



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER
04.08.2021

DATE OF PRONOUNCING ORDER
18.08.2021

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.198 OF 2018

A.K.Mani

... Petitioner/Petitioner/
Defacto Complainant

.Vs.

1. The State rep.by
The Inspector of Police,
T-15, S.R.M.C., Police Station,
Porur, Chennai - 600 116.

... 1st Respondent/1st Respondent/
Complainant

2. K.S.Gopalakrishnan

3. P.Girija

... Respondents 2 & 3/
Respondents/Accused

PRAYER:-

Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order passed in C.M.P.No.4557 of 2017 in RCS.No.923 of 2017 by the Judicial Magistrate No.1, Poonamallee, Thiruvallur District, dated 05.12.2017.

For Petitioner : Mr.C.Vidhosan
For Mr.C.P.Palanisamy

For Respondents : Mr.R.Vinoth Raja
Government Advocate for R1

Mr.Abdul Rahman
For M/s.Nathan & Associates
For R2 & R3



O R D E R

The matter is heard through "Video Conference".

2. The revision petitioner is the defacto complainant in Crime No.1022/2014 on the file of the SRMC Police Station, Chennai.

3. The petitioner herein has filed a complaint before the respondent/police for the alleged offence of cheating and further alleged that having agreed to sell the property, subsequently, entered into an agreement of sale with other person. Hence, the complaint.

4. The respondents 2 & 3 have moved the Hon'ble High Court for obtaining anticipatory bail and the matter was referred for mediation and in the mediation centre they arrived at a settlement as per the terms. However, the accused has dishonored the terms of the agreement entered before the Mediation Centre in the High Court and the respondent-police on erroneous consideration has filed the referred charge sheet and issued RCS Notice to the petitioner on 25.09.2017 and subsequently, filed referred charge sheet before the concerned jurisdictional Magistrate on 03.10.2017 and the Magistrate has recorded that the matter is civil in nature. Accordingly, accepted the RCS notice and rejected the protest petition.

5. Aggrieved against the dismissal of the protest petition in CMP.No.4557/2017 on the file of Judicial Magistrate, No-I, Poonamallee, the present revision is filed.

6. Heard, Mr.A.Natarajan, learned Senior Advocate appearing for the revision petitioner and Mr.R.Vinoth Raja, learned Government Advocate appearing for R1 and Mr.Abdul Rahman, learned counsel appearing for R2 & R3.

7. The revision petitioner gave a complaint before the respondent-Police, alleging that the accused herein have the property in favour of the private party by executing a sale deed dated 11.03.2004. However, represented to him that it is bogus sale deed in favour of one Nammalvar and believing the words, he had entered into a registered sale agreement on 29.01.2009 and received a sum of Rs.4,00,000/- and payment receipts have also been filed. Subsequently, for non-performance of the sale agreement, he has given a complaint before the respondent-police on 10.10.2014 and the same was registered in FIR.No.1022 of 2014. Thereafter, the accused persons/respondents 2 & 3 have preferred anticipatory bail petition before this Court in CrI.O.P.No.33236 of 2014 and it was referred to Tamil Nadu Mediation and Concilliation Centre, High Court, Madras, wherein,



certain terms of compromise has been arrived between the parties and the same was not complied with.

8. Meanwhile, in the year 2012, the accused persons have entered agreement of sale on 24.05.2012 with third parties and the respondent-police has filed referred charge sheet stating that the matter is civil in nature and may be closed as "mistake of fact". For which, the revision petitioner has filed protest petition in CMP.No.4557 of 2017, before the Judicial Magistrate No.I, Poonamallee and the same was dismissed. Consequently, RCS notice is taken on file.

9. The learned counsel for the respondents 2 & 3 contended that by virtue of the sale deed dated 11.03.2004, the respondents 1 & 2 herein have become the absolute owners of the subject matter of the property. Initially, they have entered an Agreement of Sale with a third party on 23.08.2000, in order to meet the financial constrain of the family, they also mortgaged the property to one Shivaji Raja on 01.07.2008.

10. At this juncture, since the present defacto-complainant (the revision petitioner herein) entered into a registered Agreement of Sale on 29.01.2009, wherein in clause numbers 6, 7, 8, 9 & 10, it is specifically referred to a Sale Deed executed in favour of one Nammalvar, on his death, the property was sold by the legal heirs to Anuradha Ravi and the said Anuradha Ravi has also obtained patta from the Government and also drew my attention to the memo of compromise entered between the present petitioner (defact complainant) and the accused (R2&R3) dated 30.04.2015 before the mediation and drew my attention to Class Nos.3, 4, and 10 in the said compromise and hence he was stated since there was an agreement dated 24.05.2012, some amount has been given to the said agreement holder and further contended that the first respondent - Investigation Officer, taking into consideration that the matter is involved in civil in nature has filed the closure report before the concerned Magistrate and the said closure report does not suffer from any legal process and made submissions of order passed by the trial Court.

11. After perusing the documents and also the memo of compromise entered into between the defacto complainant and the accused before the Tamil Nadu Mediation Centre attached to the Hon'ble High Court, based upon the mediation report only the anticipatory bail was granted to the accused herein. The accused have not complied with the terms of the agreement.

12. While things being so, on perusal of the sale deed dated 11.03.2004, the accused herein have become the absolute owner of the property and also mortgaged the same with Shivaji Raja on 01.07.2008. Based upon the sale deed and the mortgage deed, in



order to discharge the mortgage deed, they entered into the sale agreement which was registered on 29.01.2009, with the defacto complainant and further payment is also made as could be seen from the documents of payments of receipt and undertaking of the accused is also furnished before this Court dated 05.07.2010.

13. It remains to be stated that when the registered sale agreement dated 29.01.2009 is in existence, the defacto complainant having received the huge sum of the amount and also part of the mortgage amount has been discharged, appears to have entered into another agreement of sale in respect of very same property with Keshwar Kamal, on 24.05.2012 which is also registered sale agreement. Accordingly, they have preferred complaint which is registered as FIR No.1022/2015.

14. On perusal of the sale deed, above referred registered sale deed, I find that there is a prima-facie case of cheating has been indulged by the accused and when the anticipatory bail has been moved before this Court in CrI.O.P.No.33226/2014, the matter was referred to Mediation Centre at High Court in terms of compromise is settled. However, after receiving the anticipatory bail, he has indulged again entering into an agreement of sale with third party. Without complying with the terms of agreement which is a basis for anticipatory bail and hence, I find that the referred charge sheet filed by the respondent/police is erroneous in law and the report of Mediation Centre annexed with the High Court is clear and the accused have entered into an agreement of sale during the subsistence of the earlier registered agreement wherein substantial amount has been paid and substantial amount of mortgage deed is also discharged and all are reflected in the memo of compromise between the defacto complainant and the accused recorded before the Mediation Centre on 30.04.2015 and hence, I find that the order of the Magistrate is unsustainable in law and the same is set aside.

15. Accordingly, this Criminal Revision Petition is allowed. The order dated 05.12.2017 passed by the Judicial Magistrate in C.M.P.No.4557 of 2017 is set aside and the learned Judicial Magistrate shall follow the procedure by treating the protest petition as a private complaint and dispose of the same in accordance with law.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Poonamallee,
Thiruvallur District.

2. The Inspector of Police,
T-15, S.R.M.C., Police Station,
Porur, Chennai - 600 116.

3. The Public Prosecutor,
High Court,
Madras.

+2ccs to Mr.C.P.Palanisamy, Advocate, S.R.No.41406

+1cc to M/s.Nathan & Associates, S.R.No.41420

CRL.R.C.NO.198 OF 2018

VBM(CO)
PBS/08/09/2021