crl.O.P.No.18687 of 2021

in

Crl.MP.No. 10273 and 10274 of 2021

1.Nilafer Nisa

2.Nazir Ahamed

... Petitioners

Vs

1. State Rep by
The Inspector of Police,
District Crime Branch,
Udhagamandalam,
The Nilgiris
Crime No. 10 of 2009

2. K.Vijayan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records relating to the C.C.No. 74 of 2019 on the file of the Hon'ble Judicial Magistrate, Udhagamandalam and quash the same in respect of the petitioners herein.



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For Petitioners : Mr.L.Mouli
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)
For R2 : Mr.Thangavadhana Balakrishnan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No. 74 of 2019 on the file of the Hon'ble Judicial Magistrate, Udhagamandalam.

2. The case of the prosecution is that the second respondent who is the Power Agent of one Sunitha Bhatia had lodged a complaint before the first respondent on 19.11.2009 against Christian Meier and Hirdyanandan Tiwari, alleging that the said Sunitha Bhatia is the absolute owner of three properties viz., (a) a property to an extent of one acre land together with building bearing Door No. 186-A, 191-C, commonly known as Kuruvilla Bungalow situated in Survey No. 3959/1B at Udhagamandalam; (b) a property to an extent of 14 acres of land situated at Kil-Kunda Village, Kunda Taluk, bearing old Survey No. 384/2B1, New Survey No. 384/4 and



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(c) a property to an extent of 0.11 acres (11 cents) of land together with building bearing Door No. 12-A in Ward No. 33, Assessment No. 64060 of Udhagamandalam Municipality and it is further alleged that the first accused Christian Meier and the second accused Hirdyanandan Tiwari joined together with an intention to grab the above said properties had created a notarized Power of Attorney dated 04.08.2003, forging the signature of Sunitha Bhatia and executed three Sale Deeds dated 16.08.2005 in favour of M/s. Edith Meier's Exim Private Limited Company in respect of said three properties belonging to Sunitha Bhatia and the first Respondent had registered a case in Crime No. 10/2009 under Section 465, 420 and 471 of Indian Penal Code.

3. After registration of First Information Report, the first respondent conducted the investigation and closed the FIR as mistake of fact. The closure report is also filed before the Learned Judicial Magistrate, Udhagamandalam and the defacto complainant was served with charge sheet in R.C.S.No. 5 of 2010. However, the learned Judicial Magistrate ordered for further investigation. Accordingly, further investigation was



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conducted and filed a final report for the offences under Sections 465, 468, 471, 420, 120(b) and 109 of IPC.

4. The learned counsel for the petitioners would submit that there are four accused in this case and in which the petitioners are arrayed as third and fourth accused. They are the bonafide purchaser of the said property. Even according to the case of the prosecution, the first accused is the Ex-husband of de facto complainant who forged the signature and executed the Power of Attorney in favour of himself. In turn on the strength of the Power of Attorney, the first accused had executed sale deed in favour of second accused. The second accused mortgaged the property with Tamilnadu Mercantile Bank, Coimbatore Branch and availed the loan. Thereafter, she had committed default and as such in order to avoid Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act proceedings, she was permitted by the Bank to sale the property. The third accused intend to purchase the property. Since she was in abroad, she had executed Power of Attorney in favour of her father namely the fourth accused. On the strength of the Power of Attorney, the fourth accused had



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purchased the property from the second accused after settling the dues as the part of of sale consideration to the Bank and purchased the said property. Accordingly, the said house property was in possession and enjoyment of the third and fourth accused. Hence, accordingly to the petitioners they are the bonafide purchasers and no charges are made out as against them.

5. The learned counsel for the second respondent submitted that his signature was forged by the first accused and fabricated the Power of Attorney in his favour. In turn, he colluded with the other accused person and encumbered the property by the two sale deeds. Therefore, all are colluded with each other in order to grab the property and cheated the de facto complainant. There are materials available to attract the offences as against the petitioners also.

6. The Learned Public Prosecutor, Mr.A.Gopinath submitted that as far as the petitioners are concerned, they also colluded with the other accused persons viz., A1 and A2 had created sale deed in their favour. The



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first accused forged the signature of the defacto complainant and had executed sale deed in favour of himself. In turn, he had executed sale deed in favour of the second accused. Thereafter, the second accused had executed the sale deed in favour of the third accused through her Power of Attorney namely the fourth accused. The petitioners are arrayed as third accused and fourth accused. Therefore, the grounds raised by the petitioners cannot be considered before the Trial Court during the trial.

7. On perusal of the records, there are totally 4 accused. The properties are situated at (a) a property to an extent of one acre land together with building bearing Door No. 186-A, 191-C, commonly known as Kuruvilla Bungalow situated in Survey No. 3959/1B at Udhagamandalam, (b) a property to an extent of 14 acres of land situated at Kil-Kunda Village, Kunda Taluk, bearing old Survey No. 384/2B1, New Survey No. 384/4. (c) a property to an extent of 0.11 acres (11 cents) of land together with building bearing Door No. 12-A in Ward No. 33, Assessment No. 64060 of Udhagamandalam Municipality owned by defacto complainant. The third accused/first petitioner is residing in Abroad. Utilising the said



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circumstances, the first accused who is being the Ex-Husband of defacto complainant forged her signature and executed the Power of Attorney in his favour on 04.08.2003. It was also notarized and not registered before any sub-registrar office. On the strength of the unregistered Power of Attorney, the first accused had executed sale deed in favour of the second accused by the sale deed dated 16.08.2005. In turn, the second accused mortgaged all the properties with the Tamilnadu Mercantile Bank, Coimbatore Branch and availed huge loans. Subsequently, the second accused committed default and as such bank namely Tamilnadu Mercantile Bank had taken action against the properties in order to avoid auction proceedings. The second accused intended to sale the property. The petitioners herein are being the daughter and father deciding to purchase the said property. The first petitioner residing in abroad and as such she has given Power of Attorney in favour of the second petitioner and purchased the property. Therefore the second petitioner on behalf of the first petitioner purchased one item of the property which was mortgaged by the second accused in the Tamilnadu Mercantile Bank, Coimbatore Branch by the registered sale deed dated 19.03.2008 registered vide document No.411/2008. The second petitioner



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had purchased the third item of the property for the valid sale consideration.

On perusal of the sale deed it was clear that in pursuance of the total sale consideration of Rs. 20,00,000/- paid by the second petitioner to the vendor herein by way of part payment made to Tamilnadu Mercantile bank, Coimbatore. Wherein, the vendor namely, the second accused had mortgaged the scheduled mentioned property and the balance amount paid to the vendor namely the second accused and the second accused had admitted, acknowledged and acquitted from further payment thereof. Therefore, the petitioners are bonafide purchasers of the one item of the property which was already mortgaged by the second accused with the Tamil Nadu Merchantile Bank, Coimbatore Branch.

8. That apart, even according to the case of the prosecution, there is no relationship between the petitioners and the second accused or the first accused. That apart, further, the defacto complainant filed a suit challenging the sale deed dated 19.03.2008 executed in favour of the petitioners herein in O.S.No.94 of 2011 on the file of the District Munsif Court, Udthagamandalam and the same is pending. Admittedly, the petitioners are



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in possession and enjoyment of the property which was purchased by them.

Therefore, there are no materials available to attract the offences under Sections 120(b) and 109 of I.P.C. as against the petitioners.

9. Further, the first accused only forged the signature of the defacto complainant with the knowledge of the second accused and had executed the sale deed in favour of the second accused. Insofar as the petitioners are concerned, they are only the bonafide purchasers and they had no knowledge about the forgery of the signature of the defacto complainant by the first accused. In fact, only through bank they purchased the property that too after settling the loan amount which was borrowed by the second accused. Therefore, no offences is made out as against the petitioners. Hence, the entire proceedings cannot be sustained as against the petitioners and the same is liable to be quashed.

10. In the result, this Criminal Original Petition is allowed. The proceedings in C.C.No. 74 of 2019 on the file of the Hon'ble Judicial Magistrate, Udthagamandalam is hereby quashed as against the petitioners



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alone. The Trial Court is directed to proceed with the trial in C.C.No. 74 of 2019 as against the first and the second accused and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
nsl/veda

To

1. The Inspector of Police,
District Crime Branch,
Udhagamandalam,
Nilgiris.
2. The Public Prosecutor,
High Court, Madras.

10/11



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