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CrI.R.C.No.1916 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1916 of 2023

Anandan

... Petitioner/Complainant

Vs.

1.The Deputy Commissioner of Police,
Pallikaranai District,
Tambaram Commissionerate,
at Kanathur, Chennai – 119.

2.The Inspector of Police,
Selaiyur, Chennai – 73.

3.Neelavathy

4.Saraswathi

5.Selvam

6.Karthick

7.The Manager,
Sri Ram Transport Finance Company Ltd.,
Chennai.

8.The Sub Registrar,
Selaiyur, Chennai – 73.

... Respondents



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PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to set aside the order passed in Crl.M.P.No.1141 of 2023 dated 13.09.2023 and direct the trial Court to take cognizance of offence under Sections 406, 417, 465, 468, 429 of IPC and issue summons to the accused.

For Petitioner : Mr.S.N.Subramani

For Respondents-1, 2 & 3 : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the learned Judicial Magistrate No.I, Tambaram in Crl.M.P.No.1141 of 2023 dated 13.09.2023 and for a direction to the trial Court to take cognizance of offence under Sections 406, 417, 465, 468, 429 of IPC and issue summons to the accused.

2.The petitioner, who is the son of Shanmugam, grandson of Chellappa Naicker, lodged a complaint before the Commissioner of Police, Tambaram and thereafter to the respondents 1 and 2, but no action has been taken despite cognizable offence was made out. Thereafter, he approached the Lower Court



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and filed a petition under Section 156(3) of Cr.P.C. seeking a direction to register an F.I.R. against the accused. The Lower Court, by order dated 13.09.2023 in Crl.M.P.No.1141 of 2023 dismissed the petition and negatived the prayer of the petitioner. Hence, the above petition.

3.The case of the petitioner is that the property situated at Vengaivasal Village, Tambaram Taluk, Chengalpattu District comprised in S.No.97/2 bearing Patta No.536 to an extent of 2 acres and 32 cents belonging to his grandfather, Chellappa Naicker, who originally purchased the property in the year, 1974 vide Document No.2336 of 1974. The petitioner's grandfather died on 09.12.1991 leaving behind him his wife, Neelavathy, sons, C.Rajamanickam, C.Shanmugam, C.Babu, C.Vadivelu and daughter Saraswathi, who jointly cultivated the property, in occupation and enjoyment of the entire property. In such circumstances, the third and fourth respondents, namely, Chellappa Naicker's wife/Neelavathy and daughter/Saraswathi executed a power of attorney to one Selvam/fifth



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respondent herein vide Doc.No.1727 of 2011 on 28.11.2011. On coming to know about it, the other legal heirs of Chellappa Naicker made objection and thereafter the power of attorney was cancelled by them on 21.03.2012 by Doc.No.342 of 2012. This being so, the said Selvam though was informed about the cancellation of power of attorney and he has got nothing to do with the property, thereafter in connivance and conspiracy with Karthick/sixth respondent and others, executed a power of attorney document in Doc.No.2824 of 2012 on 30.03.2012 on the properties of the petitioner's grandfather. Later, the petitioner came to know that this property had been mortgaged with Sriram Transport Finance Company Limited, who was arrayed as seventh respondent.

3.1.The Sub Registrar, Selaiyur registered these documents and also mortgaged documents despite knowing the fact that the power of attorney earlier given cancelled and the property belongs to Chellappa Naicker and the said Karthick or Manager, Sriram Transport Finance Company Limited have



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got no right on the property, the Sub Registrar in collusion with the others created encumbrance and also attempted to take away the property of Chellappa Naciker's legal heirs. Further, by using the forged documents as genuine all he accused committed forgery, cheating and misappropriation. The petitioner produced the relevant documents along with the complaint, which are listed as Document Nos.1 to 14. The Lower Court without considering these documents gave a wrong finding that the legal heirs of Chellappa Naicker filed this petition and further it is seen that the issue pertains to joint family property and conveyance made by members. The issue is purely civil in nature and joint family devolution and hence, no cognizable offence made out, is perverse. The said Selvam, Karthick, Manager, Sriram Transport Finance Company Limited are all total strangers. They have got nothing to do with Chellappa Naicker's family. Hence, by creating forged documents all the accused connived and committed the offence. Hence, the learned counsel for petitioner prays for setting aside the Lower Court order.



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4.The learned Additional Public Prosecutor submits that on the complaint of the petitioner, the Commissioner of Police, Tambaram forwarded the same to the first respondent in C.No.507/DC-PLK/COP-Tapal/2023, who thereafter forwarded the complaint to the Assistant Commissioner of Police, Selaiyur vide C.No.421/AC-SLR/COP-Tapal/2023 and on the directions of the Assistant Commissioner of Police, the Inspector of Police, Selaiyur called the complainant on 11.05.2023 for enquiry and the said Selvam, Karthick and others were also called for enquiry and the enquiry was pending till date. The petitioner sent a representation to the Deputy Commissioner of Police, Kannathur seeking a direction to the Inspector of Police to register an F.I.R., since the enquiry has been pending from 19.06.2023. In the meanwhile, the petitioner approached the Magistrate Court and filed a petition under Section 156(3) of Cr.P.C. He further submits that after coming to know about the dismissal order passed by the learned Magistrate on 13.09.2023, the enquiry has been closed but fairly submitted that if any direction is given, the case can be reopened.



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5.Considering the submissions made and from the complaint and the documents annexed therein, it is seen that the contention of the petitioner needs to be reconsidered on the facts apparent. It is seen that Power of Attorney, which was executed by Selvam and Karthick in Doc.No.2824 of 2012 on 30.03.2012 is without any authority. Through this Power of Attorney document, the property had been mortgaged to Sriram Transport Finance Company Limited by Doc.No.7906 of 2020 dated 07.10.2020 and the property is now worth about several crores. In such circumstances, the Sub Registrar, Selaiyur ought to have shown some due diligence before registering such documents. In this case, apparently it has not been done so. For what reason the police kept quite without any progress is not known. The Lower Court without considering the background of the case and purport of the documents, dismissing the petition would amount to denying justice to the petitioner. In view of the same, the order passed by the learned Judicial Magistrate No.I, Tambaram in Crl.M.P.No.1141 of 2023 dated 13.09.2023 is



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set aside and the learned Magistrate is directed to reconsider the petitioner's evidence and documents, if further materials is required, the same can be called for, petitioner can be enquired and thereafter to take appropriate decision based upon the materials available. The said exercise shall be completed within a period of 60 days from the date of receipt of a copy of this order.

6. Accordingly, the Criminal Revision Case is allowed with the above directions.

22.11.2023

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order
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To



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- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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