



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2018

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CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.3832 of 2014

and

M.P (MD) .Nos. 1 & 2 of 2014

1.K.Kothai Ammal
2.K.Murugan
3.Ulagammal
4.S.Muneeswari
5.K.Nambirajan

...Petitioners/
Accused Nos.1,3,4, 6 & 7

Vs .

1.State represented by
The Inspector of Police
S.S.Colony Police Station
Madurai

...1st Respondent/Complainant

2.P.Krishansamy

...2nd Respondent/
Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records and quash the charge sheet filed against the petitioners in C.C.No.147 of 2013 on the file of the Judicial Magistrate No.V, Madurai in respect of Crime No.357 of 2013 on the file of the respondent police.

For Petitioners: Mr.H.Arumugam

For R1 : Mr.V.Neelakandan

Additional Public Prosecutor

For R2 : No appearance

O R D E R

This quash petition has been filed to call for the records pertaining to C.C.No.147 of 2013 on the file of the Judicial Magistrate No.V, Madurai and quash the same as against the petitioners herein.



2.The case of the prosecution is that the defacto complainant came to know through the second accused in this case that the accused persons/Petitioners offered to sell the property, which originally belonged to the father of the second accused. The second accused told that their family is in urgent need of money so as to vacate the stay granted by the civil Court in respect of the same and also promised to sell the same for a sum of Rs.18,35,000/-. Accordingly, the second accused received a sum of Rs.5,05,000/- as advance from the defacto complainant and he has also promised to get signature of all the legal heirs of his father.

3.Subsequently, the other legal heirs disputed among themselves and in order to settle the dispute, the second accused once again demanded Rs.5,00,000/- from the defacto complainant and the same was also paid to him on 19.11.2011. Thereafter, the first and second accused promised to execute the sale deed along with others. Thereafter, the petitioners herein received another sum of Rs.5,60,000/-. Subsequently, they failed to execute the sale deed. When the defacto complainant insisted for execution of sale deed, the accused persons threatened him with dire consequences. Hence, the complaint.

4.On the basis of the complaint, the first respondent police registered a case in Crime No.357 of 2013 for the offences punishable under Sections 406, 420, 294(b) and 506(i) I.P.C. Subsequently, the respondent police after completing investigation, filed the final report and the same has been taken cognizance in C.C.No.147 of 2013 on the file of the learned Judicial Magistrate No.V, Madurai.

5.Aggrieved over the same, the petitioners filed this present criminal original petition.

6.The learned counsel appearing for the petitioners would submit that without conducting proper enquiry, the first respondent filed the final report. The petitioners 2 and 3 herein are not signatory to the said sale agreement and they have not made any promise to execute the sale deed and the entire transaction is civil in nature and the said transaction was made only between the defacto complainant and the second accused only.

7.He further submitted that if the sale agreement is true, the remedy available to the defacto complainant is only to approach the civil Court either for specific performance of contract or for refund of amount and the defacto complainant has not chosen to initiate any proceedings under civil law as the entire transaction seems to be a loan transaction, which cannot be successful, but in order to threat the petitioners and grab the



property set down the criminal law in motion, which is a clear case of abuse of process of law. Hence, he prays to quash the charge filed as against the petitioners herein.

8. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

9. On perusal of records shows that the second and fifth accused died during the investigation of the first information report, but the first respondent filed the charge sheet against the dead persons also. It is also seen that subsequent to the notice issued by the defacto complainant, the petitioners have also issued reply notice. But suppressing the said notice, the second respondent has registered the case.

10. It is further seen that the factum of death of Accused Nos. 2 and 5 was clearly mentioned in the order passed in CrI.O.P (MD).No.7819 of 2013, dated 02.08.2013, which was filed for seeking anticipatory bail. It clearly shows that the illegal support of the second respondent, the first respondent police had registered the case against the petitioners herein.

11. Therefore, considering the facts and circumstances of the case, this criminal original petition is allowed and the charge sheet filed as against the petitioners in C.C.No.147 of 2013 on the file of the Judicial Magistrate No.V, Madurai is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Judicial Magistrate No.V
Madurai

2. The Inspector of Police
S.S.Colony Police Station
Madurai



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

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+ 1 CC TO MR.H.ARUMUGAM, ADVOCATE IN SR NO.85574

MSA

BU/PM/SAR-III :01.11.2018 : 4P/5C

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