



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.08.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P.[MD]No.8208 of 2020

and

Crl.M.P.(MD)No.3889 of 2020

WEB COPY

1.Jaheer Hussain

2.Sabik Ahamed

... Petitioners/Accused 1&2

Vs.

1.The State rep.by

The Inspector of Police,
Theppakulam Police Station,
Madurai City.

(Crime No.157 of 2020)

...1st Respondent/Complainant

2.Yoga Latha Mangesh

...2nd Respondents/Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in crime No.157 of 2020 on the file of the first respondent police and quash the same as illegal so far as the petitioner is concerned.

For Petitioners	: Mr.S.Balasubramanian
For R-1	: Mr.S.APG Ohm Chairma Prabhu
	Government Advocate(crl.side)

ORDER

This Criminal Original Petition has been filed seeking the relief to call for the records relating to the First Information Report in crime No.157 of 2020 on the file of the first respondent police and quash the same as illegal so far as the petitioners are concerned.

2.The learned counsel for the petitioners would submit that the very reading of the First Information Report does not disclose any offence muchless than the offence punishable under Sections 420, 406 and 506(i) of I.P.C. The second respondent/de facto complainant has given a criminal color to the civil transaction and as such the First Information Report is an abuse of process of law, which results in miscarriage of justice. He would further submit that the de facto complainant being a well educated teacher of a school, had executed sale deed believing it as a mortgage deed, which cannot be accepted. In fact, the petitioner has not made any false representation to the de facto complainant and believing that false representation, she has entrusted the property with the petitioner



and the same was converted for her personal use so as to attract an offence of cheating under Section 420 of IPC and the offence of Breach of Trust under Section 406 of IPC and as such the FIR is unsustainable in law. According to him, the case of **State of Haryana and others Vs Bhajan Lal and others**, reported in **1992 Supp (1) Supreme Court Cases** is squarely applicable to the facts of the case.

3.The learned Additional Public Prosecutor appearing for the first respondent would submit that the allegation set out in the First Information Report clearly disclosed the cognizable offence and therefore, it is not on the fault of the respondent police to register the First Information Report as against the petitioners.

4.Upon considering the arguments advanced by either side, before entering into the merits and demerits of the petition filed by the petitioners, it is necessary to see the copy of the First Information Report dated 19.03.2020 which is required to be quashed by the petitioners. The averments set out in the First Information Report had disclosed the fact that at the time of occurrence, the petitioners herein made a false representation as they are arranging loan for purchasing the house and by using de facto complainant's cellphone sent a message to the third party in English, which did not known to the petitioners. Further, it was alleged that on 10.02.2020 by mentioning as a mortgage deed, a sale deed has been registered after getting signature from the second respondent for the purpose of availing loan, for which, the second petitioner herein received Rs.2,00,000 alone. Only at the time when the alleged mortgage deed was read over by the defacto complainant, she knows that the said deed is not a mortgage deed. Then only the defacto complainant came to know that the petitioners have not acted upon the promise made towards her. So the said averments clearly disclosed that the petitioners are having the dishonest intention to deceive the de facto complainant and obtained the sale deed by fraud. The said circumstance is a *prima facie* evidence for the cognizable offence.

5.At this juncture it is relevant to see the judgment of our Hon'ble Apex Court in the case of **SAU. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others in Crl. Appeal No.255 of 2019**, wherein our Hon'ble Apex Court has held as follows :

"Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same."

So applying the said principle set out by the Hon'ble Apex Court, to the case in hand, the allegation levelled by the de facto



complainant, is not a frivolous, vexatious, or oppressive one. The said allegation needs detailed investigation. Further, the contents of the First Information Report disclosed that there was a clear cut evidence pointing out the transfer of immovable property by fraud. Therefore, quashing the First Information Report in this stage is not warranted.

6.In the light of the above discussions, this Criminal Original Petition is dismissed. Consequently the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police,
Theppakulam Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P.[MD]No.8208 of 2020
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KB(10.09.2020) 3P 3C