

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.4.2017

DELIVERED ON : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.21830 of 2011

and

M.P.Nos.1 of 2011 & 1 of 2014

M.Rajaram Petitioner

Vs.

1.State represented by
Special S.I. of Police,
District Crime Branch,
Cuddalore District.
(Cr.No.45 of 2011).

2.T.Rasoakkiam Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records in F.I.R. Cr.No.45 of 2011, on the file of the Special S.I. of Police, District Crime Branch, Cuddalore District and quash the same as abuse of process of law.

For Petitioner : Mr.K.V.Sridharan

For Respondents: Mr.B.Ramesh Babu (for R1)
Government Advocate(Crl.Side)
No Appearance (for R2)

JUDGMENT

This instant petition is filed under Section 482 of Cr.P.C invoking the inherent power of this Court to quash the FIR in Crime No.45 of 2011 on the file of the Special S.I of Police, District Crime Branch, Cuddalore. The petitioner herein who is arrayed as 2nd accused in the above Crime No.45 of 2011 has come up with the present quash petition.

2.The case of the petitioner is that the above FIR in Crime No.45 of 2011 came to be registered by the 1st respondent Police under Section 420 I.P.C. as against the petitioner and one another, on the basis of a complaint dated 04.07.2011, given by the 2nd respondent/de-facto complainant, which was addressed to the Superintendent of Police, Cuddalore District.

3. According to de-facto complainant, the petitioner and his brother namely Kamaleshan, the 1st accused herein are brothers and they entered into a sale agreement, agreeing upon to sell a piece of property belonged to them. In pursuant of the sale agreement the de-facto complainant/2nd respondent had paid Rs.64,000/- towards the sale consideration. However, having received the sale consideration, the petitioner herein failed to execute a sale deed in favour of the 2nd respondent. In spite of several Panchayats convened, the petitioner and his brother never turned up to execute the sale deed in favour of the 2nd respondent, therefore the 2nd respondent has preferred the above complaint dated 23.04.2011 to the Superintendent of police through registered post and the same came to be forwarded to the 1st respondent police on 04.07.2011 for appropriate action. On receipt of the complaint forwarded by the Superintendent of Police, the 1st respondent has registered the above case in Crime No.45 of 2011 under Section 420 I.P.C.

4. It is the case of the petitioner that the above FIR is liable to be quashed for abuse of process of law that a purely civil dispute is given with a criminal colour. The offence of Section 420 I.P.C. will not at all arise, since so as to attract Section 420 I.P.C. there must be an intention to defraud the respondent. The registration of FIR at the instance of the 2nd respondent is only an attempt to pressurize the petitioner to perform a civil obligation.

5. I have heard Mr.K.V.Sridharan, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent. There was no representation made on behalf of the 2nd respondent and perused the entire records.

6. On perusal of the impugned FIR this Court notice that the above complaint is made with a subject and prayer part, wherein the subject and prayer part is requesting the respondent police official to take appropriate action by registering a case against the petitioner and his brother, so as to make them to register / execute a sale deed in favour of the 2nd respondent in line with an alleged sale agreement of the year 1998. The prayer made in the complaint is that to register a case against the accused so as to ensure registration of a sale deed in favour of the complainant. Excepting a vague allegation that the de-facto complainant was threatened once, there is no any reference to specific allegation as to which date the threat was given to him. Even according to the de-facto complainant the sale agreement was of the year 1998, whereas in the year 2011 he has preferred the above complaint with absolutely vague and general in nature, which cannot be the sole basis of prosecution under

Section 420 of IPC.

7. Even if the allegations made in the FIR is taken as correct and on their face value, it do not constitute any criminal offence, since it is purely civil in nature.

8. The above referred facts and circumstances disclose that the transaction between the party are of civil in nature and the FIR is only to pressurize the petitioner to perform his civil obligation. It is needless to say that the appropriate remedy for the 2nd respondent is only to approach a civil forum and he cannot prefer a criminal complaint.

9. In this context it would be relevant to look into the following decisions of the Hon'ble Apex Court:

i) in the matter of Hira Lal Hari Lal Bhagwati V. CBI reported in AIR 2003 SC 2545, wherein the Hon'ble Apex Court held that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent intention at the time of making promise or representation. It was further held that from his making failure, to keep up promise subsequently such a culpable intention right at the beginning, i.e., at the time when the promise was made cannot be presumed.

ii) in the matter of State of Haryana vs. Bhajan Lal, reported in AIR 1992 SC 604, , wherein the Hon'ble Apex Court held that where the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not, prima facie, constitute any offence or make out any case against the accused, the Court would be justified in quashing the criminal proceedings in exercise of powers u/s 482 of Code of Criminal Procedure. If the allegations disclose a civil dispute but also constitute an offence, that by itself cannot be a ground to hold that the criminal proceedings should not be allowed to continue, but, where the allegations made in the complaint, even if taken on their face value do not disclose commission of any offence, the Court would be justified in taking recourse of taking provisions of Section 482 of the Code of Criminal Procedure.

iii) in the matter of Inder Mohan Goswami and Another vs. State of Uttranchal and Others reported in (2007)12 SCC 1, wherein the Hon'ble Supreme Court, while quashing all the proceedings emanating from the FIR, inter alia, observed as under:

"The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused."

iv) in the matter of Indian Oil Corporation v. N.E.P.C. India Ltd. reported in (2006) 6 SCC 736, wherein the Hon'ble Supreme Court cautioned against a growing tendency in business circles to convert purely civil disputes into criminal cases.

The Hon'ble Court observed that:-

"Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged".

10. Therefore, in the case on hand it may clear that as made dictum made in the case by the Hon'ble Supreme Court in (2007) 12 SCC 1, the 2nd respondent/defacto complainant only with an aim give the complaint to pressurize this petitioner who alleged to be accused to execute the sale deed in his favour. When the civil remedy is available to the party concern the police authority must have looked into the nature of the complaint and therefore only to acted upon. But, in this case because of the complaint given by the 2nd respondent forwarded by the higher officer namely the Superintendent of Police, the 1st respondent without properly looked into the nature of the complaint had registered the case which act does not legally value in the eye of law.

11. Therefore in the view of the above settled law and the fact involved in the case and that the guidelines laid down by the Hon'ble Apex Court in the case of Bhajan Lal, reported in AIR 1992 Cri LJ 527 squarely applies to the case on hand, this Court has no hesitation to quash the impugned F.I.R.

12. In the result, this Criminal Original Petition is allowed by quashing the F.I.R. in Crime No.45 of 2011, on the file of the 1st respondent Police. However, the 2nd respondent is at liberty to work out his remedy before the appropriate forum. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs
To
The Special S.I. of Police,
District Crime Branch, Cuddalore District.

+ 1 cc to Mr. K.V. Sridharan, Advocate SR.81188

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CCC
EU(07/12/2017)