



Crl.O.P.(MD)No.872 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **A.A.NAKKIRAN**

Crl.O.P.(MD) No.872 of 2021

and

Crl.M.P.(MD).No.399 of 2021

1.Jegadheesh

2.Vanaja

3.Thamasraj

4.Sudhakaran ... Petitioner / Accused Nos.1 to 4

Vs.

1.The State Rep by

The Inspector of Police,

Theni Police Station,

Theni District.

... Respondent/Complainant

2.Subburam

... 2nd Respondent/Defecto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet laid by the respondents in C.C.No.4 of 2020 on the file of the learned Judicial Magistrate, Theni, Theni District.

For petitioner

: Mr.P.Sivachandran

For R1

: Mr.R.M.Anbunithi

Additional Public Prosecutor

For R2

: Mr.S.C.Herold Singh



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Crl.O.P.(MD)No.872 of 2021



ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.4 of 2020 pending on the file of the learned Judicial Magistrate, Theni, Theni District, against the petitioner herein.

2. The case of the prosecution is that the second respondent is the owner of agricultural land comprised in S.Nos.29/6A & 29/6. He is doing agricultural activities in the said land and also doing milk vendor business by rearing cattle. He has obtained loan amount of Rs.3,50,000/- from the Central Bank of India by mortgaging the said land. The first petitioner herein, who is working as Assistant in a private document writer office, stood as one of the witness to the above said mortgage and made relationship with the second respondent. In such circumstances, the petitioners approached the second respondent and promised that they will obtain huge loan amount of Rs.10 lakhs from a private bank in Theni by mortgaging his agricultural land. On believing their words, he disclosed about the loan due before the Central Bank of India. At that time, the loan due to be paid was Rs.1,96,000/-. The first petitioner has agreed to pay the said amount on behalf of the second respondent. Already, the second respondent has to pay a sum of Rs.4 lakhs to the first petitioner for purchasing cattle from him and already, there was oral agreement between them that out of loan amount



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of Rs.10 lakhs, except the amount to be paid to the first petitioner, remaining amount will be given to the second respondent. Thereafter, the first petitioner paid a sum of Rs.1,96,000/- and redeemed the document from the Central Bank of India. At that time, he also received 3 cheques from the wife of the second respondent for the security purpose. Thereafter, he got sign in the empty papers from the second respondent for obtaining huge amount of loan. Thereafter, when the respondent police came to the house of the second respondent for enquiry with regard to the complaint about the missing document only, he came to know about the alleged power of attorney and the execution of sale deed. The first petitioner lodged the said complaint in the name of the second petitioner. Further, the first petitioner with the help of other petitioners registered the agricultural land of the defacto complainant in his mother's favour by creating forged power of attorney. Thereby, the defacto complainant lodged a complaint before the respondent police and the same was registered in Crime No.880 of 2018 for the offences punishable under Sections 406 & 420 of IPC. After enquiry, the same was altered into Sections 406, 420, 465, 468, 471 and 120B of IPC. The respondent police conducted investigation and after completion of investigation, filed charge sheet before the Judicial Magistrate, Theni, Theni District, and the same was taken on file in C.C.No.4 of 2020.



3. Aggrieved against the same, present petition has been filed.

4. The learned counsel appearing for the petitioners submitted that the petitioners are innocent persons and a false case has been foisted against the petitioners. He further submitted that the statement recorded from the defacto complainant under Section 161(3) Cr.P.C., clearly stated that the alleged power of attorney was executed in the presence of the Sub Registrar, Theni on the own will and volition of the second respondent. The second respondent has to paid a sum of Rs.5,96,000/- to the first petitioner towards the due arose an account of purchase of cattle and on redemption of the mortgage with the Central Bank of India. In order to settle the above said amount, the second respondent executed a registered Power of Attorney in favour of the first petitioner. Hence, there is no offence made out by the petitioners as alleged by the second respondent and hence, the charge sheet filed against the petitioners is clear abuse of process of law and the same is liable to be quashed and prayed for allowing this petition.

5. The learned counsel appearing for the second respondent would contend that in order to obtain an additional loan amount of



Rs.10 lakhs from the private bank in Theni, the second respondent signed in the empty papers given by the first petitioner. Thereafter, he came to know about the forged power of attorney dated 28.05.2018 and execution of sale deed in favour of the second petitioner, who is the mother of the first petitioner dated 01.06.2018. Subsequently, he cancelled the said Power Deed on 11.09.2018 and lodged a complaint before the respondent police. Hence, he prayed for dismissal of the petition.

6. The learned Additional Public Prosecutor appearing for the State submitted that in the alleged power of attorney dated 28.05.2018, there is no mentioning about the loan transaction, other debts and the sale of property between the second respondent and the first petitioner. The first petitioner executed a sale deed to his mother namely, the second petitioner for an under valued amount of Rs.1,96,000/-. The second respondent has executed the power of attorney only for the purpose of obtaining an additional loan of Rs.10 lakhs. However, the first petitioner executed a sale deed in favour of the second petitioner. The petitioners 3 & 4 were stood as witnesses to the sale deed dated 01.06.2018. Further, the first petitioner lodged a complaint before the police in the name of the second respondent as if the original document was found missing. Hence, there is specific allegation against the



petitioners. He would further submitted that already trial was commenced and 11 witnesses were examined. At this stage, this petition cannot be entertained. Hence, he prayed for dismissal of the petition.

7.Heard the learned counsel for the petitioners, learned counsel for the second respondent and the learned Additional Public Prosecutor for the State.

8.From the perusal of power of attorney, it shows that there is no mentioning about the sale of property. It is clearly mentioned that the first petitioner has to maintain the property and could not make any encumbrance. However, the first petitioner sold the property to his mother immediately after the power of attorney. The date of power of attorney is 28.05.2018. The date of execution of sale deed in favour of the second petitioner is 01.06.2018. So, it creates some suspicious. Hence, this Court is not inclined to entertain this petition.

9. In view of the same, this Court finds no ground or scope to quash C.C.No.4 of 2020, pending on the file of the learned Judicial Magistrate, Theni, Theni District. Accordingly, this Criminal Original Petition is dismissed. However, learned Judicial Magistrate, Theni, Theni



Crl.O.P.(MD)No.872 of 2021

District. is directed to complete the trial proceedings in C.C.No.4 of 2020 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

10. The learned counsel appearing for the petitioners submitted that this Court may consider to dispense with the personal appearance of the petitioners before the court below. Taking into consideration the request as made by the learned counsel for the petitioners, the appearance of the petitioners before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners are necessary, the trial court, at its wisdom, shall direct their appearance on those days.

02.04.2024

NCC : Yes/No
Index : Yes/No
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Crl.O.P.(MD)No.872 of 2021

A.A.NAKKIRAN, J.

dss

To

1. The Judicial Magistrate,
Theni, Theni District.
2. The Inspector of Police,
Theni Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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