

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.1208 of 2019

S.Muthiah

... Petitioner

Vs.

State rep by

The Inspector of Police (Crime),
Thiruvottiyur Police Station,
Thiruvottiyur, Chennai -600 019.

.... Respondent

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C., seeking to call for the entire records pertaining to the C.M.P.No.2958/2019 and set aside the order dated 31.07.2019, by the Judicial Magistrate,(FAC), Thiruvottiyur.

For Petitioner : No appearance

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

- 1.This Criminal Revision Petition has been filed,seeking to call for the entire records pertaining to the C.M.P.No.2958/2019 and set aside the order dated 31.07.2019, by the Judicial Magistrate, (FAC), Thiruvottiyur.
- 2.The brief facts of the case is that the petitioner along with his friend one G.Uthandraman entered in to the sale agreement dated 19.06.2017, for the period of eleven months with one R.V.Mani for the property land measuring to an extent of 85 cents comprised in Survey No.618 (part) situated at Thiruvottiyur Village, towards the sale consideration of Rs.1,50,00,000/- out of which Rs.22,50,000/- was paid towards advance sale consideration. The owner of the property R.V.Mani who is the absolute owner of the property was very well acquainted and since the property was not duly levelled the petitioner and his friend have spent about Rs.12,40,000/- to reclaim and level the land. But the said R.V.Mani has not come

forward to execute the sale deed in favour of the petitioner and his friend even after repeated demands. The petitioner and his friend approached the said R.V.Mani and requested him to repay the entire sale consideration and the amount spent for levelling the said land which comes around Rs.34,90,000/- for which the said R.V.Mani and Regan threatened the petitioner and also abused them in filthy language. At the time, the said R.V.Mani along with his son had threatened the petitioner and apprehending life threat from R.V.Mani and his son, the petitioner had lodged a complaint before the Inspector of Police, (Crime), Thiruvottiyur Police Station and since no action was taken by the respondent police, the petitioner had preferred the petition invoking Section 156(iii) of Cr.P.C., before the learned Judicial Magistrate (FAC), Thiruvottiyur. The learned Magistrate, by order dated 31.07.2019, had dismissed the petition on the following ground.

"Orders pronounced. Perused the records. The transaction between the petitioner, Mani and Regan is purely comes under the purview of civil dispute. The Respondent Mani and Regan failed to execute the sale deed in favour of the Petitioner. The Petitioner could obtain his remedy by means of filing the suit under the transfer of property Act. The petitioner herein failed to made out the prima facie case. In view of above this Court comes to the conclusion of dismissing the petition. In the result, this CMP is dismissed."

- 3.As against the same, the present criminal revision petition has been filed.
- 4.It had been contended in the revision petition that though offence of cheating and intimidation has been made out, the learned Magistrate, had on erroneous consideration has dismissed the petition.
- 5.The learned Additional Public Prosecutor on perusal of records would submit that earlier based on the complaint given by the petitioner, enquiry was conducted in C.S.R.No.434/2019 and finding that the dispute between the parties are civil in nature, the respondents have not proceed any further action.
- 6.This Court perused the materials placed on record.
- 7.The learned Magistrate, after perusing the record and coming to the conclusion, that the transaction between the petitioner and the opposite parties viz., Mani and Regan is purely civil in nature and the case comes only within the purview of civil dispute has held that the petitioner in order to circumvent due

process of law had filed the petition under Section 156(iii) of Cr.P.C., before the learned Judicial Magistrate (FAC), Thiruvottiyur. The learned Magistrate has also held that the petitioner could obtain his remedy by filing a suit under the Transfer of Property Act and further holding that the petitioner had failed to make out the prima facie case, had dismissed the petition.

8.I have gone through the records and I am of the opinion, the petition has been filed under Section 156(iii) of Cr.P.C., to circumvent the due process of law to avoid filing a civil suit.

9.I do not find any error or infirmity in the order passed by the learned Judicial magistrate.

10.In view of the above, the Criminal Revision Petition is dismissed granting liberty to the petitioner to proceed in accordance with law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Judicial Magistrate,(FAC), Thiruvottiyur.
2. The Inspector of Police (Crime), Thiruvottiyur Police Station, Thiruvottiyur, Chennai -600 019.
3. The Public Prosecutor, High Court, Chennai.

सत्यमेव जयते

Cr1.RC.No.1208 of 2019

mr(co)

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