IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **12.04.2023**
PRONOUNCED ON : **20.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 22144 of 2019
and
Crl.M.P. No. 11488 of 2019

Chandrappa ... Petitioner

Versus

1. State
Rep., by the Inspector of Police,
Hosur Town Police Station,
Hosur,
Krishnagiri District.

2. K.Palliappa ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the Charge Sheet in C.C. No.277 of 2015 on the file of the Judicial Magistrate No.II, Hosur, quash the same in so far as the petitioner is concerned.

For Petitioner : Mr. R. Bharath kumar.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

Ms. R.Poornima for R2.

O R D E R

The petition is to quash the final report for the alleged offence under Sections 120(B), 406, 418, 423, 465, 468, 471 and 474 of the Indian Penal Code.

2. It is alleged in the final report that the defacto complainant acquired the properties in S.No.255/1 measuring 0.17 cents, and in S.No.294/3 measuring 0.20 cents, in Hosur Rural Village by virtue of partition deed in the family; that he had executed a power of attorney in favour of the second accused on 03.03.1997; that based on the said power of attorney, A2 divided the properties into plots and sold it to third parties; that the defacto complainant later came to know that A2 had misused the power of attorney and hence he cancelled the power of attorney in the year 2004; that thereafter the accused joined together and entered into a sale agreement in respect of the property belonging to the defacto complainant and obtained an advance from third parties; that the power of attorney was executed by the defacto complainant in favour of A2 at the instance of the petitioner who was then a VAO.

3. The learned counsel for the petitioner, who is arrayed as A4, would submit that the allegations even if accepted to be true, would not constitute any offence against the petitioner. The defacto complainant had executed a power of attorney in favour of A2 and had admittedly cancelled it only in the year 2004. It cannot be said that the defacto complainant was not aware of the consequences of executing a power of attorney in favour of the second accused. In any event, the second accused had acted upon the said power on the very same day and sold the properties in favour of third parties. There is no forgery or cheating alleged. In any event, the alleged power was given in the year 1997. However, the FIR which culminated in the impugned final Report was given in the year 2006. The impugned proceedings are to only get over the law of limitation to prosecute the civil proceedings. He would further submit that the petitioner is aged 80 years now and prayed for quashing the final report against the petitioner.

4. The learned counsel for the defacto complainant and the learned Additional Public Prosecutor submitted that there are allegations in the

impugned final report that the power of attorney was executed by the defacto complainant in favour of A2 at the instance of the petitioner. The petitioner was then working as a Village Administrative Officer and he was able to exercise influence over the second respondent. The question of whether the petitioner is innocent or acted in connivance with the other accused to grab the property of the defacto complainant has to be adjudicated only during the trial. Hence, they prayed for the dismissal of this petition.

5. This Court, on perusal of the impugned final report finds that the only allegation against the petitioner who was arraigned as A4 is that he was the Village Administrative Officer of the concerned Village and that he instructed the defacto complainant to give power of attorney in favour of the second accused. It is alleged that the other accused had already illegally dealt with the property belonging to the defacto complainant. Since the petitioner was the Village Administrative Officer, they believed his representation and executed a power of attorney in favour of A2. The occurrence took place in the year 1997. However, the First Information Report was registered in the year 2006. There is no reason why the defacto complainant waited for such a long time to lodge the

complaint. Admittedly, he had cancelled the power in the year 2004. He was aware of the sales made by the power agent in favour of third parties. It is not the case of the defacto complainant that his signature was forged and documents were executed by the accused. The defacto complainant has not filed any Civil Suit challenging the power of attorney or the sale deeds executed based on the power. An action which is barred by limitation under Civil law cannot be permitted to be investigated by the Police in the absence of the ingredients attracting the offence.

6. The allegation that he was misled by the petitioner even if it is true, would not constitute any of the offences against him. The defacto complainant cannot plead ignorance of the consequences of executing a power of attorney in favour of A2. He was aware of the fact that A2 had acted upon the power of attorney and executed sale deeds in favour of third parties. If there is any dispute with regard to the terms of the agreement, the defacto complainant ought to have approached the Civil Court for remedy. In the instant case, he had not done so. The validity of the power of attorney and the subsequent sale cannot be the subject matter of a prosecution. The Honourable Supreme Court in ***Mohammed.***

Ibrahim and Others vs. State of Bihar and Another reported in ***(2009) 8 Supreme Court Cases 751*** had held that even if a sale is made by making a false claim of title an offence of forgery is not made out. Further, in respect of cheating, it is the purchasers who can be said to be deceived. In the instant case, they are also the accused. The relevant observations made in the said Judgment is extracted hereunder for better understanding:-

> *"**17.** When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.*
>
> ***18.** Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*
> *(i) deception of a person either by making a false or misleading representation or by dishonest concealment*

or by any other act or omission;
(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

***20**.When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.*

***21**.It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by* *any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."*

7. Thus, for all the above reasons, this Court is of the view that the impugned proceedings against the petitioner are clearly an abuse of process of law. For an occurrence which is said to have taken place in the year 1997, First Information Report was registered in the year 2006, besides the fact that no offence is made out as against the petitioner. Hence, the impugned final report is liable to be quashed as against the petitioner.

8. Accordingly, this Criminal Original Petition is allowed by quashing the C.C. No.277 of 2015 as against the petitioner on the file of

the Judicial Magistrate No.II, Hosur. Consequently, the connected Miscellaneous Petition is closed.

20.04.2023

ay
Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Inspector of Police,
Hosur Town Police Station,
Hosur,
Krishnagiri District.

2. The Judicial Magistrate No.II,
Hosur.

3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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Crl.O.P. No. 22144 of 2019
and
Crl.M.P. No. 11488 of 2019

Dated: 20.04.2023