

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.20230 of 2011
and
M.P.Nos.1 and 2 of 2011

1.Sellammal
2.Muthusamy .. Petitioners

vs.

1.The State of Tamil Nadu
Represented by Sub-Inspector of Police,
District Crime Branch,
Namakkal.
2.Prasanna .. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the case in C.C.No.60 of 2011 pending on the file of the Judicial Magistrate No.1, Namakkal and quash the same.

For Petitioners : Mr.S.Senthil Nathan

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)
Mr.R.Nalliappan (for R2)

JUDGMENT

The petitioners herein are accused Nos.1 and 2 respectively facing criminal charge in C.C.No.60 of 2011 on the file of the learned Judicial Magistrate No.I, Namakkal for offences punishable under Section 420 of I.P.C. r/w 120(B) of IPC.

2.The factual backdrop led to filing of said final report as against the petitioners as follows that:
According to the 2nd respondent/defacto complainant, the petitioners herein fraudulently entered a sale agreement in respect of a property which already sold by them to a third person.

3.It is the case of the defacto complainant that the accused entered with a sale agreement in respect of the stretch of property measuring 9.90 acre in Vaalavandhinadu Village for a sale price of Rs.4,50,000/- with the defacto complainant and accordingly Rs.50,000/- was paid as an advance by the sale agreement and it came to be registered on 10.07.2009 before the Sub-Register Office, Sendhamangalam.

4.It was agreed between the parties that the balance sale consideration of Rs.4,00,000/- has to be paid on or before 09.07.2011 failing which the advance amount will stand forfeited and in case of default by the accused it is open for him to file a suit for specific performance. In the above terms the sale agreement was acted upon.

5.Whereas it was shocking to find that in the above extent of 9.90 acre, about 6.00 acre was already sold for an amount Rs.3,00,000/- by the accused in favour of one Duraisamy, vide a registered sale deed dated 11.09.2009. Thereby defacto complainant realized that the accused by playing fraud had cheated him by entering into an agreement in respect of a property which was sold much earlier.

6.Therefore a complaint was lodged before the 1st respondent police and the investigation was conducted. On investigation the 1st respondent police laid final report as against the petitioner and few others under Section 420 of IPC r/w 120(B) of IPC.

7.The said final report is under challenge on the ground of abuse of process of law claiming that a civil dispute is given a criminal colour.

8.According to the Learned Counsel for the petitioner the issue on hand is civil in nature involving contractual obligation. If at all their breach of contract or sale agreement it would be open for the parties to seek remedy under civil law.

9.However, on perusal of the typed set of papers it is seen that the above sale deed favoring Duraisamy stood executed by the petitioners in the capacity as a general power of Attorney of one Mahendran and Papathi. Again from page Nos.30 and 27 respectively of the typed set of papers, it is found that the schedule of property of the sale deed in favour of Duraisamy dated 09.09.2019 and the sale agreement in favour of the defacto complainant dated 10.07.2009 bearing DOC.No.350/2009 on the file the Sub Registrar, Mohanoor are one and the same in as much as the Survey Number and an extent of about 6 acres.

10.It is equally important to note that both the sale agreement in favour of defacto complainant and the sale deed in favour of Duraisamy respectively are claimed to be executed by the petitioners on the basis of the Registered Power of Attorney deed dated 24.10.2008 said to have been executed by the alleged land owners Mahendran and Papathi.

11.In the said factual back ground this court is not in a position to appreciate the contention of the learned counsel to the petitioners.

12.At the same time it is needless to say that merely a dispute or an alleged offence had been committed in respect of a property it cannot be taken as a civil dispute.

13.Therefore, this Court does not find any merit to quash the subject Final report at the threshold and the instant case deserves a full-fledged Trial.

14.More so, the decisions relied by the petitioner do not aid the petitioner's case, since being a case of Quashing of FIR, whereas the case on hand being investigated and laid with final report. Again nature of allegations and the facts and circumstances involved in the case are entirely different and the accused are placed in a different footing.

15.For the foregoing discussions, this Court is constrained to come to a conclusion that there are prima facie materials against the petitioners requiring Trial.

16.In the result, this Criminal Original Petition is disposed of. However, the appearance of the petitioners herein before the trial court is hereby dispensed with, unless their presence is required by the court at the time of trial and questioning. The Learned Magistrate is directed to dispose the above C.C.No.60 of 2011 within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

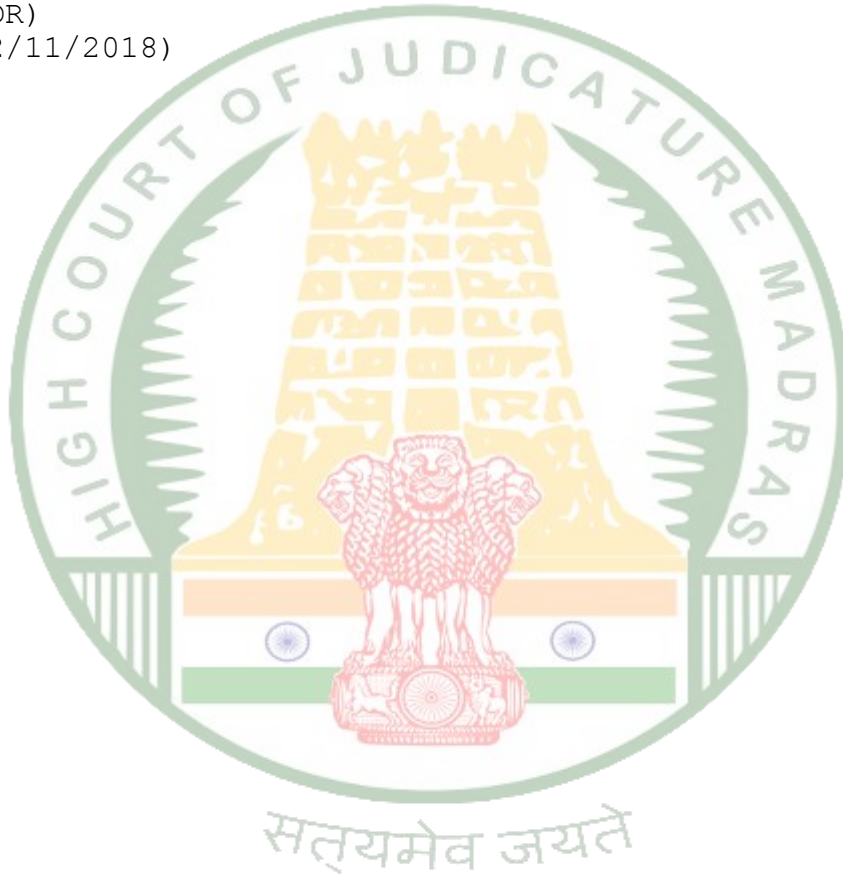
vs

To
The Judicial Magistrate No.I, Namakkal.

+ 1 cc to MR. S. Senthilnathan, Advocate Sr.20131
+ 1 cc to Mr. R. Nalliyappan, Advocate Sr.20432

Cr1.O.P.No.20230 of 2011
and
M.P.Nos.1 and 2 of 2011

(CS-DR)
EU (02/11/2018)



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