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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.2882 of 2015
and
M.P.No1 of 2015

1.S.Govindasamy
2.S.Sornambal
3.P.Selvaraj ...Petitioners

-Vs-

1.The Inspector of Police,
District Crime Branch,
Tiruppur,
Tiruppur District.
(Crime No.1/2014)

2.N.Murugavel ...Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the F.I.R. in Crime No.30 of 2014 from the file of the 1st Respondent / the Inspector of Police, District Crime Branch, Tiruppur, Tiruppur District and quash the same.

For Petitioners : Mr.V.Lakshminarayanan
for M/s.M.Easan

For Respondents : Mr.C.Raghavan(for R1)
Government Advocate

Mr.R.Ganeshkumar (for R2)

O R D E R

This petition has been filed seeking to quash the F.I.R. in Crime No.30 of 2014, pending on the file of the 1st respondent.

2.The case of the prosecution is that the defacto complainant is the owner of the property. He wanted to sell the property and therefore he approached the 3rd petitioner who was a Panchayat President and wanted him to sell the property. The 3rd petitioner had promised the defacto complainant that he will sell the property for Rs.1.50 crores. The property was sold in favour of one

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Viswanathan. The 3rd petitioner paid only a sum of Rs.75 lakhs to the defacto complainant and promised to pay the balance amount of Rs.83 lakhs within a period of one month. Later the 3rd petitioner informed the defacto complainant that for the balance amount, he will transfer yet another property in favour of the defacto complainant and the defacto complainant has also accepted for the same. Accordingly a sale deed was executed in favour of the defacto complainant on 21.04.2011. This sale deed was executed by one M.Balasubramanian in favour of the defacto complainant and it was the 3rd petitioner who had brought the parties together for completing the transactions. Later when the defacto complainant went to Registrar office to get the documents, he was informed that the 3rd petitioner had already taken the documents. The defacto complainant enquired the 3rd petitioner and he informed him that the documents had been lost and he had already given a complaint before the police on the ground that the original documents are not able to be traced. Further the 3rd petitioner promised to pay the balance amount of Rs.83 lakhs to the defacto complainant within a month. Thereafter he was evading the payment. When the defacto complainant enquired he came to know that the 3rd petitioner had cheated both the defacto complainant as well as the above said Balasubramanian. Thereafter in order to come to a final settlement, the 3rd petitioner informed both the defacto complainant as well as the above said Balasubramanian that their respective amounts will be repaid back by selling the property in favour of the 1st and 2nd petitioners.

3.It is the further case of the prosecution that on 26.06.2013, the defacto complainant and Balasubramanian were taken to the Sub-Registrar Office at Thottipalayam and the defacto complainant were asked to sign in the sale deed. Since the agreed sale consideration of Rs.1 crore was not paid to the defacto complainant, the defacto complainant refused to sign the sale deed. At that point of time, it is alleged that the 1st petitioner had informed the defacto complainant that he is owning a company, and within a month he will pay the money. The defacto complainant believed the words of the 1st petitioner and he had signed two sale deeds, one in favour of the 1st petitioner and the other in favour of the 2nd petitioner, who is the wife of the 1st petitioner. Both these sale deeds were registered before the Sub-Registrar, Thottipalayam as document Nos.1674 and 1675 of 2013.

4.Inspite of the promise made by the 1st petitioner, the amount was not paid for more than nine months and the

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defacto complainant came to know that all the accused persons have joined together and have cheated him by taking away the property and thereby the property belonging to the defacto complainant has been grabbed by the accused persons and the defacto complainant was also not paid the amount of Rs.1.36 crores which according to him is due and payable to him.

5.The learned counsel for the petitioner submitted that the sale consideration for the property sold in favour of the 1st and 2nd petitioners is reflected in the very sale deed itself. The learned counsel submitted that the defacto complainant in the guise of criminal complaint is virtually seeking to recover the balance amount of money, which according to him is payable by the accused persons. Therefore, the learned counsel submitted that the case is purely civil in nature and the defacto complainant even without challenging the sale deeds executed in favour of the 1st and 2nd petitioners, has parallelly initiated criminal proceedings only with an intention to armtwist the petitioners and extract more money from the petitioners. The learned counsel further submitted that the defacto complainant wanted to take advantage of the increase in the real estate value of the immovable property, at a later point of time and therefore by means of giving a criminal complaint, wanted to extract money from the accused persons. The learned counsel concluded his arguments submitting that the entire criminal proceedings is an abuse of process of law and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6.The learned counsel for the defacto complainant/2nd respondent submitted that the allegations made in the complaint, make out a cognizable offence and the respondent police must be permitted to investigate the case and find out the true facts. The learned counsel submitted that eventhough the sale consideration is reflected in the sale deed executed in favour of the 1st and 2nd petitioners, there are certain un-registered documents in possession of the accused persons, which will reveal the factum of cheating that has been committed by the accused persons against the defacto complainant. The learned counsel submitted that the scope of interference with an F.I.R. is very limited and this Court should not conduct a mini investigation and must leave it to the police to find out the actual truth. Therefore the learned counsel submitted that the present petition is liable to be dismissed.

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7.The learned Government Advocate appearing on behalf of the respondent police submitted that the respondent police were not able to go head with the investigation since the petitioners had approached this Court and this Court had also stayed the investigation. The learned counsel further submitted that the respondent police must be permitted to investigate the case in order to collect the materials and see if any offence has been committed by the accused persons.

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

9.The sum and substance of the entire allegations that has been made by the defacto complainant is that for the property which according to him is worth more than Rs.1.58 crores, only a sum of Rs.75 lakhs was paid to him by the 3rd petitioner and the balance amount of Rs.83 lakhs was not paid to him. In order to make this payment, the 3rd petitioner made the defacto complainant enter into other sale transactions and subsequently the defacto complainant was made to execute two more sale deeds in favour of the 1st and 2nd petitioners for a total sale consideration of Rs.19 lakhs.

10.It is important to note that the entire case is borne out by documents. The documents also reveal the total consideration that has passed on between the parties. All these documents have remained intact till date without any challenge. Therefore as on date the 1st and 2nd petitioners have become absolute owners of the property. Even if the defacto complainant wants to question the title of the 1st and 2nd petitioners and proceed against the accused persons for recovery of money, it will be hopelessly barred by limitation.

11.That apart except for the ipse dixit of the defacto complainant, there is absolutely no other material to show that the defacto complainant has been cheated by the accused persons by not paying him the agreed sale consideration. The sale consideration has been specifically mentioned in the sale deeds executed in favour of the 1st and 2nd petitioners and the sale deed does not talk about any balance consideration payable by the 1st and 2nd petitioners to the defacto complainant. What the defacto complainant wants the police to investigate is something which is beyond the sale deeds

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executed by him in favour of the 1st and 2nd petitioners and he wants the police to investigate and find out if the 1st and 2nd petitioners are liable to pay any amount more than what is stipulated in the sale deeds. This exercise cannot be conducted by the respondent police, since materials in variance to the contents of the documents is impermissible and it will go against the very fundamental principle enunciated under Sections 91 and 92 of Indian Evidence Act.

12.It is now a well settled law that where a complainant who cannot approach the civil Court seeking for a remedy due to the inordinate delay and due to the fact that it is barred by limitation, cannot be permitted to initiate criminal proceedings in order to achieve the very same purpose. In other words what cannot be achieved in civil proceedings cannot be permitted to be indirectly achieved through criminal proceedings. Any such attempt will result in abuse of process of law and the present case squarely false under this criteria.

13.In the considered view of this Court, the criminal proceedings initiated by the defacto complainant is an abuse of process of law and the nature of dispute that has been projected between the parties is purely civil in nature. The allegations even if it is taken as it is do not constitute an offence of forgery and cheating. Therefore, this Court has to necessarily interfere with the F.I.R. registered by the respondent police in exercise of its jurisdiction under Section 482 of Cr.P.C.

14.In the result, the F.I.R. in Crime No.30 of 2014 on the file of the 1st respondent, is hereby quashed and this Criminal Original Petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

vs

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To

1.The Inspector of Police,
District Crime Branch,
Tiruppur,
Tiruppur District.

2.The Public Prosecutor,
Madras High Court.

+2ccs to Mr.M.Easan , Advocate SR.No. 60037
+1cc to Mr.R.Ganeshkumar , Advocate SR.No. 60605

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and
M.P.No1 of 2015

A.SK(14/08/2019)

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