IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1307 of 2016
& Crl.M.P.No.11790 of 2016

S.Punitha ... Petitioner

Vs.

S.Ganesan ... Respondent

PRAYER: This Criminal Revision Case filed under Section 397 read with 401 of the Code of Criminal Procedure against the order dated 06.05.2016 passed in Crl.M.P.No.3600/2015 in C.C.No.10353/2009 by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai-15.

For Petitioner : Mr.K.V.Sridharan
for Mr.S.M.Deenadayalan

For Respondent : Mr.K.R.Ramesh Kumar

ORDER

This criminal revision case has been filed by the petitioner against the order dated 06.05.2016 made in Crl.M.P.No.3600/2015 in C.C.No.10353/2009 by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai-15.

2. It is the case of the revision petitioner that she filed complaint against the respondents under Section 200 of Criminal Procedure Code read with Section 190(1)(a), for the offences committed under Sections 420 IPC read with 34 IPC and 120-B read with 420 IPC.

3. Subsequently in order to prove the allegations leveled against the respondents, the petitioner herein made out the prima facie case to proceed further in the complaint and the same was taken on file of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.10353/2009.

4. During the pendency of the trial in C.C.No.10353/2009, the respondent herein filed petition Crl.M.P.No.3600/2015, to

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discharge him from the C.C.No.10353/2009. The learned 23rd Metropolitan Magistrate, Saidapet, after hearing both sides, allowed the petition in Crl.M.P.No.3600/2015. Against the discharge of the respondent from the Crl.M.P.No.3600/2015, the petitioner herein has preferred the present criminal revision case.

5. It is the case of the revision petitioner that the suit property in Plot No.62, Shri Sai Nagar, 1st Main Road, Senjari Village, Egmore, Nungambakkam Taluk, Chennai, belongs to her and the respondent herein approached the petitioner to purchase the undivided share of the above mentioned property. It was agreed by both the parties, that the price of 549 Sq.ft of undivided share in the property mentioned above is Rs.4,94,100/-.

6. The respondent herein, not having any assests to purchase the said property, requested the petitioner to execute the sale deed in respect of undivided share of the land, so that he could get a loan from the bank and from that he could pay the sale consideration. For which the respondent informed that he is having immovable properties at Nagarkoil and also owns a flat in Navi Mumbai and he would sell the same and pay the sale consideration, or else his wife one Mrs.Selvi Ganesan, who is working as an officer in Central Excise Department, also given assurance that she will obtain loan from her department and pay the sale consideration.

7. In view of the representations by both the respondent and his wife, the petitioner decided to register the undivided share of the land in favour of the respondent without receiving the sale consideration. Though it is mentioned in the sale deed that entire consideration has been paid but in reality it is not so. The respondent informed the petitioner that he will pay the sale consideration within a month and till then she can receive the document from the Sub-Registrar's Office and keep it in her custody. After completion of registration on 14.06.2006, the petitioner herein received the document from the office of the Sub-Registrar. Afterwards, the respondent paid Rs.50,000/- on 21.06.2006, Rs.75,000/- on 02.07.2006 and on 27.07.2006, Rs.50,000/- to one Mr.P.Krishnaswamy, who in turn gave the amount to the petitioner. But, thereafter no payment for balance sale consideration was paid to the petitioner neither through Mr.P.Krishnaswamy, nor directly by the respondent, instead the petitioner received a letter dated 09.01.2007 from the respondent for returning the original sale deed.

8. Therefore the revision petitioner filed the complaint under Section 200 of Criminal Procedure Code read with Section 190(1)(a), for the offences committed under Sections 420 IPC read with 34 IPC and 120-B read with 420 IPC before the learned

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23rd Metropolitan Magistrate, Saidapet, Chennai, and the same was taken on the file of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.10353 of 2009. Against which, the respondent herein preferred the discharge petition in Crl.M.P. No.3600/2015 and the same was allowed.

9. Aggrieved against the order of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai, in Crl.M.P. No.3600/2015 dated 06.05.2016, the petitioner is before this Court with this present Criminal Revision Case.

10. The learned counsel for the petitioner would submit that admittedly sale deed was executed on 14.06.2006 and the recitals of the sale deed was clearly exhibited. It is crystal clear from the averments made in the complaint subsequent to the examination of the petitioner herein and other witnesses would constitute the offence of cheating. In this case, the respondent is having dishonest intention of cheating from the beginning itself. The factual details given in the complaint would clearly disclose the essential ingredients of the offence of cheating. He further submitted that the evidence adduced by the prosecution witnesses in the above case would be sufficient to make out a case, that the respondent has committed the offence.

11. The learned counsel for the respondent would submit that by taking advantage of holding the original sale deed, the petitioner herein has now developed a story as if without settling the full sale consideration, she has executed the sale deed in favour of the respondent, hence she is having lien over the property. In further there was a contrary to the petitioner's allegation in the complaint as well as in the chief examination, the documents marked by the petitioner speaks otherwise. If the petitioner has not received the entire sale consideration , then what made her to execute a sale deed in favour of the respondent. Even prior to the institution of the criminal complaint, the respondent approached the Civil Court and filed a suit against the petitioner and the same is pending, suppressing the civil case, the petitioner has filed a criminal complaint with intention to cheat the respondent and to grab the property. He further contended that if the allegations are going to be taken into consideration almost all the registered documents would be challenged before the Criminal Court. Therefore, the order passed by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.3600/2015 in C.C.No.10353/2009 dated 06.05.2016 may be confirmed.

12. Heard both sides and perused the materials available on record.

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13. It is not in dispute that the registration of sale deed took place on 14.06.2006 and marked as Ex.P.1, which shows that the sale consideration was already paid. Against which no oral evidence can be accepted, therefore, the trial Court has rightly appreciated the defence taken by the respondent. The main issue involved in this case is whether the petitioner has agreed for or was made to agree for the registration of the document without payment of sale consideration by the respondent and on the strength of false representation. This can be decided only on considering the entire evidence let in by the petitioner and defence and not at this stage. Therefore, while considering the application under Section 245 Cr.P.C the Court has to see the averment in complaint and not the defence. On a perusal of the complaint filed by the complainant before the learned 23rd Metropolitan Magistrate, Saidapet, Chennai, prima facie allegation leveled against the respondent. At this stage, the defence cannot be looked into and also probative value of the material need not be gone into. Therefore, this Court is inclined to set aside the order passed by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.3600/2015 in C.C.No.10353/2009 dated 06.05.2016.

14. Accordingly, the order passed by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.3600/2015 in C.C.No.10353/2009 dated 06.05.2016 is set aside. The Criminal Revision Case is allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

The 23rd Metropolitan Magistrate,
Saidapet, Chennai-15.

+2 cc to M/s.K.V.Sridharan, Advocate Sr.No.61566
+1 cc to M/s.K.K.Ramesh Kumar, Advocate Sr.No.61572

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