

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP.No.26682 of 2014
and MP Nos.1,1 & MP.No.2 of 2015

1. Vatsala Jagannathan
2. Rathinam Petitioners/Accused Nos.1&2

vs.

1. The State Rep. by
The Inspector of Police,
Vadavalli Police Station,
Vadavalli (Post),
Coimbatore. ... 1st respondent / Complainant

2. Mrs. Renuga J.Bhojani ... 2nd respondent / Defacto
Complainant

PRAYER:Criminal Original Petition filed under Section 482 of Cr.PC to
call for the records relating to FIR in Crime No.237 of 2014, on the file of
the 1st respondent police and quash the same.

For Petitioner : Mr.M.Venkadesh
For Respondents : Mr.M.Mohammed Riyaz,
Additional Public Prosecutor for R1
Mr.M.Santhanaraman for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.237 of 2014, pending investigation before the 1st respondent police.

2. The allegation made in the complaint is that the 2nd respondent entered into an agreement of sale with the 1st petitioner and the 1st petitioner agreed to sell the property and received an advance amount of Rs.60,00,000/-. The 1st petitioner did not receive the balance amount and did not execute the Sale Deed in favour of the 2nd respondent. This agreement was entered into on 24.10.2008. Subsequently, the 1st petitioner is alleged to have entered into another agreement of sale on 21.07.2011 and the Power of Attorney was also executed in favour of the 2nd petitioner. The 2nd petitioner had also acted as a attesting witness in the agreement of Sale dated 21.07.2011. When the 2nd respondent questioned the 1st petitioner regarding the subsequent developments, the 1st petitioner is said to have told the 2nd respondent that she will not execute any Sale Deed and she will also not repay back the advance amount. Based on this complaint, an FIR came to

be registered under Section 120(b) and 420 IPC.

3. The learned counsel for the petitioners submitted that even if the allegations made in the complaint are taken as it is, no offence of cheating has been made out. The learned counsel further submitted that a dispute which is purely civil in nature is attempted to be given a criminal colour and therefore, the registration of the FIR itself is an abuse of process of law.

4. The learned counsel appearing on behalf of the defacto complainant submitted that the 1st petitioner has received a sum of Rs.60,00,000/- as advance and this amount was also not repaid back to the defacto complainant. The learned counsel further submitted that the 1st petitioner had an intention to cheat the defacto complainant right from the inception and the 2nd petitioner has conspired along with the 1st petitioner and deprived the 2nd respondent both the property as well as the advance amount paid by her. The learned counsel concluded his arguments by submitting that the respondent police must be directed to proceed further with the investigation and file a final report.

5. The learned Additional Public Prosecutor submitted

that the allegations made in the complaint makes out a *prima facie* case of cheating and some time can be fixed by this Court for the purpose of completion of the investigation.

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

7. A reading of the complaint shows that the 2nd respondent wants to proceed against the 1st petitioner to recover the advance amount paid by her, at the time of entering into an agreement of sale on 24.10.2008. The 2nd respondent has not taken any efforts to pay the balance amount and prosecute the case before the Competent Civil Court, seeking for the relief of specific performance. The amount was admittedly paid in the year 2008 and the complaint has been given in the year 2014 and even if the 2nd respondent wanted to recover the advance money, it is highly doubtful as to whether the 2nd respondent could have maintained a suit in the year 2014, since it would have been barred by law of limitation.

8. The crux of the allegation that has been made by the

<http://www.judis.nic.in> 2nd respondent will only amount to a breach of contract on the part of

the 1st petitioner. The Hon'ble Supreme Court in **[International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics Private Limited and another]** 2016 1 SCC 348 has brought out the difference between cheating and breach of contract and the Hon'ble Supreme Court has categorically held that a breach of contract cannot attract the provision of Section 420 of IPC.

9. As per the case of the Defacto complainant, the 1st petitioner agreed to execute a sale deed after receiving the balance sale consideration. Therefore, even according to the 2nd respondent, there was no culpable intention at the very inception. At the best, it can be said that it was developed at a later stage. In the judgement of **[T.Chandrasekar Vs. The State, rep by the Inspector of Police, Central Crime Branch, Land Grabbing Cell]** reported in 2011 3 MLJ Criminal 644, it has been categorically held that a culpable intention at the very inception cannot be presumed on the failure to keep up the promise subsequently. This judgement will apply squarely to the facts of the present case.

10. The 2nd respondent has made a clear attempt to give

the Civil dispute a criminal colour and an attempt has been made to recover the money by way of filing a criminal complaint against the petitioners.

11. In the considered view of this Court, the FIR itself is an abuse of process of law and it does not make out an offence under Section 420, 120(b) of IPC. In the result, the FIR in Crime No.237 of 2014, on the file of 1st respondent is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is also closed.

27.08.2019

Index : Yes/No
Internet: Yes /No

To

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The Inspector of Police,
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Vadavalli (Post),
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH.,J



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