



Crl.O.P.No.20886 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.03.2023

Pronounced on : 12.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.20886 of 2019

and

Crl.M.P.No.10766 of 2019

D.Srinivasan

... Petitioner/A1

Vs.

1.The State represented by

Inspector of Police

T- 1, Ambattur Police Station,

Ambattur,

Chennai.

2.T.P.Raj Mohan

... Respondents



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PRAYER : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.348 of 2018 pending on the file of the Judicial Magistrate, Ambattur, Chennai and quash the same.

For Petitioner : Mr.MA.Gowthaman

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : No Appearance

ORDER

The petition seeks to quash the final report filed for the offences under Sections 420, 406, 384, 427, 506 (ii) and 34 of I.P.C.

2.It is alleged in the final report that the second respondent owned a land in Kolathur, Chennai measuring 614 sq.ft along with a building; that A2/Mr.R.Jayakumar approached him for purchase of the said land, and in exchange offered to sell his lands at Kancheepuram District measuring 31,967 sq.ft, to the second respondent; that on 31.12.2008, the second respondent sold his property at Kolathur to A2/R.Jayakumar; that on the same day A2/R.Jayakumar had executed a Power of Attorney in respect of his lands at Kancheepuram District; that thereafter, he had cancelled the power and executed



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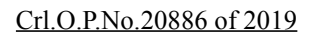
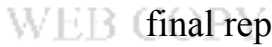
another Power of Attorney on 06.05.2015; that around that time, the petitioner/A1 had approached the second respondent to start a partnership for doing construction business; that the petitioner promised to sell the land belonging to the second respondent in Kancheepuram District bearing Plot Nos.13, 14, 23, 24 and 25 in Katrambakkam Village, Kancheepuram District; that the second respondent had handed over the documents relating to the said lands to the petitioner; that A2 in collusion with the petitioner had cancelled the power of attorney executed in favour of the second respondent and thereafter executed a Power of Attorney in favour of the petitioner on 21.06.2016 without his knowledge; that thereafter on 20.10.2016, the petitioner had represented that he would obtain loan for the second respondent and for that purpose requested him to bring all the documents of title relating to his remaining property to Ambattur Court, for the purpose of obtaining legal opinion; that when second respondent went to Ambattur Court, the petitioner threatened the second respondent, assaulted him and took the documents of title from the possession of second respondent. The complaint was lodged on 21.10.2016 and the same was registered on 20.12.2016 for the offences under Sections 420 and 506 (1) IPC. Thereafter, on investigation, the final report was filed for the aforesaid offences under Sections 420, 406, 384, 427, 506 (ii) r/w 34



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3.Mr.Ma.Gouthaman, the learned counsel for the petitioner would submit that the allegations in the impugned final report reflects only a civil dispute and the petitioner is sought to be implicated falsely. The allegation is that A2/R.Jayakumar after executing a Power of Attorney in favour of the second respondent cancelled it and executed a Power of Attorney in favour of the petitioner herein. It is further stated that in order to sell the lands, the second respondent handed over the documents relating to Plot Nos.13, 14, 23, 24 and 25 to the petitioner herein. All these allegations, even if accepted to be true would only show that there was a dispute with regard to civil transactions between the second respondent/defacto complainant, petitioner/A1 and A2/R.Jayakumar. The act of A2 cancelling the Power of Attorney in favour of the second respondent and executing in the favour of the petitioner would not amount to cheating. He further submitted that there is no criminal breach of trust as stated in the final report. Hence, the offence under Section 409 IPC is not made out. The allegation of extortion and setting fire to the documents is false and the other offences are also



not made out against the petitioner/A1 and hence he prayed for quashing of the final report.

4.Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the first respondent submitted that the offences are made out in the impugned final report and the points raised by the petitioner that the allegations are false and invented cannot be adjudicated in a quash petition. He further submitted that the materials suggest that the petitioner had forcibly obtained documents from the second respondent on 20.10.2016 by falsely representing that he would obtain legal opinion. He had also set fire to the said documents and hence, committed the offence under Section 427 IPC. Hence, he prayed for dismissal of this petition.

5. Though notice was sent and received by the second respondent, none has entered appearance on his behalf.

6.It is seen from the final report that there is a civil transaction between the second respondent, the petitioner/A1 and A2/Mr.R.Jayakumar. In the impugned final report, it is alleged that the second respondent had handed over documents of



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title relating to five plots of land belonging to the second respondent to the petitioner, based on his representation that he would make arrangements to sell the same on his behalf. It is also seen that the second respondent was aggrieved by the fact that the Power of Attorney executed was cancelled by A2/Jayakumar and in turn, executed in favour of A1 on 21.06.2016. Even assuming that A2 had cancelled a Power of Attorney in favour of second respondent and executed a Power of Attorney in favour of A1, that would not constitute cheating or Criminal Breach of Trust. It only reveals a civil dispute between the parties. Admittedly, the documents of title in respect of certain properties were handed over to the petitioner herein.

7.As regards the offence under Section 384 IPC, the allegation is that on 20.10.2016, the second respondent had asked the petitioner to bring all the documents of title to Ambattur Court, Chennai for getting title opinion from a lawyer and thereafter, the petitioner threatened and took away all the documents of title. The FIR was given on the next day i.e., on 21.10.2016. In the first information report, the second respondent had not stated anything about the previous transactions between him and the petitioner. It is no doubt true that in the



FIR, all the details need not be stated. However, certain basic facts necessary to appreciate the allegations in the complaint have to be made. Be that as it may.

In the FIR, the details of certain documents which were allegedly taken by the petitioner is mentioned. However, the second respondent later during the course of investigation had stated that he had wrongly mentioned the particulars of certain documents and missed out certain documents in the FIR. In the light of the relationship between the petitioner and the second respondent and the nature of transactions between them which is stated in the final report, the allegation that the petitioner had threatened and took away the documents of title appears to be highly improbable and an afterthought. A civil transaction is sought to be given a criminal colour by projecting as if certain documents were forcibly taken by the petitioner. Admittedly, the respondent had voluntarily given the documents of title in respect of certain properties earlier.

8. Thus for all the above reasons, this Court is of the view that the impugned final report as against the petitioner is an abuse of process of law and it is liable to quashed. Hence quashed.



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9. With the above observations, the Criminal Original Petition is allowed.

Consequently, the connected miscellaneous petition is closed.

12.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
dk



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To

1.The Judicial Magistrate,
Ambattur,
Chennai.

2.The Inspector of Police
T- 1, Ambattur Police Station,
Ambattur,
Chennai.

3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN. J,
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Pre Delivery Order in

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