

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Crl.OP.No.5971 of 2016
and
Crl.MP.Nos.3069 & 3070 of 2016

1.C.Kanchana
2.C.Sivakumar

... Petitioners/Accused 1 & 2

Versus

K.Selvaraj

...Respondent/Complainant

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.447 of 2015 on the file of the Learned Judicial Magistrate No.V, Coimbatore and quash the same.

For Petitioners : Mr.K.S.Karthik Raja

For Respondents : Mr.K.Venkatasubban

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.447 of 2015 pending before the learned Judicial Magistrate No.V, Coimbatore and quash the same.

2.It is the case of the defacto complainant that the petitioner is the owner of the property comprised in D. No.130-A, Samy Iyer New Street, Coimbatore, and with regard to the said property, the defacto complainant entered into an usufructuary mortgage with the petitioner for a sum of Rs.3,35,000/- on 27.11.2010 and that the defacto complainant was residing in the said premises. However, without divulging the fact that the property was already mortgaged with Tamil Nadu Mercantile Bank, the said mortgage was entered into between the defacto complainant and the petitioner, which came to the knowledge of the defacto complainant only on receipt of the notice from the Debts Recovery Tribunal. The defacto complainant further allege that the said fact about the loan was suppressed by the petitioner at the time of entering into the mortgage with the defacto complainant, hence, the complaint.

3. Since the said fact was suppressed by the petitioner, leading to the defacto complainant entering into the mortgage, a private complaint u/s 200 Cr.P.C. was filed before the Judicial Magistrate No.V, Coimbatore and the Court below, took cognizance of the case by issuing summons to the petitioner, which has led to the filing of the present petition u/s 482 Cr.P.C. for quashment of the said case before the Judicial Magistrate.

4. Learned counsel appearing for the petitioner submits that the defacto complainant had approached the petitioner through a broker and it was not a direct dealing between the petitioner and the defacto complainant and suppression of any facts, cannot be put against the petitioner as any act done by the broker, without the explicit instruction of the petitioner cannot be a ground to initiate proceedings against the petitioner and, therefore, it is submitted that no offence has been made out against the petitioner. It is the further submission of the petitioner that a civil dispute has been given a criminal colour by invocation of a private complaint u/s 200 Cr.P.C., and, therefore, it is submitted that the defacto complainant has to proceed only before the Civil Court against the petitioner, if at all he is aggrieved by any act of the petitioner.

5. Per contra, the learned counsel appearing for the defacto complainant submitted that the petitioner had suppressed the mortgage with the Tamil Nadu Mercantile Bank and had entered into a mortgage with the defacto complainant. It is the further submission of the learned counsel for the defacto complainant that though the defacto complainant had approached the petitioners through a broker, however, the petitioners have not divulged the mortgage with the Tamil Nadu Mercantile Bank and the petitioners, by their above act, have cheated the defacto complainant to the tune of about Rs.3,35,000/-. It is the further submission of the respondent that the property was brought to auction, pursuant to a judicial order and though the petitioners promised to pay the amount to the defacto complainant, however, they did not take any steps to pay back the said amount, which led to the lodging of the private complaint against the petitioners for the offence of cheating.

6. This Court heard the learned counsel appearing on either side and perused the materials available on record.

7.The present petition has been filed to quash the complaint, leading to the registration of the case, which has been initiated by the defacto complainant for the offence of cheating and suppression of materials while entering into a contract which has resulted in the defacto complainant parting with money to the petitioner.

8.A perusal of the materials available on record reveal that pursuant to a tenancy agreement, the petitioner and the defacto complainant have mutually agreed to certain terms. Further, the said agreement has been brought in through a broker between the defacto complainant and the petitioner, which is accepted by both the parties. When it is borne out by record that the matter relates to a tenancy agreement and a criminal complaint has been initiated by the defacto complainant against the petitioner, the Court below has to test the evidence to be placed before it to come to a definitive conclusion as to whether the matter is criminal in nature, in that the petitioners have tried to cheat the defacto complainant or that it is purely a civil transaction on the basis of the tenancy agreement, which would only lead to filing a suit for recovery of money paid to the petitioners. The present petition for quashment of the complaint is premature as the intentions of the parties have to be tested by leading evidence and the defacto complainant has to establish his case of cheating by the petitioners in accordance with law. At this point of time, it would not be in the interest of either party for this Court to decide the issue one way or the other, on the basis of the material available before it.

9.For the reasons aforesaid, this Court is of the considered view that the relief as sought for by the petitioner cannot be granted. However, in the interest of justice, this Court is of the view that the court below should be directed to dispose of the case pending before it within a prescribed period, as the matter in issue relates the year 2015.

10.In such view of the matter, this criminal original petition is disposed of, by directing the Court below to dispose of C.C. No.447 of 2015 pending on its file, within a period of six months from the date of receipt of a copy of this order. The parties are granted liberty to raise all contentions that were raised before this Court at the time of trial. Pending trial, if the petitioners return back the amount to the respondent, the same shall also be taken into consideration by the court below while deciding the issue.

11.With the above observations and directions, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

klt

To

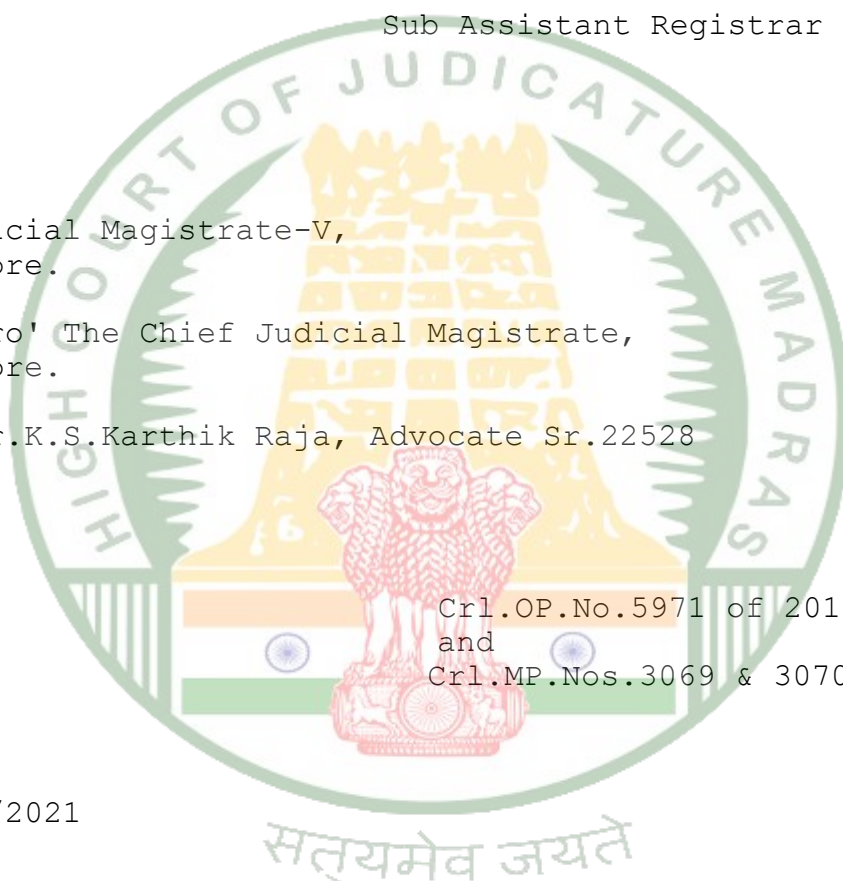
1.The Judicial Magistrate-V,
Coimbatore.

2.-Do- Thro' The Chief Judicial Magistrate,
Coimbatore.

+lcc to Mr.K.S.Karthik Raja, Advocate Sr.22528

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pvs[col]
srg 06/07/2021



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