



CRL.O.P.No.20074 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.20074 of 2021

and

Crl.MP.Nos.10938 & 10939 of 2021

1.T.Susella

2.R.Jayakumar

3.J.Krishnaveni

4.S.Arun

.. Petitioners/Accused No.1 to 4

Versus

1.The State by its

Inspector of Police,

District Crime Branch,

Coimbatore District,

(crime No.12/2015)

... Respondent/ Respondent

2.N.Balasubramaniam

... Respondent/ defacto complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.34 of 2020 on the file of the Judicial Magistrate at Sullur and quash the same.

For Petitioners : Mr. K.Myilsamy

For Respondent-1: Mr.A.Gopinath,
Government Advocate (crl.side)

For Respondent-2: Mr.H.Rajasekar



ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.34 of 2020 on the file of the learned Judicial Magistrate at Sullur.

2.The petitioners are the accused 1 to 4. The second respondent is the defacto complainant and his mother viz Sarasulakshmi and the first petitioner/Susella were family friends. They purchased a subject property from one Rathnasamy jointly on 09.06.1994 for Rs. 48,000/-. The Second accused is the son in law of the first accused. The first and second accused had conspired together to defeat the interest of the second respondent's mother in the subject property by obtaining a power of attorney from the second respondent's mother in favour of the second accused on 15.03.2007, on the assurance that they would give Rs.18 lakhs to the second respondent's mother for executing the power deed. But the said sum was not paid, hence the second respondent's mother Sarasulakshmi had cancelled the power of attorney on 01.06.2007. Despite the cancellation, the second accused had sold the plot Nos.23 and 24 comprised in the subject property infavour of one Krishnaveni [3rd petitioner /A3] who is the daughter of the first petitioner and wife of the second accused also. After having created the



sale deed infavour of A3, A4 purchased the subject property from A3. The first and second accused have also executed a sale deed infavour of A5, who is the sister of the second accused on 07.11.2021 in respect of some other plots situated in the same subject property. The fifth accused is no more now.

3. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4. The learned counsel for the petitioners submitted that the second respondent's mother Sarasulakshmi has filed a civil suit for declaration and permanent injunction in respect of the very same property and now a criminal complaint has been given just to add a criminal colour to a civil dispute; in fact the petitioners had also given a police complaint against the second respondent's mother and subsequently the parties are entered into a compromise and settled the matters between themselves; suppressing the above said facts, the second respondent's mother had chosen to file the civil suit and the second respondent has filed this criminal complaint; since the alleged transactions were not made with any criminal intention, there is no necessity for the criminal case; the power document is said to have been



cancelled in the year 2007 and on the basis of which the complaint has been given in the year 2013. Since a civil matter is exaggerated into a criminal offence, the charge sheet is liable to be quashed.

4.1. In respect of the above argument, the learned counsel for the petitioners relied the judgment of the Hon'ble Supreme Court held in Crl.A.No.1285 of 2021 [Mitesh Kumar J Sha Vs. The State of Karnataka].

5. The learned Government Advocate (crl.side) for the first respondent and the learned counsel for the second respondent have submitted that even though a civil case is pending, the transactions came subsequent to the cancellation of the power of attorney and that contains the criminal intention. Until 2011 the petitioners did not give any troubles and hence it was not necessitated to prefer any criminal complaint; only during the year 2010 and 2011, the subsequent transactions have been done by the second petitioner on the strength of the power of attorney which was cancelled already in the year 2007; the delay cannot be the only ground on which the charge sheet should be quashed; since the materials available on record make out a criminal case against the petitioners, the petition should be dismissed.



6.The said subject property was jointly purchased by the first accused and the second respondent's mother Sarasulakshmi. Subsequent to that the second respondent's mother had executed a power of attorney infavour of the second accused on 15.03.2007. It is alleged that towards the execution of the said power of attorney of the second respondent a consideration of Rs.18 lakhs was agreed to be paid by the petitioners. However, the power of attorney was subsequently cancelled on 01.06.2007 in view of the non payment of the said consideration of Rs. 18 lakhs.

7.The contention of the second respondent is that the petitioners who are relatives among themselves have created documents of title in respect of the plots comprised in the subject property even after the cancellation power deed. Even though a civil suit was pending in this regard, it is claimed that the transactions which were done subsequent to the cancellation of the power of attorney are tainted with criminal intention.

8.Though the matter in issue predominately appears to be civil in nature the one and only contention now made by the second respondent is that the petitioners 1 and 2 did not have any right in respect of the subject property and had continued to execute the sale deeds in favour of the third



petitioner and the said acts was done with criminal intention.

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9.It is seen that the power of attorney is executed by the second respondents mother for consideration. But it is to be seen that the second respondent had never challenged the cancellation of the power of attorney prior to his execution of sale deed in favour of the third petitioner, on strength of the earlier power of attorney document. All these conduct on the part of the petitioners and their close relationship would throw doubt upon their genuine intention in executing the registered documents in respect of the subject property.

10.Even though the civil case is pending while questioning the validity of the sale deed executed by the second petitioner by proclaiming himself as power agent of the second respondent's mother, the criminality, if any attached in the said transactions cannot be dealt before the civil court. If the petitioners are confident that the second respondent had given the complaint by suppressing the material facts and there is no criminal intention on his part he has to prove those facts only by taking the said facts as his defense before the trial court. Even before the parties are subjected to undergo trial the genuineness of the submission of the respective parties cannot be



CRL.O.P.No.20074 of 2021

presumed. So far as these petitioners are concerned there are specific allegations made against them and it is borne by documentary evidence as well. Even though a cloud is caused on the title and can be resolved before a civil court, the criminal case has to be dealt by the criminal court only.

11. Since the materials and the dates of the transactions have the prima facie background to make out a case against the petitioners I do not find any reason to quash the same without permitting a trial to be proceeded. Further it is submitted by the learned Government Advocate (crl.side) for the first respondent that the trial has commenced and three witnesses were already examined. In such context of the facts, I feel it is appropriate to direct the Judicial Magistrate at Sullur to complete the trial as expeditiously as possible.

In the result, this criminal original petition stands dismissed. The connected miscellaneous petitions are also dismissed.

30.01.2023

jrs

Index: Yes/No

Internet: Yes/No

Speaking /Non Speaking

Neutral : Yes /No

R.N.MANJULA, J.,

jrs



CRL.O.P.No.20074 of 2021

To:

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

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