

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.03.2017

Judgment Pronounced on : 03.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Crl.OP.No.22061 of 2010
and MP.No.1 of 2010

1.R.Karthikeyan, S/o.Ramasamy
2.R.Kannan, S/o. Ramasamy ... Petitioners/Accused Nos. 2 and 3

-Vs-

1.The State,
Represented by Inspector of Police,
Royapettah Police Station
Chennai.
(Crime No.155 of 2009)

2.V.Bhaskaran ... Respondents

[R2 impleaded as per the order of this Court
dated 20.12.2010 in MP.No.3 of 2010 in
Crl.OP.No.22061 of 2010]

Prayer:- Criminal Original Petition filed under Section 482 of
Cr.P.C., for quashing the proceedings in CC.No.8639/2010 on the
file of the learned XVIII Metropolitan Magistrate, Saidapet,
Chennai.

For Petitioner : Mr.V.R.Shanmuganathan

For Respondents: Mr.B.Ramesh Babu,

Government Advocate [Crl. Side] for R1
Mr.K.Govi Ganesan [R2]

ORDER

This petition is filed under Section 482 Cr.P.C. for quashing
the proceedings in CC.No.8639/2010 on the file of the learned
XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. Heard the learned counsel appearing for the petitioners,
learned Government Advocate [Crl Side] for the first respondent
and Mr.K.Govi Ganesan, learned counsel for the second respondent.

3. The brief facts are :

On 25.03.2009, the second respondent Bhaskaran had preferred
a complaint, based on which the FIR was registered by first

respondent under Sections 465, 468, 471 and 420 IPC. The material aspects stated in the FIR are that on 08.4.2006, the second respondent entered into a sale agreement with the first accused (Ramasamy) for a total sale consideration of Rs.37,00,000/- and paid Rs.5,00,000/- as advance payment. A-1 handed over to the second respondent an encumbrance certificate for 22 years from 06.1.1983 to 25.6.2004, which show that there is no encumbrance in the property. It was on that foundation, A-1 proceeded to decide to purchase the property. It was agreed in the sale agreement that the sale should be completed on or before 30.06.2006. While the second respondent was keen to pay the balance sale consideration before the expiry of the time stipulated, A-1 shown no interest to accept the same. There was some personal meetings between them. In all, he paid Rs.30,00,000/- through different cheques and they were issued to A-1 and his two sons, the appellants herein. The balance was to be paid at the time of the sale. While so, on 07.3.2009, A-1 visited the second respondent and promised to complete the sale should the former pays the latter an additional sum of Rs.9,00,000/- towards sale consideration. Thereafter, the second respondent applied for an encumbrance certificate on 11.03.2009 and obtained it for the period from 01.1.2001 to 10.3.2009. It showed that A-1 had created a mortgage in favour of two individuals. After investigation, first respondent laid charge sheet and the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has taken cognizance of the same.

4. The learned counsel for the petitioners submitted that the plain allegations in the FIR are pointed towards A-1, who according to him is a signatory to the sale agreement, and that at all level he had been dealing with the second respondent/complainant. Even the mortgage, according to the complainant was created only by A-1. The only allegation against the petitioners are that a sum of Rs.6 lakhs was paid under two cheques each in favour of the two petitioners herein. None of the petitioners herein are the parties to the sale agreement that the second respondent has referred to. In addition, the complainant/second respondent has already filed a civil suit in O.S.No.1989/2009 on the file of the City Civil Court, Chennai and the same is pending. He further submitted that it is a case where it has got a civil overtone and he has instruction to state to the extent the petitioners know that it was the second respondent/complainant was delaying the things for their father (first accused) and that he had made corrections in the sale agreement in the police station when the father had gone to settle the matter. He relied on the authorities in Pepsi Foods Ltd., and Another Vs. Special Judicial Magistrate and Others [(1998) 5 SCC 749]; Mohammed Ibrahim and Others Vs. State of Bihar and Another [(2009) 8 SCC 7510] and Joseph Salvaraj A. Vs. State of Gujarat and Others [(2011) 7 SCC 9].

5. Per contra, the learned counsel for the second respondent argued that there is a conspiracy by A-1 with the petitioners and he has been cheated of his money and it is a product of the said conspiracy, otherwise why Rs.6.0 lakhs must be received by the petitioners herein, questioned the counsel. He also added that all the three accused had moved for anticipatory bail before this Court and this Court directed them to deposit a sum of Rs.30 lakhs and later modified to Rs.10.0 lakhs and he has no idea that the said sum was deposited. To this the learned counsel for the petitioners replied that he has paid the sum .

6. After considering the rival submission and also the authorities involved, there appears to be allegation and counter allegation as to who attempted to cheat whom. This however can be resolved only by the civil Court in whose file the suit for specific performance is pending. It is settled law where a dispute has a civil complexion, resort to criminal action must be discouraged. Secondly, it is an admitted fact that neither of the petitioners are party to the sale agreement. The mere fact that amounts were paid to them by cheques pursuant to an agreement of sale that their father had entered into, cannot be considered that they were actually involved in cheating the complainant. The ultimate point is, is there a representation made by any of the petitioners to the complainant which lead to the complainant parting his money. Here the materials available do not disclose that the complainant had paid the money pursuant to any direct representation made by the petitioners.

7. To conclude, this petition is allowed and the proceedings in CC.No.8639/2010 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is set aside as regards petitioners. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To:

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
Royapettah Police Station
Chennai.

3. The Public Prosecutor
High Court, Madras.

+ 1 cc to M/s.T.Panchatsaram, Advocate,SR.78352

+ 1 cc to Mr.K.Govi Ganesan Advocate,SR.78530

CrI.OP.No.22061 of 2010

rsi(co)
nr 26/12/2017
nr 08/01/2018



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