

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 25.07.2017
Pronounced on : 11.10.2017**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**Crl.O.P.Nos.19348 and 20260 of 2010
and
M.P.Nos.1 and 1 of 2010**

1. Jayaraman
2. Pichaiammal ... Petitioners in Crl.O.P.No.19348 of
2010/Accused 3 & 4

1. Shanmugam Pillai
2. Ilanchezian ... Petitioners in Crl.O.P.No.20260 of
2010/Accused 1 & 2

.. Vs ..

1. State Represented by its
Deputy Superintendent of Police,
Sethiathope Sub Division,
Cuddalore District.
(Cr.No.59 of 2010 of
Kumaratchi Police Station) ... 1st Respondent in both
Crl.O.Ps./Complainant

2. T.Kumaravelu ... 2nd Respondent in both
Crl.O.Ps./De facto Complainant

Prayer in both Crl.O.Ps: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in S.C.No.238 of 2010 pending on the file of the learned Principal District and Sessions Judge, Cuddalore, and quash the same insofar as the petitioners herein are concerned.

In both cases

For Petitioners : Mr.R.Karthikeyan
 For R-1 : Mr.B.Ramesh Babu,
 Government Advocate (Crl. Side)
 For R-2 : Mr.M.C.Swamy
 for M/s.Senthilswamy Association

COMMON ORDER

Challenging the correctness of the final report filed by the Investigating Officer in Crime No.59 of 2010, A.3 and A.4 have filed the petition in Crl.O.P.No.19348 of 2010 seeking to quash the proceedings in S.C.No.238 of 2010 pending on the file of the learned Principal District and Sessions Judge, Cuddalore, while A.1 and A.2 have filed the petition in Crl.O.P.No.20260 of 2010 seeking for similar prayer.

2. The first accused-land owner and pending this Criminal Original Petition, he died. The second accused is the power of attorney holder of A.1. Accused Nos.3 and 4 are the purchasers while the de facto complainant is the Agreement Holder.

3. The brief facts, which are necessary for determination of the cases, are as follows:-

[i] The second respondent herein/de facto complainant has filed a private complaint before the learned Judicial Magistrate No.2, Chidambaram under Section 200 of Cr.P.C. for the offences under Sections 120-B, 420 and 109 of IPC and Section 3 (2) (V) and 3 (2) (ii) of SC & ST Act, 1989. The learned Judicial Magistrate, referred the same to the Sub-Inspector of Police, Kumaratchi Police Station, for investigation. The Sub Inspector of Police has registered an FIR on 20.04.2010 in Crime No.59 of 2010 for the offences under Sections 420, 120-B and 109 of IPC and Section 3 (2) (V) and 3 (2) (ii) of SC & ST Act, 1989 (hereinafter referred as Special Act) and transferred the investigation to the Deputy Superintendent of Police, Sethiathope, as he was the competent officer under the Special Act to investigate into the same.

[ii] The first respondent herein, after investigation, has filed a final report before the learned Judicial Magistrate No.2, Chidambaram on 20.04.2010 for the offences under Sections 420 r/w. 34 & 109 of IPC and Section 3 (1) (5) of SC & ST Act, 1989. The allegation in the charge sheet is that A.1 and A.2 belong to Vellallar Community. A.3 and A.4 belong to Adi Dravida Community. The second respondent/de facto complainant was cultivating 4.80 acres of the lands belonging to the first accused. The second respondent/defacto-complainant wanted to purchase 66 cents of land from the land owner/first accused and the first accused also agreed for the same and received a sum of Rs.16,500/- and entered into a sale agreement with the wife of second respondent. A.2 represented to the defacto complainant that he is power agent of A1 and promised to sell another 4 acres and 14 cents and on 19.12.2001, A.2 in the capacity of Power Agent of A.1 received a sum of Rs.1,00,000/- and gave a hand receipt to the said amount. It is also the further case that A.2 received Rs.30,000/- in three instalments and totally, A.2 had received Rs.1,30,000/- and A.1 had received Rs.16,500/-. A.1 and A.2, with an intention to cheat the second respondent herein/de facto complainant and knowing the fact

that the de facto complainant is a Adi Dravida, all the accused had entered into a criminal conspiracy to cheat the de facto complainant and A.1 and A.2 had executed a Sale Deed in favour of A.3 and A.4 for a sum of Rs.1,46,500/- and thus, A.1 and A.2 had committed the offence under Section 420 r/w. 34 of IPC and Section 3 (1) (5) of SC & ST Act, 1989 and A.3 and A.4 had committed the offence under Section 420 r/w. 109 IPC. The final report filed before the learned Judicial Magistrate No.2, Chidambaram, was taken on file as PRC No.5 of 2010 and the same was committed to the learned Principal District and Sessions Judge, Cuddalore and taken on file as S.C.No.238 of 2010.

4. The short points that need to be addressed in both the cases are whether there is any abuse of process of Court by the de facto complainant.

5. The case of the de facto complainant is that he belongs to Adi Dravida Community which is notified as a Scheduled Caste community and A.1 and A.2 are not the members of the Scheduled Caste or Scheduled Tribe community and A.1 has entered into an agreement of sale on 25.04.1998 and received part of the sale consideration on

various dates. However, instead of executing the Sale Deed in his favour, on 10.01.2007 A.1 has executed a Sale Deed in favour of A.3 and A.4 on the ground that A.3 and A.4 are the members of the Scheduled Caste community and with an intention to cheat the de facto complainant and thereby, he alleged to have committed the offences under Sections 420 r/w. 34 & 109 of IPC and Section 3 (1) (5) of SC & ST Act, 1989.

6. As per the final report filed by the Deputy Superintendent of Police, Sethiathope police station in Crime No.21 of 2010, it is seen that A.3 and A.4 are the members of Scheduled Caste. Even according to the investigation report, A.1, who is the land owner, now reported dead and A.2, who is alleged to be the Power of Attorney Holder of A.1, alleged to have executed Sale Deed in favour of A.3 and A.4, who are members of the Scheduled Caste and hence, this Court is unable to accept the contention of the learned counsel for the contesting respondent since the de facto complainant also is the member of the Scheduled Caste, the land owner/A.1 has not executed any Sale Deed in his favour cannot stand for the reason that since A.3 and A.4, who are the purchasers, are also the members of the Scheduled Caste and hence, this ground does not hold water.

7. The other issue is that both A.1 and A.2 have conspired together and cheated the de facto complainant. It remains to be stated that though the agreement of sale was entered into as early as on 25.04.1998 for the reasons best known, sale was not completed within the stipulated time and absence of non performance of terms of agreement of sale is purely a civil dispute for which the de facto complainant can very well sue before the civil Court seeking specific performance of the sale agreement dated 25.04.1998. However, it appears that only in the year 2007 i.e., after nine years, the land owner seems to have sold the property to the third and fourth accused and no suit for specific performance has been filed by the de facto complainant assumes significance. Considering the allegation that the first accused is the land owner and the second accused, who is the general power of attorney holder of A.1, has received amount on different dates upto the year 2001, there was total silence for more than six years is also assumes significance as the subject matter of the complaint appears to be a purely civil in nature and civil remedy is also provided for the specific performance of the agreement dated 25.04.1998 entered between the first accused and the de facto complainant.

8. This Court is of the considered view that the uncontroverted allegations contained in the complaint and the final report appears to be purely civil in nature and there is no element of ingredients of Sections 420 r/w. 34 and 109 of IPC is present and hence, in this view of the matter, this Court is of the considered view that the de facto complainant is trying to give a criminal colour for the civil dispute arisen out of the agreement of sale and more than nine years, nothing appears to have been moved after entering into an agreement also goes against the de facto complainant. The de facto complainant has also not preferred any suit for specific performance to enforce the civil right. On the contrary, it appears that he has filed the suit against A.4/Pachaiammal for injunction from entering into the suit property on 11.02.2007 that is after the sale in favour of A.4 and hence, the said suit will not support the case of the de facto complainant, since the same is admittedly filed after the sale deed executed in favour of the fourth accused.

9. As stated supra, A.1 is now dead and A.3 and A.4 are the members of the Scheduled Caste and the Sale Deed has been effected

in their favour after nine years i.e., after the alleged agreement in favour of the de facto complainant and the contents of the complaint and also the final report filed by the first respondent Deputy Superintendent of Police of Sethiathope Sub Division, Kumaratchi police station in Crime No.59 of 2010 appears to be purely civil in nature and therefore, this Court is of the considered view that the de facto complainant is giving a criminal colour to the civil dispute in respect of sale of the property and the final report filed by the first respondent police in the above said Crime No.59 of 2010 does not disclose commission of any criminal offence either under IPC or under the Special Act by A3 and A4.

10. As against the second accused/second petitioner in CrI.O.P.No.20260 of 2010, it is specifically alleged by the wife of the defacto-complainant was made to believe that the second petitioner herein as power of attorney holder of the first accused and he agreed to sell 4 acre 14 cents and received a sum of Rs.1,00,000/- in cash and also issued hand receipt and further on believing such representation made by the second accused/second petitioner and another further payment of Rs.30,000/- has been given by him in 3 installments

thereby, the second petitioner/second accused has received Rs.1,30,000/- in toto.

11. With regard to the said contention, this Court is of the considered view that whether the second accused is a holder power of attorney agent of A1 and alleged agreement of sale by the defacto-complainant and his wife with the said second petitioner and further payment if any made and refusal to execute that part of the agreement of contract by mis-representing himself as the power agent of first petitioner/A1(now deceased) are all matters for evidence that has to be gone into at the time of the trial and hence, this Court is of the considered view that as against A2 the preceding as to carry on while as against A1, the criminal proceedings stands abated as he died pending disposal of the Criminal Original Petition and as against the A3 and A4, the matter is of civil in nature cannot be gone into by the Criminal Court.

12. In this view of the matter, the CrI.O.P.No.19348 of 2010 filed by the accused A3 and A4 allowed and CrI.O.P.No.20260 of 2010 filed by the A1 stands abated in view of the death of the A1 and stands dismissed in respect of A2 as indicated above.

13. In the result, Crl.O.P.No.19348 of 2010 filed by the accused A3&A4 in S.C.No.238 of 2010 is allowed and proceedings in respect of A3 and A4 in the above sessions case is stand quashed and the Crl.O.P.No.20260 of 2010 filed by the A2 is dismissed and the trial Court, Principal District and Sessions Judge, Cuddalore is directed to proceed against the A2 alone in S.C.No.238 of 2010 in respect of I.P.C offences only and to that limited extent, the Criminal Original Petition is allowed-in-part and observing that the criminal proceedings against A1 shall stand abated. Consequently, the connected miscellaneous petitions are closed.

11.10.2017

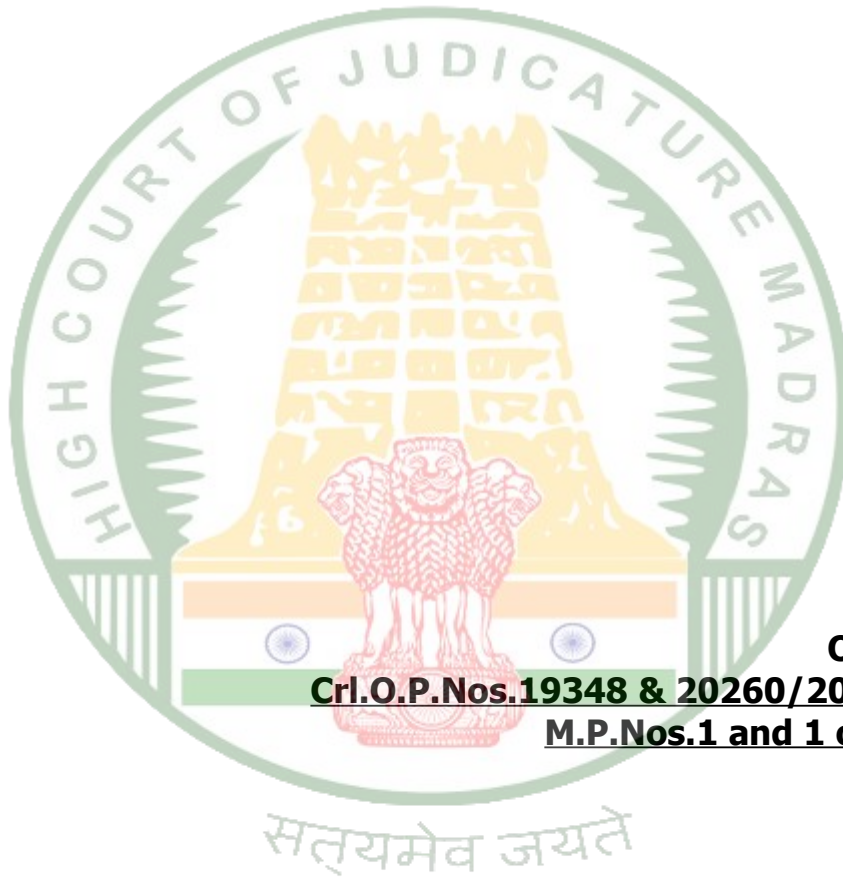
Index : Yes
Internet : Yes
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To

1. The Principal District and Sessions Judge,
Cuddalore.
2. The Deputy Superintendent of Police,
Sethiathope Sub Division,
Cuddalore District.
3. The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN, J.

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**Order in
Crl.O.P.Nos.19348 & 20260/2010 and
M.P.Nos.1 and 1 of 2010**

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