



Crl.O.P.(MD) No.1644 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.01.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.(MD) No.1644 of 2021

Muthukumaran

... Petitioner/Accused No.2

Vs.

1.The State represented by,
The Inspector of Police,
Oomachikulam Police Station,
Madurai District.
(Crime No.263 of 2018)

...1st Respondent/Complainant

2.Jayasudha

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in Crime No.263 of 2018 pending investigation on the file of the first respondent Police and quash the same as against the petitioner.

For Petitioner : Mr.R.Pon Karthikeyan

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor
(Criminal Side)

For R-2 : Ms.M.Nila



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ORDER

The case of the prosecution is that the mother-in-law of the defacto complainant namely, Chinnayee who is aged more than 90 years and does not have proper eye sight, has been made to execute a Power of Attorney dated 20.07.2016 by the present petitioner / Accused No.2 in his favour in respect of the properties situate in Survey Numbers 50/4, 50/5 of Iluppakudi Village measuring 2 acres 59 cents and a house bearing Door No.3/12 in Maaranivariyenthal Village. The defacto complaint's husband namely Pathivel died on 16.06.2021 and after his death, the entire properties belonging to their families are in possession of the defacto complainant, her mother-in-law and other legal heirs. The accused no.2 thereafter created a mortgage deed on 22.07.2016 in favour of three persons and obtained a sum of rupees more than a Crore. When the defacto complainant questioned the accused no.2 and other accused in this regard, they abused her in filthy language and also threatened her with dire consequences. She therefore lodged a complaint with the Sub-Inspector of Police, Oomachikulam Police Station, Madurai District which was registered as FIR in Crime No.263 of 2018 on 28.11.2018 against one Pathi Maharajan/Accused No.1, who is the brother of defacto complainants's husband and the present petitioner/ Accused No.2.



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2. Mr.R.PonKarthikeyan, learned counsel appearing for the petitioner/Accused No.2 would contend that the mother-in-law of the defacto complainant, had executed a registered power of attorney in respect of her family properties in favour of the petitioner and the petitioner, in turn, had properly mortgaged the properties in favour of third parties. According to the learned counsel for the petitioner, the defacto complainant had filed a civil suit in O.S.No.343 of 2019 before subordinate Judge, Melur against eight defendants including the present accused seeking to set aside the general power of attorney dated 20.07.2016 and the mortgage deed dated 22.07.2016 and for a partition of the suit properties. The learned counsel further submitted that when the civil suit is pending, the defacto complainant is attempting to give a criminal colour and had given a false complaint with the Inspector of Police, Oomachikulam Police Station, Madurai. He therefore prayed for quashing the FIR in Crime No.263 of 2018, Oomachikulam Police Station, Madurai.

3. Per contra, Ms.M.Nila, the learned counsel appearing for the defacto complainant would contend that the Accused No.2 though in know of the fact that the properties for which the power of attorney deed was executed by the mother-in-law of the defacto complainant are ancestral properties, the petitioner



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got the deed executed in his favour and also created encumbrance over the properties by way of mortgaging the same. It is his contention that though a civil suit is filed by the defacto complainant seeking for partition of entire ancestral properties and also to set aside the Power of Attorney and the mortgage deed, the defacto complainant is not attempting to give a criminal colour to the civil dispute, because the petitioner/Accused No.2 had fraudulently obtained Power of Attorney from the mother-in-law of the defacto complainant, by taking advantage of the fact that she was aged more than 90 years and has also lost her eye sight. In fact, when the defacto complainant questioned the petitioner/accused No.2 in this regard, he abused her in filthy language and also threatened her with dire consequences. According to the learned counsel, this prompted the defacto complainant to lodge a criminal complaint against the petitioner and others. Therefore, she prayed for dismissal of the present petition.

4. Mr.R.M.Anbunithi, learned Additional Public Prosecutor contended that the Police is investigating the case and since there is an order of stay granted by this Court to not file a final report, the case is kept pending on the file of Inspector of Police, Oomachikulam Police Station, Madurai.



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5. Admittedly, the properties for which the Power of Attorney deed was executed on 20.07.2016 are ancestral properties of Tmt.Chinnayee/mother-in-law and her legal heirs. The defacto complainant is the daughter-in-law of Tmt.Chinayee. At the time of executing the Power of Attorney deed, she was more than 90 years of age and now she is no more. It is not the case of the petitioner/accused No.2 that after mortgaging the property mentioned in the Power of Attorney deed, he had handed over the money to the said Tmt.Chinayee and absolutely there are no averments to the effect in the present petition. However, it is seen that the accused No.2 had mortgaged the properties in favour of another person, who in turn, mortgaged the property in favour of some other person. Though a civil suit is filed, the conduct of the petitioner has to be taken into consideration.

6. A perusal of the mortgage deed shows that the petitioner had infact clearly indicated that the properties are the ancestral properties of V.Chinayee. The version of the police is that when the defacto complainant confronted the accused 1 and 2 they not only abused her verbally in filthy language and also threatened her with dire consequences. In the circumstances, I do not see any reason to quash the FIR and the Inspector of Police, Oomachikulam is directed



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to complete the investigation within a period of two (2) months from the date of receipt of a copy of this order and file a final report.

7. Accordingly, this Criminal Original Petition is dismissed.

11.01.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

- 1.The Inspector of Police,
Oomachikulam Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R. HEMALATHA, J.

Nsr

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