

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.18412 of 2010

and

M.P.No.1 of 2010

1.N.Boraiah

2.N.A.Rajendran

.. Petitioners

Vs

P.R.Krishnasamy

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings pending in C.C.No.333 of 2010 on the file of the learned Judicial Magistrate, Mettupalayam and quash the same.

For Petitioners : Mr.M.Vijayakumaran

For Respondent : Mr.Sreerangan

ORDER

The petitioners herein who are accused Nos.1 and 2 in C.C.No.333 of 2010 on the file of the learned Judicial Magistrate, Mettupalayam approached this Court by way of this Criminal Original Petition seeking to quash the above Calendar Case.

2.The case of the complainant/ respondent herein is that the 1st petitioner is the owner of the property and the 2nd respondent is his power agent. The land owned by the 1st petitioner was developed into several house site plots by forming layout in the name of Sri Sathya Sai Nagar in Kaaramadai Village at Annoor Road. The complaint of the respondent herein is that the 2nd petitioner herein approached him for the purchase of land. According to the respondent herein, the petitioners herein made him to purchase the plot which was ear marked for building Community Hall in the layout plan by making false propaganda that it is a house site plot. On that premise the

respondent herein and his brother had purchased two house plots on 30.10.1995 vide registered sale deed in Document Nos.4017 and 4018 of 1995. But subsequently they came to know that the plots purchased by them were actually allotted for construction of a community hall. When the respondent questioned about the cheating committed by the petitioners, they stated that conversion can be obtained from the Director of Town & Country Planning Office after submitting revised plan and they will get the same from the said office. The petitioner's application submitted to the office of the Director of Town and Country Planning on 04.09.2008 for conversion of the plots purchased by the respondent herein was rejected stating that the place allotted for the construction of community Hall cannot be converted into house site. The petitioners also failed to provide an alternative site. Hence according to the respondent herein, the petitioners herein have committed an offence punishable under section 420, 463, 464 and 465 of IPC.

3. Therefore the respondent herein filed the above private complaint against the petitioners herein and the same was taken cognizance in C.C.No.333 of 2010. Challenging the same, the present quash petition is filed by the petitioners herein.

4. It is the contention of the Learned Counsel for the petitioners that admittedly the respondent herein purchased the plot which was allotted for construction of a community hall. The respondent herein after verifying with the layout plan and after knowing fully well that the plots purchased by him and his brother were earmarked in the layout plan as house site. Further, earlier as per the proceedings of the Director of Town and Country Planning dated 30.05.1991 the plots allotted for public purposes like Kalyana Mandapam, School, Shops and etc., may be permitted to seek conversion into residential plots. But the said conversion order was cancelled and the conversion of places allotted for public purposes into the house sites by the proceedings of the Director of Town and Country Planning dated 12.06.1998. The respondent herein having purchased plots meant for construction of community Hall in the year 1995, now cannot blame the petitioners herein and if at all he wants to have conversion, he could have submitted application to the competent authority for conversion of his plots into residential plots before 1998. But he kept quiet for several years and after nearly about 12 years lapse the respondent has blamed the petitioners herein as if they have cheated him by selling the community hall plot as house plots.

5. It is the submission of the Learned Counsel for the petitioners that a private complaint filed by the respondent

herein is liable to be dismissed on the ground of delay alone. Further, prima facie no offence is made out as against the petitioners herein. If at all the respondent herein is affected by the order of the Director of Town and Country Planning, his duty is to challenge the same before the appropriate forum, but he filed the vexatious private complaint against the petitioners which is not at all maintainable either in law or on facts.

6.I heard Mr.M.Vijayakumaran, learned counsel appearing for the petitioners and Mr.Sreerangan, learned counsel appearing for the respondent and perused the entire materials available on record.

7.It is seen from the records that the respondent herein and his brother purchased plots vide two registered sale deeds dated 30.10.1995. The perusal of said sale deeds especially in the schedule of property wherein it is stated that they have purchased 7849 Sq.feet and 7879 Sq.feet of vacant site as mentioned in the layout. It is pertinent to note here that in the said sale deeds no plot number is mentioned. From the perusal of schedule of property this Court is unable to see whether the respondent herein has purchased residential plots or community hall. Apart from that it is to be noticed that if at all the house site plot is purchased it will be around 5 to 6 cents or maximum 10 cents, but the respondent purchased more than 18 cents of vacant land. Therefore it could be presumed that the properties purchased by the respondent herein are allotted for the construction of community Hall as pointed out by the Learned Counsel for the petitioners. Further the respondent herein failed to produce the copy of layout plan for the perusal of this Court to come to a conclusion that whether the respondent has purchased vacant site allotted for community hall or house plots. In the absence of non production of layout plan creates a serious doubt in the mind of this Court about the case of the respondent.

8.Now coming to the other facet of the argument of the Learned Counsel for petitioners herein in respect of question of delay is concerned I am in favour of the petitioners herein. As rightly contented by the Learned Counsel for the petitioners the alleged offence of cheating said to have committed by the petitioners herein is of the year 1995, but the respondent has filed the present private complaint only in the year 2009 and therefore the complaint is not maintainable and the same is liable to be dismissed on the ground of delay in lodging the complaint. There is no prima facie case of cheating and forgery is made out against the petitioners herein.

9.Viewing from any angle no offence is made out as against the petitioners herein considering the facts and circumstances of the case. In view of the same, I am inclined to allow this Criminal Original Petition.

10.In the result, this Criminal Original Petition is allowed and the proceedings initiated against the petitioners herein in C.C.No.333 of 2010 on the file of the learned Judicial Magistrate, Mettupalayam stands quashed. Consequently, connected miscellaneous petition is closed.

-s/d-

Deputy Registrar

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Sub-Assistant Registrar

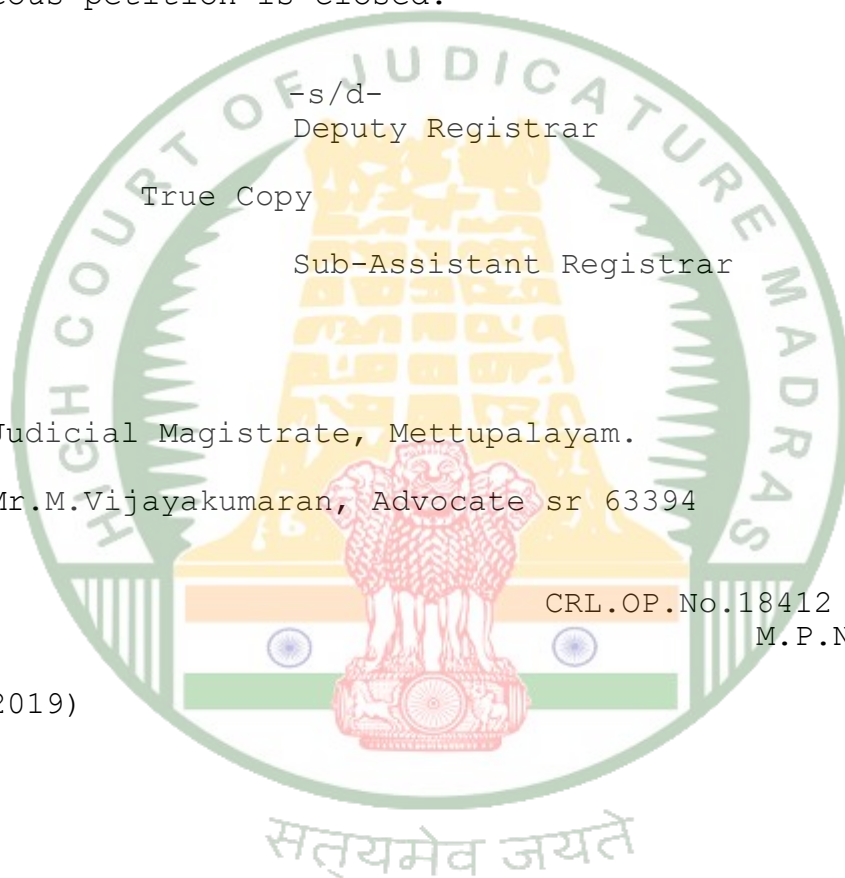
vs
To

The Judicial Magistrate, Mettupalayam.

+1 CC to Mr.M.Vijayakumaran, Advocate sr 63394

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M.P.No.1 of 2010

SP(22/01/2019)



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