

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Cr1.O.P No.23714 of 2015
and M.P.No.1 of 2015

1.Vijayalakshmi
2.S.Mohan

... Petitioners/Accused

vs.

1.State rep by: The Sub Inspector of Police,
District Crime Branch Police Station,
Villupuram. ... Respondent/Complainant

2.Durai

...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to charge sheet pending in C.C.No.142 of 2015, on the file of the learned Judicial Magistrate, Tirukoilur and to quash the same.

For Petitioner:M/s.A.Malath Devapriyam

For Respondent:Mr.M.Mohamed Riyaz

Additional Public Prosecutor for R1
Mr.H.Rajesh For R2

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.142 of 2015, pending on the file of the Judicial Magistrate, Thirukoilur.

2. The respondent police registered an FIR in Crime No.19 of 2015, based on the compliant given by the second respondent, for an offence under Sections 294(b), 409, 417, 420, 506(i) of IPC. Thereafter, an investigation was conducted and the final report was filed before the Court below and the same was taken cognizance by the Court below in C.C.No.142 of 2015.

3. The case of the prosecution is that the second respondent had borrowed a sum of Rs.1,00,000/- from the first petitioner and had executed a document in that regard. This document was used to file a suit in O.S.No.15 of 2005, before the Principal Sub Court, Villupuram, claiming for the relief of specific performance and based on the decree passed in the said suit, a sale deed was also executed in favour of the first petitioner. This decree is said to have been obtained by committing fraud against the defacto complainant and in spite of the defacto complainant being ready to settle the entire loan amount with interest, the accused persons failed to re-convey the property and therefore a final report came to be filed for an offence under Section 420 of IPC.

4. The learned counsel for the petitioner submitted that the petitioners have become absolute owners of the property by virtue of the sale deed executed by the Court, pursuant to the decree passed in O.S.No.15 of 2005. The learned counsel submitted that this decree has become final and there has been no challenge either to the decree passed by the Civil Court or to the subsequent sale deed that was executed in favour of the first petitioner. The learned counsel further submitted that even if the case of the prosecution is taken as it is, no offence has been made out under Section 420 of IPC and the entire proceedings is an abuse of process of law.

5. The learned counsel appearing on behalf of the second respondent submitted that the second respondent has been defrauded by the petitioners and they have obtained an ex-parte decree behind the back of the second respondent and therefore this decree is not binding on the second respondent. The learned counsel further submitted that a document which was executed at the time of taking loan has been misused by the petitioners and even though, the second respondent was ready and willing to repay the entire loan amount with interest, the petitioners refused to receive the same and subsequently, a sale deed came to be executed in favour of the first petitioner. This, according to the learned counsel for the second respondent, amounts to cheating.

6. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the respondent police have collected sufficient materials and there is a prima facie case made out under Section 420 of IPC, and there is no ground to interfere with the proceedings at this stage.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This is a classic case, where a dispute which is purely civil in nature, has been given a Criminal Colour and a final report has been filed by the respondent police. The petitioners have approached the competent civil Court and file a suit for specific performance and the suit was decreed by judgment and decree dated 13.12.2006. In this suit, the second respondent's father was the defendant. After the suit was decreed, the first petitioner had filed an execution petition in E.P.No.153 of 2008. Pursuant to the filing of the execution petition, the Court has executed a sale deed in favour of the first petitioner on 11.11.2010. The decree passed by the civil Court and the sale deed executed in favour of the first petitioner has become final. Thereafter, in the year 2014, the defacto complainant, who is the son of the defendant in the suit, has filed a complaint before the respondent police and a final report has been filed in this case.

9. The proceedings against the petitioners is a clear abuse of process of Court and even if the final report is taken as it is, no offence of cheating is made out against the petitioners.

10. In the result, the proceedings in C.C.No.142 of 2015, on the file of the learned Judicial Magistrate, Tirukoilur, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

ub

To

1. The Judicial Magistrate,
Tirukoilur.
2. The Sub Inspector of Police,
District Crime Branch Police Station,
Villupuram.

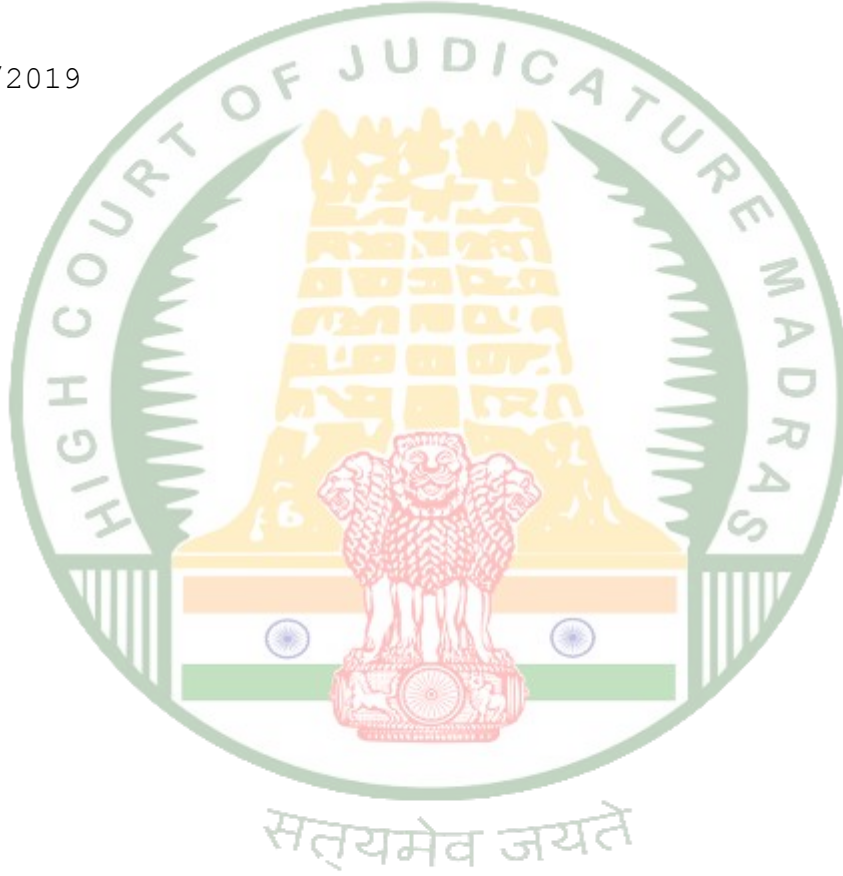
WEB COPY

3.The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to M/s.A.Malath Devapriyam, Advocate Sr.66878
+1cc to Mr.H.Ramesh, Advocate Sr.67472

Cr1.O.P No.23714 of 2015

nrjk[co]
srg 16/09/2019



WEB COPY