

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P No.11848 of 2010

and

M.P.Nos.1 and 2 of 2010

N.Munusamy

... Petitioner

vs.

P.Kasthuri

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings as against the petitioner in C.C.No.966 of 2009 pending on the file of the Judicial Magistrate, Tambaram.

For Petitioner : Mr.S.Sairaman

For Respondent : No Appearance

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the records and quash the proceedings as against the petitioner in C.C.No.966 of 2009 pending on the file of the Judicial Magistrate, Tambaram.

2.The case of the petitioner is that the above Calendar Case in C.C.No.966 of 2009 on the file of the Judicial Magistrate, Tambaram in protest petition for offences under Section 406, 418, 420 and 120-B read with 34 of I.P.C, came to be filed by the respondent as against the petitioner and two others. As per the above complaint, the petitioner was accused by the respondent for the alleged indulgence of cheating the respondent herein, by purchasing a property, in respect of which there was already a sale agreement entered upon by the respondent and the 1st accused. The case of the respondent is that she as a purchaser entered into sale agreement with respect of a property situated in survey No.456 with the 1st accused /Vendor namely Kandhasamy for a total sale consideration of Rs.8,20,000/-. As per the sale agreement an advance amount of Rs.1,40,000/- was also paid to the 1st accused. However, the 1st accused without fulfilling his contractual obligation by receiving the balance

sale consideration and registering a sale deed in favor of the respondent, but joining with the petitioner herein cheated the respondent by alienating the very property in favor of the petitioner. The above act of the respondent vendor and the petitioner attracted the offence under Section 406, 418, 420 and 120b r/w 34 of IPC.

3. According to the petitioner, the above complaint of the respondent is an utter false and the same is nothing but an abuse of process of Law. The petitioner is only a bonafide purchaser and he having verified that there is no encumbrance over the property, has purchased the above property vide a registered sale deed dated 27.09.2006. However, the petitioner is falsely inflicted with the above complaint. It can be ascertained from the event of closure of an identical complaint with same set of allegations preferred before the Learned Judicial Magistrate, Tambaram under Section 200 Cr.P.C for the offences under Sections 406, 418, 420 and 120 (B) r/w 34 of IPC. The said complaint was investigated by the Inspector of Police, Chittalpappam and the dispute since revealed as purely civil in nature was closed and the corresponding final report came to be filed on 11.08.2007.

4. It is the further case of the petitioner that the criminal complaint is sheer abuse of process of law, since a purely civil dispute is given with a criminal colour. The pendency of two civil suits viz in O.S.No.494 of 2007 on the District Munsif Court, Alandur and O.S.No.6 of 2008 on the file of Principle District Judge, Chengalpet, in the contemporary period i.e. on the date of complaint, would disclose the same. Earlier suit in O.S.No.494 of 2007 was filed by the petitioner for permanent injunction against respondent and others, whereas the latter suit in O.S.No.6 of 2008 was filed by the respondent for specific performance against the 1st accused praying to register the sale deed with respect of the above property in favour of the respondent and further prayed for to declare the sale deed dated 27.09.2006 standing in favor of the petitioner as null and void.

5. The above facts demonstrate that the Calendar Case on hand in C.C.No.966 of 2009 is an abuse of process of law and Court. Hence the petitioner invoking the inherent powers of this Court under Section 482 of CrPC seeks to quash the proceedings as against the petitioner in C.C.No.966 of 2009 on the file of the Judicial Magistrate, Tambaram.

6.I heard Mr.S.Sairaman, learned counsel appearing for the petitioner and there is no representation on behalf of the respondent and perused the entire records.

7.On careful perusal of the typed set of papers filed by the petitioner, this Court is able to see that the above contention of the petitioner to the effect that the complaint on hand is a second round of litigation is found true. Previously on 05.03.2007, a similar complaint under Section 200 of Cr.P.C by way of private complaint is lodged by the respondent, before the learned Judicial Magistrate, Tambaram for the alleged offences under Sections 406, 418, 420 and 120 (B) r/w 34 of IPC. It is further noticed that on enquiry by the concerned Police, the complaint was closed as civil in nature. The said report was also accepted by the Learned Magistrate and the complaint came to be closed.

8.Whereas subsequently the respondent after two years, again with very same set of allegations has sent the above complaint on hand on 27.01.2009 to the Commissioner of Police, Sub-Urban, St.Thomas Mount, on the basis of which the above complaint was filed by the respondent and taken on file in C.C.No.966 of 2009 by the Learned Judicial Magistrate, Tambaram.

9.At this juncture, the learned counsel for the petitioner circulated the Additional typed set of paper containing the decree and judgment made by the Additional District Munsif, Alandur in O.S.No.494 of 2007, viz. suit filed by the petitioner. The said Judgment discloses that the trial Court has opined that the purchase made by the petitioner is a bonafide one and the trial Court has decreed the above suit in O.S.No.494 of 2007.

10.On careful perusal of the judgment made in O.S.No.494 of 2007 it is noticed by this Court that the above suit was duly contested by the respondent as the 1st defendant and the very same contention that a sale agreement was entered in respect of suit property by the respondent prior to the purchase made by the petitioner was put forth by the respondent.

11.Whereas the trial Court after elaborate discussion and appreciation of the oral and documentary evidence has held that the purchase made by the petitioner is a bonafide one and

possession of the suit property vested with the petitioner. The relevant finding of the trial Court is noticeable in Page No.23 of the judgment and the same is extracted here under "In view of the plaintiffs proving through Ex.A1 to A16, the bonafide purchase of the suit property". Furthermore it is indispensable to note that so as to attract a Criminal Offence Mens Rea is to be established by the respondent. But in the case on hand the petitioner has established that he is a bonafide purchaser and the issue is purely a civil one and also proved that the complaint on hand is a second complaint for the very same allegation.

12.Again it is needless for this Court to say that a second complaint for the very same allegation is not sustainable in the eye of law. This Court in the light of facts involved in the case is of firm opinion that a pure civil dispute between the parties is given a criminal color.

13.Therefore for the reasons stated above, if the proceeding as against the petitioner in C.C.No.966 of 2009 is allowed to proceed, the same would be nothing but an abuse of process of law and Court.

14.In the result, this Criminal Original Petition succeeds and the proceedings in C.C.No.966 of 2009 on the file of the learned Judicial Magistrate, Tambaram is hereby quashed, in so far as the petitioner is concerned. It is made clear that any observation or reference made in the above Criminal Original Petition shall not have any impact over any Civil Forum dealing with civil dispute or litigation, if any pending between the parties herein. Consequently, connected miscellaneous petitions are closed.

Sd/-
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Assistant Registrar(CS II)

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Sub Assistant Registrar

vs

To

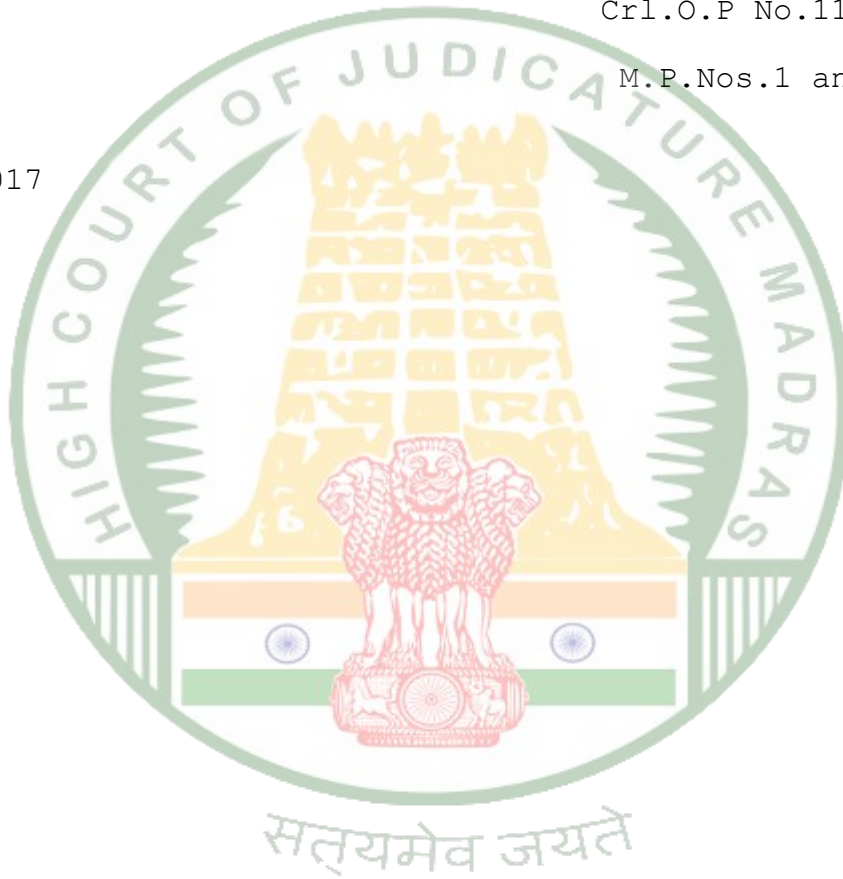
1.The Judicial Magistrate,
Tambaram.

2.The Section Officer
Criminal Section
High Court Madras

+1 cc to Mr.S.Sairaman Advocate sr 71865

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and
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