

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.3704 of 2020 & 32494 of 2019 and

Crl.MP.Nos.2141 of 2020 & 17907 of 2019

Crl.OP.No.3704 of 2020

P.Meena ... Petitioner/3rd Accused

Vs

1.The Inspector of Police, ... 1st Respondent/Complainant
S-15, Police Station,
Selaiyur,
Chennai-59
Crime No.913 of 2019

2.R.Devi ... 2nd Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482
Cr.P.C., praying to call for the records relating to Crime
No.913 of 2019 on the file of the first respondent and quash
the same.

For Petitioner : No appearance

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : No Appearance

Crl.OP.No.32494 of 2019

Abdul Kader ... Petitioner/Accused-1

Vs

1.State Rep by its ... Respondents/Complainants
The Inspector of Police,
Selaiyur Police Station,
Tambaram

2.Devi

Criminal Original Petition filed under Section 482
Cr.P.C., praying to call for the records relating in Crime

No.913 of 2019 on the file of the first respondent police and quash the petitioner's portion in respect of the same.

For Petitioner : Mr.G.Mohammed Aseef

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : No Appearance

COMMON ORDER

These petitions have been filed to quash the FIR in Cr.No.913 of 2019 on the file of the first respondent having been taken cognizance for the offences under Sections 448, 420 and 506(i) of IPC.

2. The case of the petitioner in CrI.OP.No.32494 of 2019 is that the petitioner is arrayed as first accused, and the petitioner in CrI.OP.No.3704 of 2020 is arrayed as third accused. Insofar as the first accused is concerned, on seeing the entire allegations, do not constitute any offence under Sections 448, 420 and 506(i) of IPC as against the first accused. He further submitted that even assuming that all the allegations are proved, no offence is made out as against the petitioner and the allegations made as against the petitioner are civil in nature. He further submitted that for the very same occurrence, the defacto complainant lodged complaint and the same was registered in Cr.No.888 of 2019 for the offences under Sections 294(b), 448 and 506(i) of IPC. According to the complainant, she purchased house at No.17A, Nethaji Street, Ananthapuram, East Tambaram for a sale consideration of Rs.35 lakhs from one Ramalingam, who is arrayed as A2. The sale deed was registered as document No.5426 of 2019 registered with the Office of the Sub Registrar, Selaiyur. The second respondent settled only a sum of Rs.10 lakhs and the remaining sale consideration, she committed default to the vendor. Therefore, there is a dispute between the defacto complainant and her vendor, namely the second accused with regards to handing over the possession. As far as the first accused is concerned, he acted only as a mediator, even according to the defacto complainant. When the first complaint is very much registered and it is pending for investigation in Cr.No.888 of 2019, for the very same occurrence, simply added the petitioner as accused and lodged another complaint. Therefore, the entire FIR is nothing but clear abuse of process of law and it is liable to be quashed. In support of his contention, he also relied upon the judgment in the case of **T.T.Antony Vs. State of Kerala** reported in **(2006) 6 SCC 181**.

3. The learned counsel for the petitioner / third accused in CrI.OP.No.3704 of 2020 would submit that the entire allegations are civil in nature and no offence is made out as

against the petitioner. He further submitted that the present complaint has been filed only with the intention to extract more money from the petitioner with malafide intention. In fact, the second accused lodged complaint as against the defacto complainant and others with the file of the first respondent. Since the first respondent did not take any action on the complaint lodged by the second accused, he also filed private complaint in CrI.MP.No.5759 of 2019 on the file of the Judicial Magistrate, Tambaram for direction under Section 156 (3) Cr.P.C. Whereas instead of registering the case on the complaint lodged by the second accused, the first respondent registered the case as against the petitioner and others on the complaint lodged by the second respondent dated 16.11.2019. The crux of the allegations are that insofar as the petitioner is concerned, she is a lessee under the lease agreement dated 12.09.2018 and paid a sum of Rs.10 lakhs to the second accused. The said lease agreement is very much in existence. The defacto complainant is trying to vacate the petitioner without paying back the advance amount which was paid by the petitioner herein. Therefore, the petitioner is no way connected with the occurrence took place as alleged by the defacto complainant and sought for quashment of the FIR.

4. Per contra, the learned Additional Public Prosecutor submitted that insofar as the petitioner in CrI.OP.No.3704 of 2020 is concerned, he is a habitual offender for similar offences for similar cases. She along with the other accused persons, after selling the property, she voluntarily took possession and threatened the purchaser for ransom. Therefore, she committed very serious offence and also the first respondent has to investigate further. Hence, he sought for dismissal of the quash petitions.

5. On the complaint lodged by the second respondent for the occurrence took place on 06.11.2019, the first respondent already registered FIR in Cr.No.888 of 2019 for the offence punishable under Sections 294(b), 448 and 506(i) of IPC. According to the second respondent, she approached one, Andavar and one, Samsudeen for purchasing the property. They had shown a house flat comprised in Survey No.145B/2 situated at Ananthapuram Nehruji Street, Selaiyur Village, Chennai through one Mediator, namely Ibrahim. Originally, the said property was belong to one Ramalingam, the second accused in the present FIR. The second respondent agreed to purchase the said flat for a total sale consideration Rs.35 lakhs. After payment of entire sale consideration, the second accused executed sale deed on 06.05.2019 and registered the same as document No.5426 of 2019. After purchasing of the said house flat, the second respondent visited the property for selling purpose. To her shock and surprise, the house was occupied by the third accused and others. When it was questioned by the defacto complainant, she was abused by the accused persons and also threatened her with dire consequences.

6. Again, the second respondent lodged complaint on 16.11.2019 for the very same set of allegations and rightly changed that she purchased the said house through mediator one, Abdul Kadar, who is the first accused and the petitioner in CrI.OP.No.32494 of 2019 whereas in the first complaint, she purchased the said flat through one, Ibrahim. Therefore, admittedly for the very same occurrence, there are two complaints lodged by the second respondent. Both the complaints were registered in Cr.No.888 of 2019 and 913 of 2019. In the present impugned FIR, included the offence under Section 420 of IPC and there are totally four named accused. However, in the earlier complaint, there is no allegation about the cheating by the vendor of the defacto complainant when the property was occupied by the third accused, namely the petitioner in CrI.OP.No.3704 of 2020. Insofar as the first accused is concerned in the earlier complaint lodged by the second respondent, she categorically stated that she purchased the house flat only through one, Ibrahim whereas in the present impugned FIR, she purchased the house flat only through Abdul Kadar, namely the first accused herein. Further except the allegation that she purchased the said flat through the first accused, no other allegation as against him.

7. Considering the above facts and circumstances of the case, the FIR in Cr.No.913 of 2019 cannot be sustained as against the petitioner in CrI.OP.No.32494 of 2019 / first accused. Accordingly, the criminal original petition in CrI.OP.No.32494 of 2019 is allowed, and the FIR in Cr.No.913 of 2019 on the file of the first respondent is quashed as against the petitioner in CrI.OP.No.32494 of 2019. And the first respondent is directed to complete the investigation in Cr.No.913 of 2019 and file final report as against the other accused persons before the jurisdictional Magistrate, if not already filed, within a period of twelve weeks from the date of receipt of copy of this order.

8. Insofar as CrI.OP.No.3704 of 2020 is concerned, the petitioner is arrayed as third accused and there are specific allegations as against the petitioner. Since after sold out the house flat in favour of the defacto complainant, the second accused had put up possession of the petitioner / third accused herein. Further the learned Additional Public Prosecutor submitted that the third accused is a habitual offender and he committed similar nature offences wherein she was arrested and remanded to judicial custody. In fact anticipatory bail petition was also dismissed by this Court. Therefore, there is a specific allegation to attract the offence as against the third accused and as such this Court is not inclined to quash the FIR insofar as the third accused is concerned. Accordingly, the criminal original petition in CrI.OP.No.3704 of 2020 is dismissed. Further, the first respondent is directed to complete the investigation in Cr.No.913 of 2019 and file final report, before the jurisdictional Magistrate, if not already filed, within a

period of twelve weeks from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

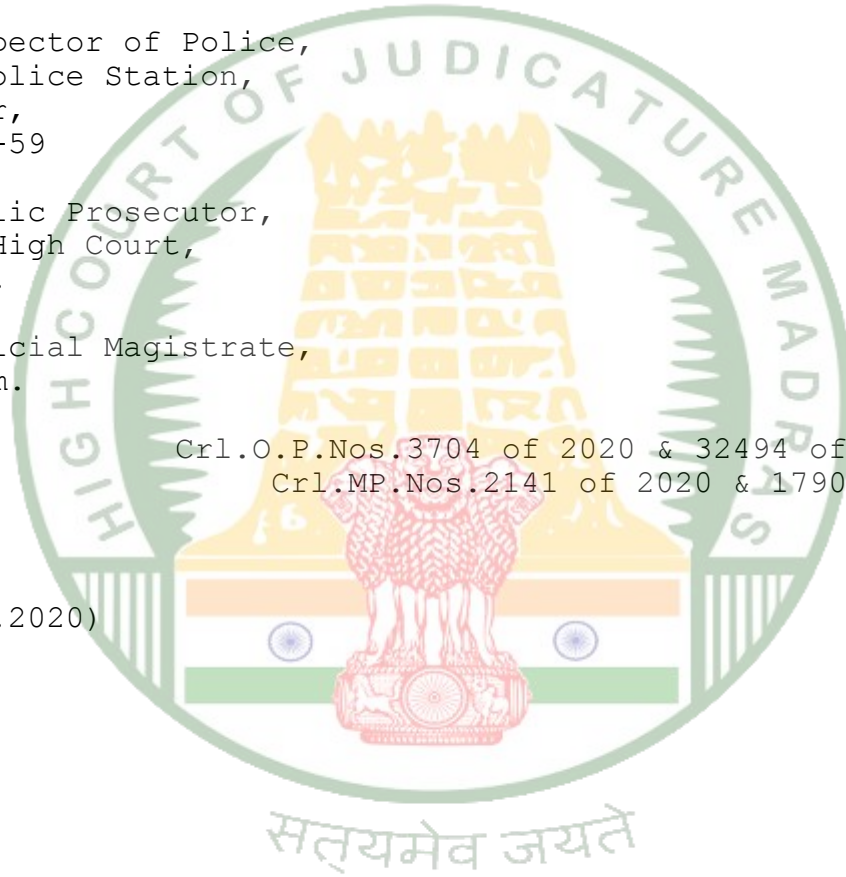
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To

- 1.The Inspector of Police,
S-15, Police Station,
Selaiyur,
Chennai-59
- 2.The Public Prosecutor,
Madras High Court,
Chennai.
- 3.The Judicial Magistrate,
Tambaram.

Crl.O.P.Nos.3704 of 2020 & 32494 of 2019 and
Crl.MP.Nos.2141 of 2020 & 17907 of 2019

CA (CO)
UM (16.12.2020)



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