

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.7645 of 2017

and

Crl.M.P.No.5527 of 2017

A.Kuppuraj

...Petitioner/Petitioner/Complainant

-Vs-

1.Tmt.M.Srividya

2.A.Muthusamy

... Respondents/Respondents/Accused 1 & 2

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 10.08.2016 passed in Crl.R.P.No.3 of 2016, by the learned III Additional District and Sessions Judge, Coimbatore in Crl.M.P.No.38 of 2015, Judicial Magistrate No.I, Pollachi.

For Petitioner : Mr.V.Sridharan

For Respondents : Mr.R.Gandhi, Sr.Counsel
for Mr.S.Vadivelmurugan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below in Cr.R.P.No.3 of 2016, dated 10.08.2016, confirming the order passed by the learned Judicial Magistrate-I, Pollachi, dismissing the Complaint filed by the petitioner under Section 203 of Cr.P.C.

2.The petitioner filed a private complaint against the respondents on the ground that the petitioner is the owner of a property measuring an extent of 1.45 acres and he executed a Power of Attorney in favour of A-1, which specifically provided that out of the 14 Sites, 13 should be sold by way of housing Sites and one should be sold by way of a Shop Site. The grievance is that the shop Site was also sold as a housing Site

by A-1 to A-2, who is her husband. The further allegation made in the Complaint is that A-1 had not properly submitted the accounts for the sale proceeds.

3.The Trial Court after going through the entire Complaint and after examining the petitioner, found that the Complaint does not make out an offence under Section 409 and 418 IPC. The Trial Court also gave a finding that the entire dispute is civil in nature and there are absolutely no materials against the accused persons to constitute an offence.

4.This order became a subject matter of challenge before the III Additional District and Sessions Judge, Coimbatore in CRP.No.3 of 2016. The Revision Court after elaborately discussing the case came to a categorical conclusion that no offence has been made out and that the entire transaction is civil in nature and the petitioner has already filed another complaint against A-1 based on the very same Power of Attorney on the ground that she has not submitted the accounts and has misappropriated the amount, and therefore the Revision Court did not find any reasons to interfere with the order passed by the Trial Court.

5.Aggrieved by the same, this Criminal Original Petition has been filed before this Court under Section 482 of Cr.P.C.

6.The learned counsel for the petitioner submitted that a reading of the Complaint clearly reveals an offence under Section 409 and 418 IPC. The learned counsel submitted that the Court below ought not to have dismissed the Complaint under Section 203 of Cr.P.C., and the Court below should have issued process to the accused persons and should have conducted a full fledged trial before coming to any conclusion regarding the commission of offence. The learned counsel therefore submitted that before the Courts below exceeded their jurisdiction and went wrong in dismissing the complaint under Section 203 of Cr.P.C.

7.Mr.R.Gandhi, learned Senior Counsel appearing on behalf of the respondents submitted that the petition filed by the petitioner is not maintainable before this Court since this Court in exercise of its jurisdiction under Section 482 of Cr.P.C., cannot treat the petition like a second revision which is barred under Section 397 (3) of Cr.P.C. The learned counsel further submitted that this Court has a very limited scope while interfering with the orders passed by the Court below and unless and otherwise this Court finds that there is an apparent illegality or perversity in the orders passed by the Court below, this Court cannot normally exercise its jurisdiction

under Section 482 of Cr.P.C., and interfere with the orders passed by the Court below.

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

9.It is clearly apparent on the face of the record that the petitioner has already filed a Criminal Complaint against A-1 in C.C.No.330 of 2013, before the learned Judicial Magistrate No.II, Pollachi. This Complaint was filed on the ground that A-1 has not properly submitted the accounts and has misappropriated the money and this Complaint was also filed for an offence of criminal breach of trust and cheating. If the petitioner was under the impression that A-1 had also cheated and committed criminal breach of trust against the petitioner by selling a Plot which was meant for shop as a residential Plot, this cause of action must also form part of the earlier complaint since the transaction is the same and the parties involved are the same. The respondents cannot file independent criminal complaints for each cause of action when more particularly the grievance of the respondent is with regard to the very same transaction and even in that case it was A-1 against whom the complaint was filed. The present complaint filed by the petitioner is more in the nature of a second complaint and therefore it is clearly barred.

10.Even otherwise this Court does not find any illegality or infirmity in the orders passed by the Court below.

11.The Courts below have given their findings based on the materials available before the Court and found that no offence has been made out and the entire case is civil in nature. This Court does not find any ground to interfere with the orders passed by the Court below.

In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District
and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.I,
Pollachi.

+1cc to Mr.S.Vadivel Murugan, Advocate Sr.59419

+1cc to K.V.Sridharan, Advocate Sr.59983

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