



Crl.O.P.No.24649 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24649 of 2023

and

Crl.M.P.Nos.17128 & 17129 of 2023

1.S.Pazhani

2.Uma Maheswari

... Petitioners/Accused 4 & 5

Vs.

1.The State Rep., by Its
The Inspector of Police,
Villianur Police Station,
Puducherry.
(Crime No.192/2013)

2.S.Balabaskaran

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.233 of 2018 on the file of Judicial Magistrate-III, Puducherry and quash the same.

For Petitioners : Mr.G.Krishnakumar

For R1 : Mr.K.S.Mohan Dass
Public Prosecutor (Puducherry)

ORDER

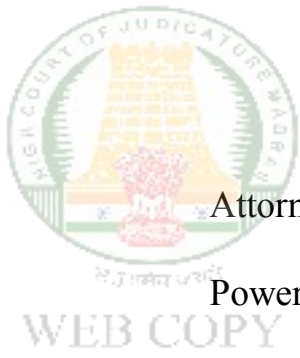


Heard the learned counsel appearing for the petitioners and the learned Public Prosecutor (Puducherry) appearing for the respondent police.

2. It is a Criminal Original Petition to quash the final report filed by the respondent police before the Judicial Magistrate-III, Puducherry on completion of its investigation in FIR No.192 of 2013 dated 18.09.2013. The said final report was taken on file by the Judicial Magistrate-III, Puducherry in C.C.No.233 of 2018, presently the case is posted for serving the copies to the accused persons as per Section 207 Cr.P.C.

3. The sum and substance of the allegations found in the final report is that in furtherance to the conspiracy to dishonestly get away the property of the defacto complainant by breach of trust, the accused person on 16.09.2013 got power of attorney deed in favour of Palani in respect of the property held in the name of Vasanthi and by making use of the Power of Attorney, the said Palani had transferred the property in favour of hi wife Uma Maheswari who in turn created a sale deed in favour of Devaki W/o. 1st accused Sakthivel. The 5th accused is the one of the signatory of this document.

4. However, the petitioner herein contends that for a loan of Rs.20,00,000/- availed by the defacto complainant and his wife, Power of



Attorney was given and since the loan was not repaid to him, by using the Power of Attorney had transferred the property in the name of A5 wife of A4 and thereafter with the knowledge and in the presence of the defacto complainant and his wife same was sold to A2 wife of A1. However to make civil transaction as criminal act several false allegations were made. But later retracted the said Vasanthi herself this issue when considered by the High Court.

5. The learned counsel further states that when the quash petition filed by A1 and A2, it was found favourable to the petitioners, hence a case against A1 and A2 was quashed by this Court dated 01.12.2021. While A1 and A2 been the persons in whose name property has been already transferred got acquitted, the petitioners herein (A4 and A5) are standing on the same footing as per the statement of the complainant and his wife. The records relied by the prosecution also does not implicate them for any of the offences for which they now stand for trial.

6. The learned Public Prosecutor (Puducherry) would submit that case of breach of trust and cheating clearly established through the fact that



WEB COPY

the Power of Attorney was given for the loan availed been converted to transfer the property in the name of his wife and further alienation in favour of A2. The reason given by the Judge in quash the complaint against A1 and A2 will not apply to this petitioners who being the direct beneficiaries of the act of breach of trust by misusing the Power of Attorney given to them. The attesting signature for the transfer of property by the defacto complainant and his wife per se will not exonerate criminal prosecution when the statement of witnesses indicates that they were forced to sign as witness in this document and not by consent.

7. This Court is not inclined to go further deep into the case and it is not within the scope of Section 482 of Cr.P.C., also. Admittedly the Power of Attorney was executed in favour of 4th accused Palani only as a security for the loan availed. But by making use of the Power of Attorney, the property of the Vasanthi wife of the defacto complainant been transferred to none other than his own wife and she in turn has sold to A2 wife of A1. The validity of the said sale transaction appears to be hit by fraud and misrepresentation which is the part of the criminal prosecution. Therefore, the matter as it is found from the record could not turn up a civil dispute. The execution of document had all such bristles with suspicion force and



WEB COPY

breach of trust. Hence it is open to the petitioner herein to agitate and establish before the trial Court whatever defence which is now been taken in the quash petition.

8. The learned counsel appearing for the 5th accused Uma Maheswari being the house wife her personal appearance shall be dispensed with.

9. The trial Court shall take conscious decision on his request and her personal appearance may be dispensed with except on hearing of her personal appearance for identification or questioning or any other purpose.

10. With the above observation, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition are also dismissed.

22.11.2023

Index : Yes/No
Neutral Citation : Yes/No
rpl

Dr.G.JAYACHANDRAN,J.

rpl

To

1. The Judicial Magistrate-III, Puducherry.

5/6



Crl.O.P.No.24649 of 2023

2.The Inspector of Police,
Villianur Police Station,
Puducherry.

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

Crl.O.P.No.24649 of 2023

22.11.2023