



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Cr1.O.P.(MD)No.24178 of 2015

and

M.P.(MD)No.1 of 2015

1.S.Raihana

2.S.Kaja Mohideen

..Petitioners / Accused No.1 & 2

Vs.

1.The State represented by
The Sub-Inspector of Police,
Thirumangalam Town Police Station,
Madurai District
(Crime No.400 of 2015)

..1st Respondent/Complainant

2.S.G.M.Shah

..2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure praying to call for the records relating to the impugned FIR in Crime No.400 of 2015 on the file of the 1st respondent police and quash the same.

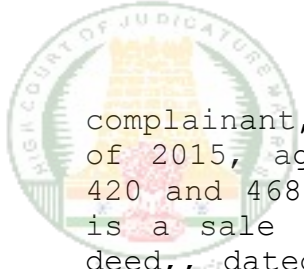
For Petitioners : Mr.R.Sundar

For Respondent-1 : Mr.A.P.Balasubramani
Govt. Advocate (Cr1.Side)

O R D E R

The petition has been filed under Section 482 Cr.P.C., praying to quash the proceedings in Crime No.400 of 2015, on the file of the 1st respondent police.

2.The counsel appearing for the petitioner would submit that originally, the property in question belonged to one Sikkandar Basha, who is the father of the 2nd petitioner. During the life time of the said Sikkandar Basha, the 2nd petitioner had entered into an oral agreement with him to purchase the property in question, measuring an extent of 44 cents, for a sum of Rs.95,600/- and that he has also paid the part amount of Rs.44,600/- as advance. Subsequently, the said Sikkandar Basha died in the year 1989 and after his demise, the 2nd petitioner paid the balance amount to the legal heirs of the said Sikkandar Basha and they have executed a registered power deed in favour of the 2nd petitioner with respect to the property in Survey No.142/13, to an extent of 44 cents, out of 1.27 acres. He would further submit that the defacto complainant is the son-in-law of the said Sikkandar Basha. Adding further, the counsel for the petitioner would submit that only the defacto complainant has grabbed some of the properties of the 2nd petitioner and in respect of the same, a suit has also been filed by the 2nd petitioner in O.S.No.4 of 2013, on the file of the District Munsif, Thirumangalam, for permanent injunction. Based on a false complainant given by the defacto



complainant, the respondent police have registered a case in Crime No.400 of 2015, against the petitioners, for the offences under Sections 417, 420 and 468 of IPC. The statement of the defacto complainant that there is a sale deed in his favour is not correct and challenging the sale deed,, dated 23.06.2006, the petitioners have filed a civil suit. It is his further submission that a civil Suit is pending and the petitioners have no objection in police enquiring into the matter but they shall not interfere with regard to the sale. Concluding his argument, counsel for the petitioners would submit that the petitioners have been falsely roped in this case and therefore, prayed for quashment of the Crime No.400 of 2015 pending on the file of the 1st respondent police.

3. The Government Advocate (crl.side) appearing for the respondents, on instructions, would submit that based on the complaint given by the defacto complainant, a case in Crime No.400 of 2015 has been registered and the investigation is going on and therefore, prayed for dismissal of the Criminal Original Petition.

4. I have heard the counsel appearing on either side and perused the materials available on record.

5. A glance at family settlement, dated 27.04.1989 would reveal that they had to wait for a period of three years after the last marriage and thereafter the properties can be partitioned. Admittedly, the partition had taken place in less than three years and power of attorney has been executed on 22.10.1991. The grievance of the 2nd respondent/defacto complainant is that the petitioners have committed an act attracting Sections 417, 420 and 468 of IPC. Further, serious allegations have been made against the petitioners and unless or otherwise, the particular share is decided in an appropriate suit, whether the act of the 2nd petitioner in selling the property in question to the first petitioner is right or not, this Court cannot render a finding on the merits of the matter, as it falls within the jurisdiction of the civil Court. But, the petitioners cannot prevent the police from investigating into the matter and in case, a prima facie case has been established, it is open to the police to act in accordance with law. The contention of the petitioners that they have no objection for the Police investigating into the matter but the accused should be heard is concerned, this Court cannot give any specific direction to the Police to enquire the petitioners herein. Since there are disputed question of facts, in view of the Judgment of the Hon'ble Supreme Court in *HMT Watches Ltd., Vs. M.A.Abida & Another* reported in (2015(2) CTC 446) holding that quashing of criminal complaint on disputed question of facts cannot be entertained and it is a matter for trial to proceed with the criminal complaints, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. It is for the petitioner to seek appropriate relief in the manner known to law, for early disposal of the civil Suit.

Sd/-

Assistant Registrar (RTI)

/True copy/



To

1. The Sub-Inspector of Police,
Thirumangalam Town Police Station,
Madurai District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.SUNDAR, Advocate, SR No.76126

Cr1.O.P. (MD) No.24178 of 2015
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MPK

SH/SK-SKN:19.01.2016:3P/4C