

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.18427 of 2014  
and M.P.No.1 of 2014

M.R.Durairaj

... Petitioner

Vs.

1.Sri Venkateshwara and Charitable Trust  
Rep. by his Managing Trustee, Commander (Retd) K.Velu,  
45, A.M.Layout, Puliyakulam,  
Coimbatore-641 045.

2.Commander(Retd) K.Velu ...Respondents

PRAYER: Criminal Original Petition filed under Section 482  
Cr.P.C. praying to call for the records and quash the  
proceedings in C.C.No.79 of 2014, on the file of the Judicial  
Magistrate-VII, Coimbatore.

For Petitioner : Mr.A.E.Ravichandran

For RR1 : No Appearance

For RR2 : Mr.T.Arul

ORDER

This petition has been filed to quash the proceedings in  
C.C.No.79 of 2014 on the file of the learned Judicial  
Magistrate-VII, Coimbatore.

2. Mr.A.E.Ravichandran, the learned counsel for the  
petitioner submitted that the entire complaint shows that the  
complainants who claim to have an agreement of sale from the  
petitioner, instead of enforcing the same before a civil court  
of competent jurisdiction, have resorted to file criminal  
complaint. The learned Magistrate without considering the same  
have taken cognizance for the offence under Sections 409 r/w 420  
I.P.C. He further submitted that when the respondent initially

filed the complaint and recorded his sworn statement, the court below came to a conclusion that part of the agreement has not been fulfilled with respect to 2.43 acres and that the said aspect was completely suppressed the fact of availing the loan and after receiving the entire sale consideration has not executed sale deed. These acts would not constitute any criminal offence and are not at all attracted any offence. The entire allegations are civil in nature. In fact, the respondents have already filed a suit in O.S.No.256 of 2012 on the file of III Additional Sub Court, Coimbatore against the petitioner claiming for specific performance on the strength of the agreement dated 09.04.2008. On the very same set of allegations now the present complaint has been filed and as such it cannot be sustained as against the petitioner. He further submitted that already the petitioner lodged complaint as against the respondents and the same was registered in Crime No.87 of 2012 and it is pending before the Inspector of Police, K.G. Chavadi Police Station, Coimbatore. Further he submitted that in fact the respondents filed criminal revision case in CrI.R.C.No.71 of 2013 before this Court and this Court remanded the matter back to the court below to deal with the case in accordance with law. Without complying the directions issued by this Court, the learned Magistrate without ordering any notice directly have taken cognizance of the impugned complaint. Therefore he prayed for quashment of the entire proceedings in C.C.No.79 of 2014, on the file of the Judicial Magistrate-VII, Coimbatore.

3. Per contra, Mr.T.Arul, the learned counsel for the second respondent submitted that the petitioner is the sole accused. The said complaint was taken cognizance for the offences under Section 409 r/w 420 I.P.C. He would further contend that the petitioner offered to sell his property admeasuring 7.46 acres comprised in SF No.343 and SF No.344 Ettimadai Village, Coimbatore for a total sale consideration of Rs.22,38,000/-. The respondents believing the words of the petitioner paid a sum of Rs.2,41,000/- by way of cheque towards part of the sale consideration. The petitioner executed sale deed for part of the land and he further agreed to execute sale deed in respect of balance extent of 6.46 acres within a period of three months. Thereafter, the respondents paid balance sale consideration. After repeated request, the petitioner executed another sale deed for the part of the land admeasuring 4.03 acres and assured that the balance extent of 2.43 acres would be executed within 15 days. Thereafter the respondents came to understand that the petitioner already mortgaged the entire extent of property with the Indian Overseas Bank and availed loan of Rs.1,12,50,000/- by submitting exorbitant valuation than the prevailing market rates thereby the petitioner cheated the defacto complainants

respondents and committed the offence. In fact, initially the private complaint was dismissed by the learned Magistrate and as such the respondents preferred revision before this Court in CrI.R.C.No.71 of 2013. This Court observed that prima facie case made out for the offences under Sections 409 r/w 420 I.P.C. as against the petitioner and directed the learned Magistrate to proceed in accordance with law. Accordingly, the learned Magistrate have taken cognizance and issued summons to the petitioner. Therefore, he prayed for dismissal of this quash petition.

4. Heard, Mr.A.E.Ravichandran, the learned counsel for the petitioner and Mr.T.Arul, the learned counsel for the second respondent.

5. The petitioner is the sole accused. The respondents filed complaint before the Judicial Magistrate-VII, Coimbatore and the same has been taken cognizance for the offences under Sections 409 r/w 420 I.P.C. as against the petitioner herein. The crux of the complaint is that the petitioner offered to sell his property admeasuring 7.46 acres for the total consideration of Rs.22,38,000/-. On payment of part of sale consideration initially one sale deed was executed and thereafter after receipt of the entire sale consideration in respect of another part of land sale deed was executed in favour of the respondents. But the petitioner failed to execute sale deed for part of land admeasuring 2.43 acres in favour of the respondents. Thereafter the respondents came to understand that the entire property was mortgaged with the Indian Overseas Bank and the petitioner availed loan to the tune of Rs.1,12,50,000/-. Initially the petitioner assured that there is no encumbrance over the property and sold out the property to the respondents without disclosing the mortgage. Therefore, prima facie allegations have been made out as against the petitioner and several materials are available to attract the offences under Sections 409 r/w 420 I.P.C. In fact, initially the learned trial court rejected the complaint and as against which the respondents preferred revision in CrI.R.C.No.71 of 2013 and this Court set aside the order passed by the learned Magistrate and directed the trial Court to proceed the matter in the manner known to law. Accordingly, the learned Magistrate after recording the sworn statement and evidences have taken cognizance of the offences under Sections 409 r/w 420 I.P.C. as against the petitioner. Therefore, this Court finds no merits in this quash petition.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate-VII,  
Coimbatore.
- 2.-Do- Thro' The Chief Judicial Magistrate,  
Coimbatore.

+1cc to Mr.A.E.Ravichandran, Advocate Sr.27908

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