IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 9605 of 2022
& Crl. MP. No. 5638 and 5640 of 2022

1 P.SHANMUGAM
S/O LATE.PALANISAMY GOUNDER

2 P.MANI
S/O LATE PALANISAMY GOUNDER

3 P.S.KARTHIKEYAN
S/O P.SHANMUGAM BOTH ARE RESIDING AT
PALANISAMY GOUNDER THOTTAM TIRUCHENGODE
ROAD SANKARI SALEM DISTRICT

[PETITIONER]

Vs

1 STATE REP BY
DEPUTY SUPERINTENDENT OF POLICE CBCID OCU
SALEM (CRIME NO.01/2019)

2 VIJAYA CHITRA
WIFE OF LATE V.VENKATESAN 4/90 ORUVAPATTI
CHITOOR-POST EDAPADI TALUK SALEM DISTRICT.

3 SHALINI
DAUGHTER OF LATE V.VENKATESAN 4/90

ORUVAPATTI CHITOOR-POST EDAPADI TALUK SALEM DISTRICT(R2ANDR3 IMPLEADED AS PER ORDER DATE 30/08/2022 IN CRL.MP.NO.

[RESPONDENTS]

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to Call for the records in Relating to the Proceedings in CC.730/2021 on the file of the Learned Judicial Magistrate No.IV Salem and quash the same.

For Petitioners : Mr.R.Thangavel

For R1 : Mr.S.Vinoth kumar,
Government Advocate crl. side

For R2 and R3 : Mr.N.Manoharan

ORDER

The petitioners herein filed this petition to Call for the records in Relating to the Proceedings in CC.730/2021 on the file of the Learned Judicial Magistrate No.IV Salem and quash the same.

2. The defacto complainant along with 16 others lodged a complaint before the respondent police stating that the petitioners herein are owners of unregistered finance for getting loan for his lorry business from the petitioners the late Venkatersan borrowed a loan of Rs.4 lakhs who had repaid 20 monthly installments out of 30 EMIs. Again the complainant

borrowed a sum of Rs.4 lakhs on 23.12.1994 for his lorry business and repaid 17 EMIs out of 30 EMIs. The accused obtained endorsement on the RC books of the concerned lorries. Even before the completion of the entire EMI, there was certain property dispute between the sister and late Venkatesan, hence he agreed to settle Rs.7 lakhs to his sister Saroja and executed power of attorney in favour of petitioner dated 17.08.1998 in respect of S.F Nos. 139/1, 139/3, 139/4 and 140/2 including the ancestral house at Thangayur Village, Edapadi Taluk and also the petitioner obtained sale agreement on the same day i.e., on 17.08.1998 in the name of A2 who is brother of A1. But, the petitioner paid only Rs.2 lakhs to Saroja and dragged the complainant with ulterior motive. Immediately the complainant approached A1 and A2 demanded to repay a sum of Rs.2 Lakhs and requested them to cancel the power of attorney dated 17.08.1998, whereas the accused 1 and 2 demanded a sum of Rs.6 lakhs as the outstanding dues. In the meantime, the accused persons intentionally misused the power of attorney and the sale agreement, executed two sale deeds dated 12.07.2001 in the name of the K.M.Ramasamy and his wife Perumaye under Doc. Nos. 716 and 717 of 2001 respectively, each measuring 11 1/2 acres. Thereafter, the accused illegally demanding Rs.2.50 crores as against the outstanding due of Rs.6 lakhs under the guise of transferring the ancestral property measuring 23 acres worth Rs.6 crores and also threatened the complainant. Hence, based on the complainant the respondent police filed FIR under Section 406, 420 and 120B of IPC against the petitioners. After investigation the respondent police filed a final report in C.C No. 730 of 2021 under Section 420, 120B and 409 of IPC before the Judicial Magistrate No.IV, Salem. Hence, the petitioners filed this petition to quash the C.C No. 730 of 2021.

3. The learned counsel for the petitioner submit that power of attorney was executed in favour of the petitioners in the year 1998 based on the power of attorney the petitioners executed a sale deed in the year 2001 in favour of Ramasamy and his wife Perumaye. Thereafter, they became the absolute owner of the property. Despite acquiring knowledge of the execution of the sale deed since 2001 had not challenged the same till date as his remedy remains before the Civil Court to the get the registered document nullified. Even the complainant had knowledge of the sale in the year 2001 and he had resorted to prefer the above complaint having lost the limitation to challenge the sale deed. Furthermore, the civil suits are pending before the civil Court, while the sale deed executed by the first petitioner is

under challenge in the pending civil suits and as such the impugned proceeding is an abuse of process of law and interference of administration of justice. Further, the respondent failed to consider that there is not even a single material to connect the loan transaction and the power of attorney deed executed by the defacto complainant. The defacto complainant is estopped from speaking against the registered documents as enumerated under Section 91 and 92 of Indian Evidence Act. Hence, he prays to allow this petition.

4. The learned Government Advocate (crl. side) submits that the petitioners were running the unregistered finance company and cheated the poor people and many victims have lodged a complaint against the petitioners. Hence, he prays to dismiss this petition.

5. The learned counsel for the second and third respondent submit that value of the property is more than 11 lakhs at the time of executing the power of attorney but the for the meagre amount power of attorney was executed for the loan transaction but the same was abused by the petitioners for unlawful gains thereby the defacto complainant was cheated. Furthermore, the petitioners are used to grab the poor people land using the above method. Further, the respondent police filed the final report by

collecting all the evidence hence this Court should not quash the proceedings to that effect he relied the judgment of the supreme Court in the case of Kaptan Singh Vs. State of Uttar Pradesh reported in (2021) 9 SCC 35:

> *9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482* Cr.P.C. *has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482* Cr.P.C. *was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel* (Supra) *in order to examine*

as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

6. Considering the submissions on either side and also on perusal of records, it reveals that the petitioners were running the unregistered finance company and they were used to lend money to the people by collecting signed document as a security subsequently they created sale deed in their favour with the intention to defraud the people. Hence, this Court is not inclined to allow this petition.

7. In the result, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

12.02.2024

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T.V.THAMILSELVI, J.

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To

1.The Public Prosecutor, High Court, Madras.
2. The Judicial Magistrate No.IV Salem.

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