



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. (MD)No.2604 of 2017

and

Cr1.M.P. (MD)Nos.1994 and 1995 of 2017

Subbiah

: Petitioner

Vs.

1.The State rep. by Inspector of Police,
Thiruvegampathu Police Station,
Devakottai Taluk,
Sivagangai District.

2.Amutha

: Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the impugned final report of the 1st respondent in C.C.No.90/2016 on the file of Judicial Magistrate, Devakottai and quash the same.

For Petitioner : Mr.C.Kishore

For 1st Respondent : Mr.A.P.Balasubramani,
Government Advocate (Criminal side)

O R D E R

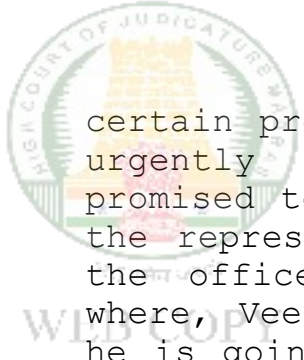
This petition has been filed seeking quash of the final report of the 1st respondent in C.C.No.90/2016 on the file of Judicial Magistrate, Devakottai.

2.On the complaint of Amutha, the first respondent police registered a case in Crime No. 90 of 2015 on 26.04.2015 and after completing the investigation have filed final report, which has been taken on file in C.C.No. 90 of 2016 before the Judicial Magistrate, Devakottai against the petitioner for offences under Sections 465, 468, 420, and 471 of Indian Penal Code, challenging which, the petitioner is before this court.

3.Heard Mr.C.Kishore, learned counsel appearing for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate appearing for the 1st respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

4.It is the case of Amutha that she is the owner of the

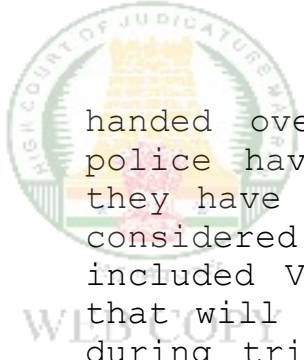


certain properties and that she and her husband wanted some money urgently and therefore, they approached one Veeramuthu who promised to make arrangements for the money as mortgage loan. On the representation of Veeramuthu, Amutha and her husband went to the office of the Sub Registrar, Kalayarkovil on 12.04.2011, where, Veeramuthu introduced Amutha to the petitioner saying that he is going to disburse the loan. Since Amutha is an illiterate lady, she believed that the said Veeramuthu and the petitioner have prepared a mortgage deed and signed the document that was shown by them at the Sub Registrar's office. The document was registered and Amutha was paid Rs. 8,00,000/- (Rupees Eight Lakhs only) and on agreement that she should pay the monthly interest for the said sum. According to Amutha, she was meticulously paying the interest directly in the account of Arun Pandian, son of Veeramuthu and she has totally paid a sum of Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) towards interest. While so, Amutha received an advocate's notice from the petitioner calling upon her to execute the sale deed in respect of the property. Thereafter, Amutha received the suit summons in O.S.No.50 of 2013 from the Sub Court, Devakottai on the suit for specific performance of contract filed by the petitioner against her. Only then, Amutha realised that she had not executed a mortgage deed on 12.04.2011 but, she was duped of into executing a sale agreement on the said date. Amutha filed a written statement in O.S.No.50 of 2013, wherein she contended the aforesaid facts. Thereafter, Amutha lodged the present complaint, which was registered as Crime No.90 of 2015 on 26.04.2015, which has resulted in the filing of the impugned charge sheet.

5.Learned counsel for the petitioner submitted that the FIR itself has been belatedly registered, in as much as even according to Amutha she had executed a document on 12.04.2011, whereas she has chosen to give the complaint only after suit was filed in O.S.No.50 of 2013. That apart, learned counsel for the petitioner contended that she has taken a stand that she was introduced to the petitioner by Veeramuthu, whereas the police had left out Veeramuthu in the final report and have filed final report only against the petitioner.

6.This Court gave its serious consideration to the submissions made by both sides.

7.It is true that Amutha has been consistently saying both before the Civil Court as well as in the FIR that she was taken to Registrar's Office by Veeramuthu and her son and only at the Registrar's office she was introduced to the petitioner. Therefore, there does not seem to be any serious inconsistency in the version of Amutha. However, police investigation shows that Amutha had indeed paid Rs.4,10,000/- (Rupees Four Lakhs and Ten thousand only) directly into the bank account of Arun Pandian, son of, Veeramuthu and thereafter the sum is said to have been



handed over to the petitioner. Under those circumstances, the police have not made Veeramuthu and his son as co-accused, but they have made them as witnesses to the prosecution case. In the considered opinion of the Court, just because the police had not included Veeramuthu and his son as accused in the charge sheet, that will not absolve the petitioner from criminal liability. If during trial, it is found that Veeramuthu and Arun Pandian were also take part in the conspiracy with the petitioner to cheat Amuthua, it is needless to state that they can also be included as accused by exercising the powers under Section 319 of Code of Criminal Procedure. As regards the delay in lodging of FIR, Amutha herself came to know that she was duped of into executing a sale agreement only after she received advocate's notice from the petitioner. In the case of this nature, mere delay in registration of F.I.R. cannot be a reason for quashing the prosecution. Thus, when there are prima-facie materials to substantiate the allegations made against the petitioner, this Court is of the opinion that it is not a fit case for quashing the prosecution.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. Whatever observation made herein shall not in any way prejudice the case of the petitioner either before the trial court or before the Civil Court in O.S.No.50 of 2013.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Devakottai.

2. The Inspector of Police
Thiruvegampattu Police Station
Devakottai Taluk
Sivagangai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.MURUGANANDAM, Advocate, SR No.13645

SJ/MR

PSM/BS/21.03.2017/3P/5C