



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD) No.6514 of 2016 and

CRL.M.P. (MD) No.3257 of 2016

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1. A.S.Kajah Mohideen @ Mannannai Kajah
 2. Samsahabudeen
 3. Ayubkhan
 4. Kasiyar Buhari
- ... Petitioners/Accused Nos.1 to 4

Vs.

1. The state rep by
The Inspector of Police,
City Crime Branch,
Tirunelveli City.
(Crime No.1 of 2016)
 2. A.P.M.Sahul Hameedu
- ... Respondent/Complainant
- ... Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the entire records pertaining to the case in Crime No. 1 of 2016 pending on the file of the Inspector of Police, City Crime Branch, Tirunelveli City and quash the same.

For Petitioners	: Mr.R.Anand
For R-1	: Mr.A.Robinson, Government Advocate (Crl. Side)
For R-2	: Mr.D.Saravanan

ORDER

Heard the learned counsel on either side.

2. The petitioners are figuring as accused in Crime No.1 of 2016 registered on the file of City Crime Branch, Tirunelveli City, for the offences under Sections 120(B), 406 and 420 of I.P.C.

3. The second respondent herein is the defacto complainant. The petitioners' counsel states that during the pendency of these proceedings, the second petitioner herein who is the purchaser has passed away.

4. The undisputed facts are thus:-

The defacto complainant has borrowed a sum of Rs.10,50,000/- from the first petitioner herein. The borrowal had taken place some time in the year 2010. The defacto complainant had executed a Power of Attorney dated 07.05.2010 in favour of the first petitioner herein. Without returning the borrowed amount, the



defacto complainant had cancelled the same on 15.03.2012. When the first petitioner became aware of the same, he appears to have confronted the defacto complainant. Thereupon the defacto complainant executed a fresh Power of Attorney dated 11.06.2012 in favour of the first petitioner herein. While the defacto complainant would claim that on 11.06.2012, a compromise deed was also executed between the parties, the petitioners' counsel states that the petitioners disputed the genuineness and authenticity of the said compromise deed. Based on the Power of Attorney dated 11.06.2012, the first petitioner herein had executed a sale deed dated 04.08.2015 in favour of the second petitioner herein. In the said sale deed, petitioners 3 and 4 herein had attested the same. The case of the defacto complainant is that there was an understanding that after settling the dues of the first petitioner, the profit arising out of the sale transaction must be shared between the parties. Therefore, according to the defacto complainant, without sharing the profits, the first petitioner had kept the entire sale consideration to himself. He hence lodged the impugned First Information Report on 05.01.2016.

5. The second petitioner has issued legal notice to the defacto complainant herein. The defacto complainant has also filed O.S.No.120 of 2018 before the District Court, Tirunelveli, for cancelling the sale deed dated 04.08.2015.

6. The petitioners' counsel would contend that since they have filed a civil suit, the impugned First Information Report no longer deserves to be kept alive. He pointed out that the first petitioner had acted in a most *bona fide* manner. He had advanced huge sum of money to the defacto complainant. The defacto complainant has initially executed the power of attorney and thereafter, he chose to cancel the same behind back. Therefore, the first petitioner obtained fresh power of attorney dated 11.06.2012 in his name. The first petitioner waited for more than three years. Partition suit involving the said property was pending. Therefore, the buyers were not ready to buy the property. For more than five years, the first petitioner was not able to get his money back. In these circumstances, the first petitioner was left with no other option but to sell the property, when the second petitioner was ready to buy the same. In fact the second petitioner had purchased 15 shares out of 18 shares standing in the name of the defacto complainant.

7. It is not the case of the defacto complainant that the Power of Attorney dated 11.06.2012 has been cancelled. Therefore, the sale deed dated 04.08.2015 is very much valid and pursuant to the authorisation given by the defacto complainant in his favour. He also drew the attention of this Court to the sale consideration set out in the sale deed and to the relevant averments in the complaint. He therefore submitted that the very registration of the impugned First Information Report is an abuse of legal process.



8. He also submitted that petitioners 3 and 4 herein had only attested the compromise deed and sale deed in question and therefore there was absolutely no justification in implicating them as accused in this impugned First Information Report. The learned counsel appearing for the defacto complainant pointed out that petitioners 3 and 4 had attested the compromise deed dated 11.06.2012 and sale deed dated 04.08.2015 and he imputed dishonest motive to petitioners 3 and 4 also.

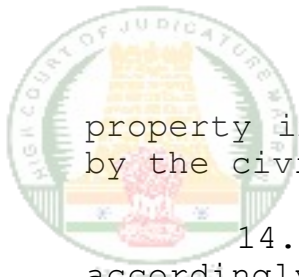
9. After considering the rival contentions, I have to hold that the impugned prosecution does not deserve to be continued against petitioners 3 and 4. They are after all attestors.

10. The petitioners' counsel would dispute the genuineness of the compromise deed dated 11.06.2012. Even if I assume that the same is authentic, still the substance of the deal is that the first petitioner will share the profits accruing in the sale consideration with the defacto complainant. The transaction was one essentially between the first petitioner and the defacto complainant. There is absolutely no justification in roping in petitioners 3 and 4. Therefore, the first respondent is directed to delete petitioners 3 and 4 from the array of the accused while filing the final report.

11. As already pointed out, there is a doubt as regards the genuineness of the compromise deed dated 11.06.2012. Exercising my jurisdiction under Section 482 of Cr.P.C., it would not be proper on my part to pronounce any decision on this issue. The petitioners have chosen to knock the doors of this Court at the FIR stage. It is for the investigation officer to find out if the document dated 11.06.2012 is authentic or not. The core contention of the defacto complainant is that his liability to the first petitioner is around Rs.10,80,000/-. The property was sold in the year 2015. According to the defacto complainant, the property was sold for a much higher figure. On the other hand the first petitioner would claim that it was sold for a sum of Rs.10,24,500/-. It is not open to me to give any finding as to the value for which the property was sold by the first petitioner in favour of the second petitioner. These are essentially factual matters and therefore it is for the investigation to take a call in the matter. The first petitioner will have to necessarily establish his innocence only in a regular trial.

12. In the event of the investigation officer filing final report accepting the case of the complainant against the first petitioner herein, the first petitioner has to necessarily establish his innocence only in a full fledged trial.

13. I have declined to accept the submissions of the petitioners' counsel only because there is a factual dispute regarding the sharing of the profits of the sale proceeds. The outcome of this quash petition will not in any way strengthen the complainant's case as regards the physical possession over the



property in question. That is a matter which will be decided only by the civil Court concerned in O.S.No.120 of 2018.

14. This criminal original petition stands partly allowed, accordingly. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (ADII)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

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

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

+1 CC to M/s.R.ANAND, Advocate (SR-4518[F] dated 03/02/2020)

Crl.O.P. (MD) No.6514 of 2016
03.02.2020

KB(10.06.2020) 4P 4C