



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 19.09.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 386 OF 2019

AND

CRL. M.P. (MD) NO. 5685 OF 2019

1. Sowkath Ali

2. Hasan Banu

.. Petitioners

- Vs -

1. Inspector of Police

District Crime Branch Police

Dindigul.

2. Selvaraj

.. Respondents

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 20.03.2019, passed by the learned Judicial Magistrate No.II, Dindigul, in Cr.M.P. No.9182 of 2017 in C.C. No.460 of 2017.

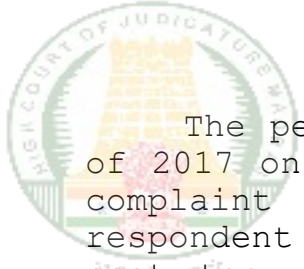
For Petitioner : Mr. Krishna

For Respondents : Ms. M.Anantha Devi, GA (Crl. Side) for R-1
Mr. S.Ravi, for
Mr.J.Anandkumar for R-2

ORDER

The present criminal revision case has been filed against the order dated 20.03.2019, passed by the learned Judicial Magistrate No.II, Dindigul, in Cr.M.P. No.9182 of 2017 in C.C. No.460 of 2017 dismissing the discharge petition filed u/s 239 Cr.P.C.

2. The brief facts of the case, as could be culled out from the materials are as under :-

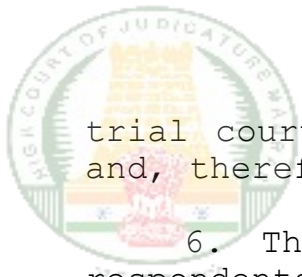


The petitioners herein are accused Nos. 4 and 7 in C.C. No.460 of 2017 on the file of the Judicial Magistrate No.11, Dindigul. A complaint was made against the petitioners and others by the 2nd respondent herein, who was a tenant under A-1 - Mohammed Ali for the past ten years. The said Mohammed Ali, had offered to sell the property and other adjacent site, situate in survey No.20/4 of an extent of 6814 square feet at Pallapatti Village, Dindigul Taluk to the said Selvaraj. The complainant, Selvaraj, who had offered a sum of Rs.18,39,780/- as sale consideration. The sale agreement was reduced into writing and a sum of Rs.10 Lakhs was paid. A survey was undertaken at the instance of the complainant and it was found that the suit land, situate in survey No.20/4 belonged to one Chinnasamy, a medical practitioner and also further came to know that the property was not in the name of the 1st accused, viz., Mohammed Ali.

3. The case of the petitioners herein is that on 23.7.1973, A-1 and his brother, who is one of the petitioner herein, jointly purchased the properties in survey No.19/1 to the extent of 24.75 cents and property in survey No.20 to an extent of 90.75 cents at Pallapatti Village, Dindigul Taluk from one Mohammed Ali, vide a separate registered sale deed and that in the year 1982, a family partition was effected among the members of the family. Several transactions had taken place after the partition of the properties. The complainant had entered into an agreement of sale with A-1 for purchase of the property and had made some advance payments. However, curiously, claiming that the properties do not belong to the petitioners and that they do not have title over the same, a complaint was lodged for the offence u/s 406, 465, 466, 468, 474, 420 & 120(B) IPC. On the basis of the said complaint, summons were issued to all the accused and since there was no case to proceed against the accused, particularly, A-4 and A-7, who are the petitioners herein, discharge petition was filed.

4. The learned Magistrate, who dealt with the discharge petition, has given detailed reasons as to how there was a prima facie case in existence for proceeding against the accused and ultimately held that the discharge petition is without merits. Aggrieved by the said dismissal, the present revision has been preferred by the petitioners.

5. Learned counsel appearing for the petitioners submit that the complaint on the basis of the which the case has been initiated is based on surmises and conjectures and that there are no prima facie materials to link the accused with the commission of the offence. It is further submitted that the petitioners are in no way directly connected with the case and it is instituted with a malicious intention and ulterior motive to wreak vengeance. The



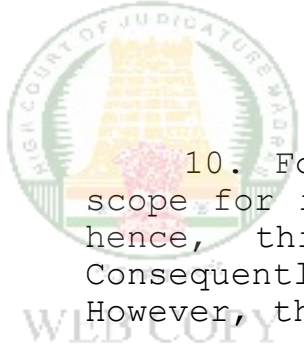
trial court has not considered the materials in proper perspective and, therefore, the order deserves to be set aside.

6. This Court heard the learned counsel appearing for the respondents on the above contentions and also perused the materials available on record.

7. A perusal of the order passed by the court below reveals that the court has referred to a decision of this Court in the case reported in **2014 (1) MLJ (Cr1.) 201**, wherein certain guidelines have been given in paras 22 and 23, which were considered and extracted in the order itself by the Magistrate. The Court below has categorically held that it is guided by the guidelines issued by the superior court that the court should not make a roving enquiry at the stage of framing of charges and the courts ought to discern a strong suspicion over the existence of facts constituting the offence as against the accused and that at that stage, evidentiary value need not be gone into at all by the court. Therefore, in line with the guidelines issued by the this Court, the court below has held that there exists some material, which gives rise to a likelihood of involvement of the accused in the fraudulent transaction and, hence, proceeded to dismiss the discharge petition as not maintainable.

8. Further, it is to be pointed out that the 1st accused had filed CrI. O.P. No.15049/2010 to quash the FIR registered against him and this Court, vide a detailed order dated 19.09.2018 has dismissed the said petition. It is seen from the said order this Court, keeping in mind the age old adage not to kill a still born child and appropriate prosecution should not be stifled unless there are compelling circumstances to do so, dismissed the petition.

9. On a careful analysis of the entire factual matrix as also the order passed by the court below, this Court finds that the order passed by the court below is a well considered order founded on material reasons and evidence and the same does not suffer from any infirmity at all. Once the conclusion reached by the Magistrate is on the basis of facts on the materials presented, unless such finding of fact is perverse and wholly unacceptable, the same does not call for any interference from this Court. In this case, it appears that the Magistrate has given cogent, sound and convincing reasons and also relied on the principles laid down by this Court for coming to the conclusion, which is perfectly in order and does not call for any interference. Further, the order of this Court not to quash the FIR, would equally stand applicable to the case of the petitioners herein, as they were also accused in the said FIR. So, it would not be right for them to now contend that there is no prima facie case against them, unless it is tested on the touchstone of the legal principles laid down in criminal jurisprudence.



10. For the reasons aforesaid, this Court finds no ground or scope for interfering with the order passed by the Court below and, hence, this petition, being devoid of merits, is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

GLN

To
The Judicial Magistrate No.II
Dindigul.

2. The Inspector of Police,
District Crime Branch Police,
Dindigul.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.K.KRISHNA, Advocate Sr. No.88447

+1CC TO MR.I.ANANDKUMAR, Advocate Sr. No.87762

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KMK(CO)

TR(10.10.2019) 4P 6C