

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.20786 of 2012 and
MP.No.1 of 2012

1.C.Subramaniam
2.S.Suresh
3.S.Latha

.. Petitioners/A2 to A4

Vs.

M.C.Subramaniam

.. Respondent/Complainant

Prayer :-

Criminal Original Petition has been filed under Section 482 of the Cr.P.C to quash the private complaint proceedings in CMP.No.194 of 2012 pending on the file of the learned Judicial Magistrate No.III, Erode for the alleged commission of offences under Sections 421, 422 and 423 of IPC.

For the Petitioners : Mr.S.Jayakumar

For the Respondent : Mr.C.P.Sivamohan

ORDER

This criminal original petition is preferred by the Petitioners/Accused A2 to A4 to call for the proceedings pending in C.M.P.No.194 of 2012 on the file of the Hon'ble Judicial Magistrate No.III, Erode and quash the same.

2.Brief case of the petitioners/accused A2 to A4

The facts of the case is that the petitioner/accused A2 had obtained a loan of Rs.7 Lakh from the complainant on 13.10.1997 and 19.11.1997. The loan was given to the petitioner/accused A2 through a cheque drawn on Madurai Grand Central Canrara Bank, Madurai by the complainant. On demand of the amount by the complainant the petitioner/accused A2 issued a cheque bearing No.1770250 drawn on Vijaya Bank, Erode Branch. The above cheque was dishonoured and criminal proceedings was initiated against the petitioner/accused A2 and convicted by the Hon'ble Judicial Magistrate No.II, Ramnanathapuram for the commission of offence

under section 138 of the Negotiable Instrument Act and further sentenced to undergo simple imprisonment for 1 year and a fine of Rs.5000/- as compensation was imposed on the complainant which was confirmed by the first appellate court. The criminal revision petition filed against the above conviction and sentence imposed by the lower court was confirmed by the Hon'ble High Court and enhanced the fine amount to Rs.7 Lakhs to be paid to the complainant and no further appeal was preferred against the above judgment of the Hon'ble High Court. It is the case of the complainant that the petitioners /accused herein sold the immovable property to the 1st accused for less sale consideration. The above sale was also effected by the 2nd petitioner who borrowed the loan from the complainant and after 70 days from the date of sale, the cheque dated 4.5.1998 was issued by the 2nd petitioner to the complainant and hence the petitioners/accused A1 to A4 suppressing the above fact of the 2nd petitioner obtaining loan from the complainant effected the sale deed dated 26.2.1998. Hence the respondent/complainant preferred private complaint in C.M.P.No.194 of 2012 against the petitioners herein for the commission of offence under sections 421, 422 and 423 of IPC. Aggrieved over the same, this quash petition is filed.

3.The learned counsel for the petitioner/accused A2 to A4 submits that further case of the complainant between the period from 13.10.1997 and 4.5.1998, the immovable property inherited by the petitioners and others through a partition deed registered vide No.3871 of 1970 dated 26.12.1970 who sold to the first petitioner/accused in the complaint in C.M.P.No.194 of 2012.

4.The learned counsel for the petitioner/accused A2 to A4 submits that the sale was executed through a sale deed No.680 of 1998 dated 26.2.1998. According to the complainant the above transaction of sale was fraudulently executed by the petitioners/accused persons for the purpose of cheating the complainant.

5.The learned counsel for the petitioner/accused A2 to A4 submits that the first accused had a known very well that the second petitioner had borrowed a loan of Rs.7 Lakhs from the complainant and fraudulently effected the above sale within the family members for the purpose of cheating the complainant, without receiving any sale consideration from the first accused.

6.The learned counsel for the petitioner/accused A2 to A4 submits that the case of the complainant that the petitioner herein had sold the immovable property to the first accused for

lesser sale consideration of Rs.3,20,000/- only. The above sale was also affected by the second petitioner who borrowed the loan from complainant and after 70 days from the date of sale, the cheque dated 4.5.1998 was issued by the second petitioner/accused to the complainant and hence the petitioner/accused A1 to A4 suppressing the above fact of the second petitioner obtaining loan from the complainant effected the sale dated 26.2.1998. Hence the above private complaint in CMP.No.194 of 2012 was preferred by the complainant against the petitioners herein for the commission of offence under sections 421,422 and 423 of IPC.

7.The learned counsel for the petitioner/accused A2 to A4 submits that the above private complaint is liable to be quashed for the reasons that the sale deed that was affected between the first accused and the petitioners herein has got no bearing on the loan borrowed by the second petitioner from the complainant.

8.The learned counsel for the petitioner/accused A2 to A4 submits that there is a civil case in O.S.No.11 of 2012 for a declaratory decree is pending on the file of the Principal District Munsiff Erode for the same cause of action, which fact is intentionally suppressed by the respondent/complainant.

9.The learned counsel for the petitioner/accused A2 to A4 submits that a matter which involves dispute of a civil nature should not allowed to be the subject matter of a criminal offence, the latter being a short cut of executing a decree which is nonexistent . Allowing the above criminal proceedings in C.M.P.No.194 of 2012 amounts to abuse of the process of the case.

10.In the case on hand, admittedly a civil litigation is pending between the parties and now the respondent attempted to give criminal colour. No prima facie case is made out except the verbal allegations. Therefore I am inclined to quash the private complaint filed by the respondent/complainant.

11.In the result, this criminal original petition is allowed and proceedings pending in C.M.P.No.194 of 2012 on the file of the learned Judicial Magistrate No.III, Erode is hereby quashed. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

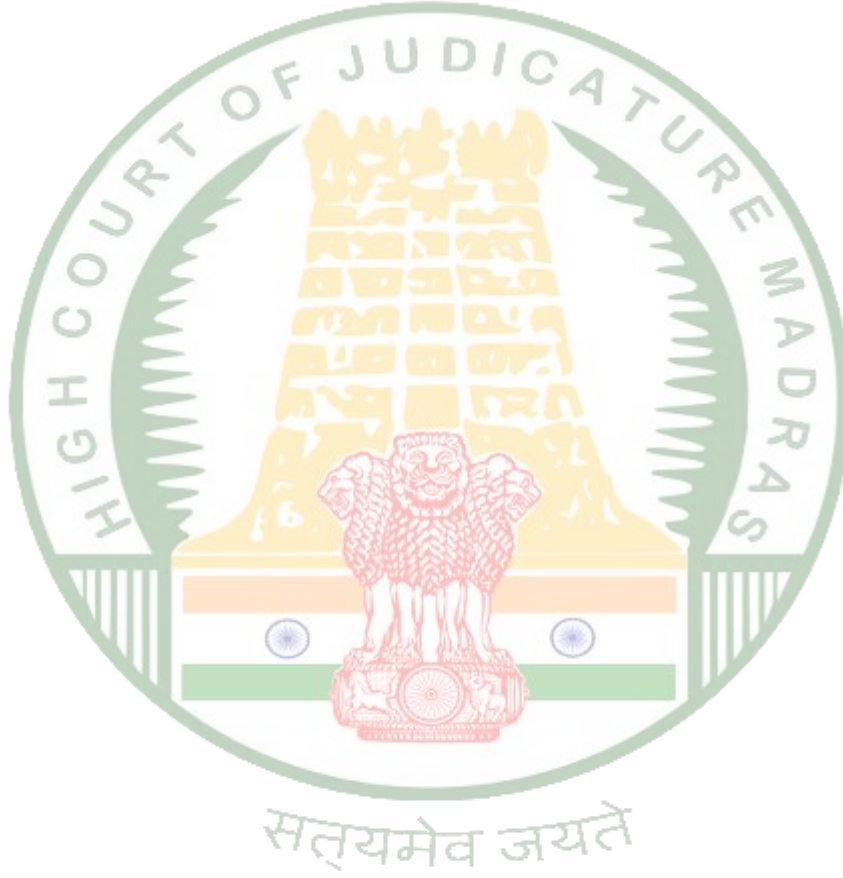
vs

To

The Judicial Magistrate No.III,
Erode.

CRL.O.P.No.20786 of 2012 and
MP.No.1 of 2012

KJ (CO)
CS/02/04/2019



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