



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.03.2020

Delivered on : 13.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

Crl.O.P. (MD)No.21123 of 2014

and

M.P. (MD)No.1 of 2014

1.Tamilarasan, S/o.Namasivayam

2.Mahalakshmi, W/o.Tamilarasan

.. Petitioners/Accused 1&2

Vs.

1.State rep. by

The Inspector of Police,
Vadipatti Police Station,
Madurai District.

[Crime No.441 of 2013]

...1st Respondent/Complainant

2.T.Kannan

.. 2nd Respondent/Defacto Complainant

Prayer:- Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash Crime No.441 of 2013 on the file of the first respondent, the Inspector of Police, Vadipatti Police Station, Madurai.

For Petitioners : Mr.J.Lawrance

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Criminal side)

For R2 : Mr.V.Nagendran

ORDER

Based on the complaint given by one T.Kannan, the second respondent herein, the first respondent police has registered a criminal case against the petitioners herein for the alleged offences under Sections 465, 467, 468, 420 and 506(ii) I.P.C. in Crime No.441 of 2013, in which, the petitioners, who are husband and wife, are arrayed as A1 and A2.

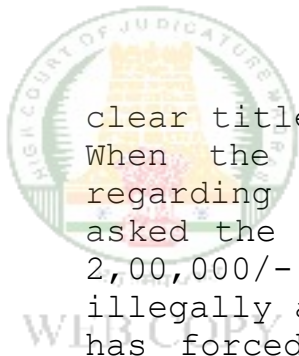
2.The gist of the complaint is that 5 Acres and 15 Cents of land, which stood in the name of the first petitioner in S.Nos. 150/6, 150/2 and 150/7 at Kulasekaran Kottai Village, Vadipatti Taluk, Madurai District, was agreed to be sold at the rate of Rs. 38,000/- per cent by the first petitioner. He received a sum of Rs. 31,00,000/- as advance towards the sale consideration and handed over a portion to the second respondent/de-facto complainant on 31.01.2012. Thereafter, on verification of the title, the second



respondent/de-facto complainant found that there is a rival claim over the title of the property. Therefore, the second respondent/de-facto complainant sought for return of the money advanced. The first petitioner returned only Rs.2,00,000/-and promised to pay the remaining Rs.29,00,000/- within ten days, but instead of paying the said money, he started evading. When the second respondent insisted for refund of the money, he was threatened by the petitioners. Hence, the complaint for forgery and cheating, has been lodged against the petitioners.

3.According to the first petitioner, he never agreed to sell the property to the second respondent and neither he has received any money from the second respondent/de-facto complainant towards sale consideration, nor he has handed over the original title deed of the property to the second respondent. According to the petitioners, the land originally belong to one J.Dhamodaran, S/o.Jeyaraman, which was purchased in two parts by the first petitioner after clearing the mortgage by their predecessor-in-title with one R.Alagan, S/o.Raman Moopan. In order to grab the property, the second respondent and his associates have created fabricated documents and had instigated the said R.Alagan to cause disturbance to the property. As far as the property in S.No.150/6 is concerned, R.Alagan gave an application to the Revenue Divisional Officer, Madurai, on 10.04.2012, to cancel the Patta held by the first petitioner. Without affording any opportunity to the first petitioner, the Patta stood in his name was cancelled. When the first petitioner was in abroad, the said Alagan and the second respondent along with his friends damaged the fencing of the property and also in order to defeat the valuable right of the first petitioner, through one C.Senthilkumar, Power Agent, Alagan and his brothers have created forged Power of Attorney document and executed sale deed in favour of the second respondent in respect of 3 Acres and 15 Cents of land in S.No.150/6B. Therefore, a criminal complaint has been preferred by the first petitioner against the second respondent and others in respect of their act of forgery. Similarly, the petitioners have now come to know that forged document has been created in respect of S.Nos.150/2B and 150/7A and based on the forged document, the property of the first petitioner is likely to be transferred. Sensing the same, the petitioners started taking legal action against the second respondent. To torpedo the said action, the second respondent has fabricated documents as if the petitioners have entered into an agreement to sell their land and received advance of Rs.31,00,000/-, which is a blatant lie and suppression of facts.

4.The learned counsel appearing for the second respondent would submit that it is a clear case of deception at the inception. When the first petitioner received Rs.31,00,000/- as advance for the property, he handed over the original documents. Without having



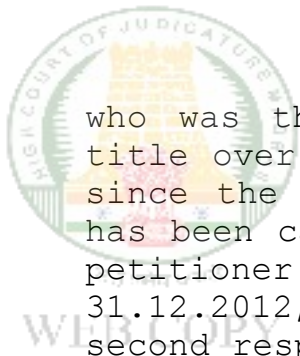
clear title over the property, the petitioners received the advance. When the second respondent came to know about the litigation regarding the property between the petitioners and Alagan, they asked the petitioners to return the money. They returned only Rs. 2,00,000/-. Instead of returning the entire money received illegally and unlawfully, the petitioners started threatening, which has forced the second respondent to give complaint to the first respondent on 22.11.2013.

5. Referring the suit in O.S.No.1037 of 2013 filed by the vendor of the petitioners and the R.D.O. Proceedings, cancelling the Patta in the name of the first petitioner, the learned counsel appearing for the second respondent would submit that the petitioners without proper title for the property, received advance money of Rs. 31,00,000/-. Suppressing facts, they have received Rs.31,00,000/-. When the second respondent demanded for refund, only Rs.2,00,000/- was returned and for the balance Rs.29,00,000/-, the petitioners have threatened him with dire consequences. It is a matter for investigation and trial and it cannot be quashed by exercising the power under Section 482 Cr.P.C., since the material placed by the second respondent/de-facto complainant, for investigation, *prima facie* attracting the ingredient of Penal provision, viz., breach of trust and cheating.

6. Per contra, the learned counsel appearing for the petitioners would submit that the pendency of civil litigation in respect of the property and the cancellation of Patta, which is now subject matter of Writ Petition, will not confer a right to the second respondent/de-facto complainant to file the impugned complaint before the first respondent, since the receipt on which they rely upon itself is a fabricated document, by misusing the signature of the first petitioner.

6. The learned Additional Public Prosecutor appearing for the first respondent would submit that the entire case revolves around the genuineness of the receipt relied by the second respondent/de-facto complainant. Further, there are several allegations about the genuineness of other documents related to the subject property and only on proper investigation, the guilty or otherwise of the parties can be ascertained. The learned Additional Public Prosecutor would further submit that the receipt dated 31.12.2012, alleged to have been given by the first petitioner for receipt of Rs.31,00,000/- is forwarded to the Expert for comparison of writing and signature. Only after receipt of the report, the prosecution can proceed further in their investigation.

8. The vendor of the first petitioner himself has filed a suit challenging the sale deed executed by him in favour of the first petitioner and had obtained ex-parte declaration decree. R.Alagan,



who was the Mortgagor for a portion of the property, now claims title over the property and the matter is pending before the Court, since the Patta, which stood in the name of the first petitioner, has been cancelled on the application given by R.Alagan. The first petitioner herein denies the genuineness of the receipt dated 31.12.2012, which is the fulcrum of the complaint given by the second respondent/de-facto complainant. The first respondent police had registered the case on 23.11.2013 and forwarded the receipt for handwriting comparison only recently. This indicates that the first respondent police not inclined to investigate this matter expeditiously and properly.

9.In the opinion of this Court, since the accusation of forgery and land grabbing have been made against each other, independent impartial investigation by CBCID alone will bring out the truth about the entire transaction whether there was really any sale consideration given to the first petitioner by the second respondent and whether the first petitioner is a *bona fide* purchaser of property, whether the petitioners have clear title free from encumbrance or whether the second respondent/de-facto complainant creating records to grab the land of innocent person are to be probed and the persons, whoever had committed offence has to be prosecuted in accordance with law.

10.For the above said reason, the entire investigation is transferred to CBCID, Madurai. The first respondent shall transfer the case records to the Superintendent of Police, CBCID, Madurai, for entrusting the investigation to a competent Investigation Officer and complete the investigation within a period of three months from the date of receipt of a copy of this order and file final report against the persons, whom, any cognizable offence made out.

11.With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1.The Superintendent of Police,
CBCID,
Madurai.

2.The Inspector of Police,
Vadipatti Police Station,
Madurai District.

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

+1 CC to Mr.V.NAGENDRAN, Advocate (SR-11723[F] dated 16/03/2020)

+1 CC to Mr.J.LAWRENCE, Advocate (SR-11867[F] dated 16/03/2020)

order in
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