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Crl.O.P.No.25197 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

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

Crl.O.P.No.25197 of 2021
and Crl.M.P.Nos.13935 & 13936 of 2021

S.Srinivasan

...Petitioner

Vs.

1. The Inspector of Police,
District Crime Branch,
Vellore.

2. S.Ravi

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pursuant to the Charge Sheet filed in C.C.No.206 of 2020 on the file of the learned Judicial Magistrate-II, Vellore and quash the same.

For Petitioner : Mr.B.Lenin Balu

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : No appearance



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.206 of 2020 on the file of the learned Judicial Magistrate-II, Vellore, thereby taken cognizance for the offences under Sections 294(b), 506(ii), 406, 420 and 120(B) of IPC, as against the petitioner.

2. The case of the prosecution is that on 27.05.2011, the second respondent and his wife had entered into agreement for sale with the accused to sell their house and some plots for a sum of Rs.18,50,000/-. At the time of agreement, they received a sum of Rs.18,00,000/- out of total sale consideration of Rs.18,50,000/-. After receipt of the said amount on 27.05.2011, the second respondent executed two registered general power of attorney in favour of A1 & A2 in respect of two separate properties. On the strength of the power of attorney, they had executed agreement for sale with the third accused. Even before they given for sale, the power of attorney executed by the second respondent was cancelled. Thereafter, on 25.05.2013, A1 and A2 were came to the house of the defacto complainant and scolded him with filthy language and also threatened him with dire consequence with knife. Hence the complaint.



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3. On receipt of the said complaint, the first respondent registered the FIR in Crime No.35 of 2013 and after completion of investigation, filed final report in C.C.No206 of 2020 on the learned Judicial Magistrate-II, Vellore, for the offences punishable under Sections 294 (b), 506(2), 420, 406 and 120B of IPC.

4. The learned counsel appearing for the petitioner would submit that after receipt of the substantial amount out of total sale consideration, the second respondent refused to register any sale deed in favour of A1 & A2. The second respondent was tried to sell the property to some other party with intention to cheat. That apart, there was no registered agreement for sale. In fact, the power of attorney executed in favour of A1 & A2 were unilaterally cancelled by the second respondent. Thereafter, no document were created by the first and second accused in favour of the petitioner herein. Insofar as the petitioner is concerned, he is nothing to do with the allegations made as against the accused 1 & 2.

5. On perusal of records revealed that there are totally three accused in which the petitioner is arrayed as third accused. The defacto



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complainant had executed power of attorney in favour of the petitioner, who is none other than the brother-in-law of the first accused. Even after cancellation of power of attorney, A1 & A2 executed an agreement to sale in favour of the petitioner herein. Now, the second respondent died and the wife of the second respondent is facing the case of the prosecution. Further, on perusal of the statement of the second respondent's wife revealed that there are specific allegations as against the petitioner.

6. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while



deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that



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the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

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13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

9. In view of the above discussions, this Court is not inclined to quash the proceeding and the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

19.10.2023

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

rts

To

1. The Judicial Magistrate-II,
Vellore.
2. The Inspector of Police,
District Crime Branch,
Vellore.
3. The Public Prosecutor,



High Court, Madras.

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