

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.20933 of 2012
and
Crl.M.P.Nos.1 & 2 of 2012

1.S.Muruganantham
2.K.M.Ramesh
3.M.Murali
4.M.Ponnusamy
5.P.Boopathi

... Petitioners/Accused

Vs.

M.Chandran

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings as against the petitioners in C.C.No.50 of 2012 on the file of the Judicial Magistrate, Omalur.

For Petitioners: M/s.C.Arunkumar

For Respondent : Mr.R.John Sathyan

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.50 of 2012 pending on the file of the Judicial Magistrate, Omalur.

2.The 1st petitioner is the owner of the property in S.F.No.81/1 and 81/2B7 totally 38 $\frac{1}{4}$ cents of land in Nachinampatty Village and he approached the respondent to sell the aforesaid property. The 1st petitioner along with his sons/2nd and 3rd petitioners executed a general Power of Attorney in favour of the respondent as per document No.337 of 2008 and later the very same property was sold out in favour of the 4th and 5th petitioners as per document No.2258 of 2011, dated 04.03.2011 and thereby, the petitioners were committed the offences under Sections 120-B, 406, 408, 420, 468, 471 and 477A of IPC. In fact the respondent had approached the 1st petitioner for selling the above said land for Rs.10,00,000/- to the 4th

petitioner and also arranging for release of original document withheld in the RDO Office. On the contrary to the 4th petitioner, the respondent arranged the said land for Rs.15,00,000/-. In the course of the transaction on 05.03.2008 at the Sub-Registrar Office, Omalur while the 1st petitioner executed a deed power of attorney in favour of the respondent, the respondent was appointed as his power agent for specific purpose of executing the sale deed in favour of the 4th petitioner. On the contrary the respondent in violation of the power given to him, had intentionally executed two sale agreements in favour of Rameshkannan and Ramakrishnan on 03.06.2008. Thus, the 1st petitioner has given a complaint to the Inspector of Police, District Crime Branch, Salem and the same was registered in Crime No.13 of 2008 for the offence under Sections 420, 409 and 409 r/w 109 IPC. As a counter blast, the respondent has filed the private complaint before the learned Judicial Magistrate, Omalur in C.C.No.50 of 2012, against which the present petition has been filed.

3.The learned counsel for the petitioners would submit that the respondent is not an owner of the property in S.F.No.81/1 and 81/2B7 totally 38 $\frac{1}{4}$ cents of land in Nachinampatty Village, which he claims to have entrusted. He would further submit that the respondent was appointed as a power agent of the 1st petitioner for specific purpose of executing the sale deed in favour of the 4th petitioner. On the contrary, he violated the power given to him and had intentionally executed two sale agreements in favour of third parties on 03.06.2008 and tried to grab the property by acting contrary to the specific power of attorney, for which the respondent is facing criminal prosecution in Crime No.13 of 2008 for the offence under Sections 420, 409 and 409 r/w 109 IPC. In order to counter blast the above proceedings and to protract the prosecution complaint, he preferred this private complaint and the same is liable to be quashed.

4.Per contra, the learned counsel appearing for the respondent contended that there is no merit in the contention of the petitioner that the respondent has filed the private complaint or that there is no allegation making out the criminal offence of cheating. It is his further contention that the facts in the present case may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the respondent that by itself cannot be a ground to quash the criminal proceedings. In support of his submission he relied on the decision of this Court in Vijayander Kumar and others Vs. State of Rajasthan and another [(2014) 3 SCC 389].

5.This Court considered the rival submissions and perused the materials available on records.

6.The settled proposition of law is that every breach of contract would not give rise to an offence of cheating. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the respondent is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

7.It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In view of this Court, the complaint lodged by the respondent does not disclose any criminal offence at all. Hence, this Court is inclined to interfere with the proceedings by using the power under Section 482 of Cr.P.C. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.50 of 2012 pending on the file of the Judicial Magistrate Court, Omalur stands quashed. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Judicial Magistrate,
Omalur.

+2 cc to Mr.C.Arunkumar Advocate sr6614/2020

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