



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2020

CORAM

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P.(MD)No.5571 Of 2016 and
CRL.M.P.(MD)Nos.2763 of 2016 & 2380 of 2017

1. S.Subramanian

2. V.Murugan ... Petitioners/Accused Nos.1&2

Vs.

State rep by

1. The Inspector of Police,
District Crime Branch,
Tirunelveli,
Tirunelveli District.

... 1st Respondent/Complainant

2. M.Gandhi Selvin

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original petition is filed under Section 438 of Cr.P.C, to call for the records in Crime No.6 of 2015 dated 02.04.2015 on the file of the first respondent herein and quash the First Information Report as far as the petitioners herein.

For Petitioners : Mr.A.Thiruvadi Kumar

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side)

For R-2 : Mr.J.Sulthan Basha,
for M/s.Ajmal Associates.

O R D E R

The petitioners stand accused in Crime No.6 of 2015 registered on the file of the District Crime Branch, Tirunelveli, Tirunelveli District, for the offences under Sections 465, 468, 471, 420 of I.P.C. r/w. 120(B) of I.P.C.

2. To quash the same, this criminal original petition has been filed.

3. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the defacto complainant and



the learned Government Advocate(Crl. Side) appearing for the first respondent.

4. The substance of the defacto complainant's case is that he entered into a sale agreement dated 03.01.2010 with M/s.Jai Sai Sankar Enterprises Private Limited for purchase of 90 cents of land in Gunaramanallur Village. Later it was realized that there were encumbrances in respect of Survey Nos.438 and 444 measuring an extent of 78.75 cents. Therefore, an Addendum was also entered between the parties on 06.05.2011.

5. Even after the transactions were entered into between the parties, the defacto complainant had retained Rs.50 Lakhs out of total sale consideration. While so, on 02.04.2015 the case on hand was registered. The grievance of the defacto complainant is that as a real estate developer, he has been unable to plot out the lands purchased by him. This was because the access for plotting out the lands purchased by him was only through those two survey numbers. It is not in dispute that the defacto complainant has paid a sum of Rs.6,08,72,500/- to the petitioners herein.

6. The learned counsel appearing for the petitioners would contend that the offences of forgery are clearly not made out. The offence of forgery can be established only if any forged document has been created. In this case, the petitioners have not forged anybody's signature. Even if all the averments set out in the impugned First Information Report is taken to be true at their face value, one cannot come to the conclusion that the petitioners have created any false document. The offence of forgery is not established. But there is considerable force in the contention of the defacto complainant's counsel that the essential ingredients of cheating are very much present in this case.

7. Looking on a *prima facie* basis, one can note that the defacto complainant was induced to enter into the transaction in question in which he will not be able to plot out the lands purchased from the petitioners herein. It is true that after entering into the sale agreement, the parties entered into a subsequent addendum. As contended by the petitioners' counsel, the original terms were subsequently modified. Therefore, one can come to the conclusion that the understanding between the parties was that the encumbrances would be cleared. The transactions date back to the years 2010 and 2011.

8. It appears that the encumbrances are yet to be cleared. Therefore, it is obvious that the second respondent has been put to wrongful loss. Therefore, I am not in a position to quash the impugned First Information Report totally. I can only hold that the offences of forgery are not made out. I must also note that the petitioner has rushed this Court at the FIR stage itself.



Therefore, this criminal original petition stands partly allowed. The offences pertain to forgery alone are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To:

1. The Inspector of Police,
District Crime Branch,
Tirunelveli,
Tirunelveli Disitric.

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

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-6977[F] dated 19/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-6995[F] dated 19/02/2020)

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18.02.2020

SPU (12.06.2020) 3P-5C