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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No. 8012 of 2016
and
Crl.M.P.Nos.4205 and 4206 of 2016

1. Murugan

2. Rani ... Petitioners

Versus

1. State, rep. by
The Inspector of Police,
Bargur Circle,
Krishnagiri.

2. Vijayan ... Respondents

Prayer:

Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to C.C.No. 3 of 2014 on the file of the Judicial Magistrate-I, Krishnagiri and quash the same.

For Petitioners : Mr.Vijayaraghavan Srinivasan

For Respondent-1 : Mr.E. Raj Thilak
Counsel for Govt. of Tamil Nadu
(Criminal Side)

For Respondent-2 : Mr.G.Vinodhkumar

For Mr.Mahendran

ORDER

The Criminal Original Petition has been filed seeking to quash the proceeding in C.C.No. 3 of 2014 on the file of Judicial Magistrate-I, Krishnagiri.

2. The case of the prosecution is that the first petitioner/accused sold his property comprised in Survey Nos.458/2, 459/2A, 460/1, 2, 464/1A, 465/2A and Survey No.472

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measuring an extent of 4.5 acres and 0.65 and also 5.15 to the tune of Rs.20,00,000/- to the second respondent/defacto complainant herein on 25.07.2010. After execution of the Sale Agreement, the defacto complainant requested the first accused to measure the said land and execute the Sale Agreement in full, after getting remaining balance sale consideration. Thereafter, the first accused had cheated the defacto complainant by not executing the Sale Agreement. Subsequently, the defacto complainant lodged a police complaint against the first accused, the first respondent police registered a case in Crime No.231 of 2013 for the offences punishable under Sections 409 and 420 IPC against the petitioners. Hence the complaint.

3. The learned counsel appearing for the petitioners/accused submitted that there was some property dispute between the first accused and the defacto complainant. Subsequenly, the defacto complainant filed a suit in O.S.No.39 of 2012 before the learned Principal District Court, Krishnagiri and the same was decreed in his favour. He further submitted that the petitioners had repaid the entire amount along with interest being a sum of Rs.27,82,676/- and the same has also been received by the defacto complainant/second respondent without any objection. He further submitted that the complaint does not disclose any criminal offence either under Section 420 or under Section 120-B IPC against the petitioners and the present case is purely a civil dispute between the parties, for which the defacto complainant had also approached the Civil Court by filing suit for specific performance and the present complaint is nothing but an abuse of process of law.

4. Heard both sides and perused the materials available on record.

5. On perusal of the records, it is seen that the Sale Agreement had been entered into between the first petitioner/accused and the second respondent/de-facto complainant herein on 25.07.2010 with regard to the aforesaid properties. It is pertinent to point out that even in the sale agreement, it was clearly specified that the properties would be measured and only then the extent of the property would be decided. Though the survey numbers of the properties were mentioned, their extent and the boundaries were not specified in the Sale Agreement, dated 25.07.2010. This clearly proves that the extent of land has to be agreed later. It is also seen that the de-facto complainant was fully aware that the petitioners' daughter was also a co-owner of the properties and only after her consent, the sale deed could be executed. Subsequently, the de-facto complainant sent a legal notice dated 10.01.2011 asking the first petitioner/accused to receive the balance sale consideration and execute the sale deed. In reply, on

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18.02.2011, the first petitioner/accused his expressing the fact that the sale cannot be completed, as the petitioners' daughter who is also the co-owner of the properties, has expressed her unwillingness to sell her share in the aforesaid properties. After receiving the reply notice, the de-facto complainant/2nd respondent filed a suit in O.S.No.39 of 2012 on the file of the learned Principal District Court, Krishnagiri, and the same was decreed in favour of the de-facto complainant. Subsequently, the first petitioner/accused herein has preferred an appeal in A.S.No.820 of 2015 before the learned Principal District Court, Krishnagiri, and the same is pending for further adjudication.

6. It is an admitted fact that as per the earlier direction of this Court passed an order in M.P.No.1 of 2016 in A.S.No.820 of 2015, 26.10.2015, the first petitioner herein had repaid the advance amount together with interest at the rate of 7.5% from 15.08.2010 to the 2nd respondent/defacto complainant by way of a Demand Draft bearing No.040925 drawn in favour of Indian Bank, Bargur Branch, dated 13.10.2015 for a sum of Rs.27,82,676/-. However, the Court below had committed illegality in entertaining the complaint, when the allegations of the complaint did not satisfy the basic ingredients such as, deception of a person either by making a false or misleading representation or by other action or omission and fraudulently or dishonoestly inducing any person to deliver any property or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. None of the above ingredients are there in the complaint filed by the 2nd respondent.

7. It is clear that even in the Civil Suit filed by the de-facto complainant, the second petitioner has not been made as a party, nor she is a party to the Sale Agreement. The second petitioner is being a senior citizen, made as a party to the criminal offence. Therefore, the Court below failed to note that the ingredients of Sections 409 and 420 of IPC are absolutely not made out in the complaint and hence, the complaint automatically falls to the ground without any merits. Therefore, the matter is civil in nature and the criminal cognizance is not attracted against the petitioners. Hence, this Court is of the considered view that the entire initiation of criminal proceedings, is only an attempt to convert a purely civil dispute into a criminal case and any effort to settle the civil dispute and claims which do not involve any criminal offence through criminal prosecution, should be deprecated and discouraged. Hence, the above proceedings initiated against the petitioners are liable to be quashed.

8. In the result, the proceeding in C.C.No. 3 of 2014 on the file of Judicial Magistrate-I, Krishnagiri, is hereby quashed,

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and this petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Judicial Magistrate-I, Krishnagiri.

2. The Inspector of Police,
   Bargur Circle, Krishnagiri.

3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.A.Selvendran, Advocate, S.R.No.37891
+1cc to Mr.G.Vinodhkumar, Advocate, S.R.No.38332

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KG(CO)
CT/17/12/2021

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