

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.10389 of 2011

and

M.P.No.1 of 2011

1.A.Rajendra Kumar

2.V.Srinivasan

... Petitioners/Accused

vs.

Kuppusamy

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in C.C.No.150 of 2009 on the file of the Judicial Magistrate, Bhavani and quash the same against the petitioners.

For Petitioners : Mr.B.Kumarasamy

For Respondent : Mr.N.Manokaran

ORDER

The petitioners are before this Court aggrieved over the respondent's Private Complaint in C.C.No.150 of 2009 filed on the file of learned Judicial Magistrate, Bhavani, under section 200 of Cr.P.C. against the petitioners for the alleged offences under sections 120 (b), 406, 465 and 468 I.P.C. Sum and substance of the complaint is that the petitioners herein by inducing the Respondent's father Muthu on 18.06.2007 obtained signatures in the stamp papers making him to believe that he was only a witness to the document, but obtained a Sale deed in respect of the respondent's property on 18.06.2007 in favour of 1st petitioner herein.

2.According to respondent, on 01.12.2006 the respondent's father along with his family members executed a Sale Agreement in favour of one K.A.Sivagami, vide a Document 2805/2007 on the file of the Sub-Registrar, Bhavani. Previously the respondent's father executed a General Power of Attorney in favor of one K.Pramanandhakumarar and the same was subsequently cancelled.

3. In the meantime the 1st petitioner's father namely Ashokan who was a good friend besides serving accountant of respondent's father, using such relation managed to induce the Respondent's father Muthu and fraudulently obtained a Sale deed as stated above. Therefore the above private complaint was filed for the alleged offences under sections 120(b), 406, 465 and 468 IPC under section 200 of Cr.P.C. against the petitioners, who also served as part and parcel of the above illegality.

4. According to the petitioners the transaction said to have taken place between said K.A.Sivagami and the respondent's father is an apparent collusion to defraud the 1st petitioner and overcome the earlier Sale Deed dated 18.06.2007 executed in favour of the 1st Petitioner which has been Registered as a Document No.2488/2007 on the file of the Sub Registrar, Bhavani to which the 2nd petitioner is one of the witnesses to that document. More so, there is no allegation against petitioners as to impersonation or Criminal breach of Trust.

5. The allegation against the petitioners that they misrepresented the Respondent's father and made to believe him that the Respondent's father is only witness to the document is an afterthought, in view of hike in Market value of the land alienated to the 1st petitioner.

6. However, regardless of lack of ingredients of sections 405 and 420 of I.P.C. and the above facts the impugned complaint was taken on file. The present complaint is ill-motivated to get unlawful enrichment by giving a criminal colour to a civil dispute.

7. Per Contra, the Learned Counsel for the respondent submits that even if the allegations disclose civil disputes, the same by itself may not be ground to hold that the criminal complaint should not be allowed.

8. It is his further contention that at the threshold a criminal complaint cannot be quashed citing a civil dispute.

9. In this regard he relied over the following decisions reported in

I) 2014 (1) MWN CrL. 259 and

II) 2009 (1) SCC 516) wherein it was held that:

i) If the allegations made in the complaint disclose commission of an offence, the court shall not go beyond the same and pass an order in favor of the accused to hold absence of any mens rea or actus reus.

ii) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue. 2013 (4) MD CrL. 622.

10.On hearing upon the rival submissions and perusing the complaint, this Court is able to see that Para 6 of the subject Complaint attract the ingredients of Sections 24 and 25 of I.P.C. Again the execution of the sale deed dated 18.06.2007 is also admittedly not in dispute. Only thing to be decided is as to whether the said document was executed in the circumstance as projected by the respondent or in otherwise as projected by the petitioners.

11.In the said factual back ground, this Court having found that the allegation leveled by either side remain unsupported by Oral or documentary evidence, is of the firm opinion that the case on hand is not a fit case to exercise its inherent powers to quash the complaint. All the above disputed facts is liable and will be capable of establishing only by way of Trial through Oral and Documentary evidence.

12.It is made clear that the observation made in this Crl.O.P shall not have any influence over Trial of the above complaint and as well also in any civil proceedings that may be pending adjudication between the parties.

13.In the result, this Criminal Original Petition is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate, Bhavani.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.16799

+1cc to Mr.N.Manokaran, Advocate, S.R.No.17001

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