



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2021

PRONOUNCED ON : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.RC.No.848 of 2018

M.Settu

... Petitioner/
Defacto Complainant

Vs.

1.The Inspector of Police,
Kannankurichi Police Station,
Cr.No.372 of 2017.

... Respondent/Complainant

2.M.Chitra

... Respondent/Petitioner

Prayer: This Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., to set aside the judgment dated 17.01.2018 in Crl.M.P.No.3126 of 2017 on the file of the Judicial Magistrate No.4, Salem.

For Petitioner : Mr.R.Marudhachalamurthy

For R1 : Mr.S.Vinoth Kumar
Public Prosecutor

For R2 : Mr.B.Vasudevan

O R D E R

This Criminal Revision Case has been filed by the defacto complainant, against the order passed in Crl.M.P.No.3126 of 2017 before the learned Judicial Magistrate No.IV, Salem, dated 17.01.2018.

2.The above said Crl.M.P.No.3126 of 2018 has been filed under Section 451 of Cr.P.C for interim custody of the money recovered during the investigation, was dismissed and hence, the present Criminal Revision Case.

3.Brief facts leading to file of this Criminal Revision Case are as under:



(a)The gist of the complaint is that the revision petitioner herein/defacto complainant doing real estate business all over Tamil Nadu and in particular Vellore District. In the month of April, 2017, Velu and Ayyadurai, who were arrayed as A2 & A3 in the above said crime number, had informed to the defacto complainant that there was 5 acres of land available in the Kondappanaickenpatty at Salem and requested him to visit the land for purchase.

(b).On 15.04.2017, the revision petitioner herein/defacto complainant and his assistant viz., Ramu Alagu went to the place for seeing the said property and on seeing the same the revision petitioner herein interested to purchase the property and the above said Velu and Ayyadurai had introduced one Abishek by saying that he is the owner of the said property, who was arrayed as first accused in the above said crime number.

(c).The revision petitioner herein/defacto complainant had negotiated the land price with all three persons and they have agreed for the price and thereby insisted the revision petitioner herein/defacto complainant to bring a sum of Rs.10,00,000/- on the next day to the same place. On 16.04.2017 the revision petitioner herein/defacto complainant had handed over the above said sum of Rs.10,00,000/- to Abishek in the presence of Velu and Ayyadurai and with the evidence of his Assistant Ramu Alagu. The Abishek had received the same as an advance of sale price and the price per acre fixed is Rs.20 lakhs and the Abishek assured that the same will be reduced into writing on 20.04.2017.

(d).On 20.04.2017, the revision petitioner herein/defacto complainant went to the same place and visit all three accused stated herein above for the purpose of obtaining written argument of sale, but however they have insisted the revision petitioner to give further a sum of Rs.10,00,000/- and the same was handed over by the revision petitioner by way of cash and thereafter, the accused have informed that the said amount was deposited in the bank and send the proof of SMS to said Ramualagu and thereafter, they have informed to the revision petitioner that if he has paid further sum of Rs.13,40,000/-, they will execute the sale agreement immediately on the same day.

(e).On receipt of the above said amount, the three accused had insist the revision petitioner to come for receiving the agreement of sale on 21.4.2017 and accordingly, the revision petitioner and his assistant Ramualagu came and waited in the place where the accused persons insist upon them to come, but all the three accused had not turned up.

(f)Hence, the defacto complainant has lodged the complaint



(g).After registering the case, the first accused was arrested and on the basis of his confession the amount swindled by him was recovered and produced the same in connection with the above said crime number. The recovered amount is belonging to the revision petitioner and therefore, he rightly filed the above said C.M.P.No.3126 of 2017 before the learned Judicial Magistrate No.4, Salem, under Section 451 of CrI.P.C. On knowing the same the accused persons had set up the second respondent herein, who is none other than the mother of A1 and filed another application in C.M.P.No.3997 of 2017 under Section 451 of Cr.P.C. and she claims the said amount as if she is the owner of the said amount.

4.The learned counsel for the revision petitioner/defacto complainant would contend that the second and third accused introduced the first accused to the revision petitioner/defacto complainant as 5 acres land owner in Kondappanaickenpatti and he was willing to sell the property. The first accused agreed to sell the said property to the revision petitioner for a sum of Rs.20 lakhs per acre. The accused received Rs.10,00,000/- on 16.04.2017 and Rs.23,40,000/- on 20.04.2017 totally Rs.33,40,000/- from the revision petitioner. But, they did not come and execute sale agreement and they absconded and thereby, cheated the petitioner.

6.The second respondent viz., Chitra, the mother of the first accused would contend that it is her property.

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8. Heard the respective counsels and perused the materials placed on record.

9. After hearing rival submissions made by both the parties and also after perusing the document filed by the learned Public Prosecutor, I find that one Mahalingam, S/o. Olavuk Gounder, Ponnampetai, Salem, gave a statement to the police on 16.09.2017 stating that A1, A2 approached him to sale the house and accordingly, they fixed the sale consideration of the house for a sum of Rs.59,00,000/- and Rs.9,00,000/- was given to them and on promise to pay further amount, he had executed the sale deed on the protest that since they have already transferred the amount to the bank account of the said Mahalingam after execution of the sale deed in favour of A1 & A2 and on verification of the Bank account he find that no such amount has been transacted as promised by A1 and A2. On enquiry, the said Mahalingam find that A1 & A2 have indulged in similar set of offence and accordingly through the mediator, he found that the accused have compromised and asked to re-convey the property. He had re-conveyed the property in his favour and after adjusting amount for revenue charges and stamp duty, a sum of Rs.5,50,000/- is in his hand and hence, he has entrusted the property to the investigation officer and the same was handed over to the learned Judicial Magistrate as case a property in CP.No.341 of 2017 on 12.10.2017.

10. Thus, I find that as against the accused and his mother viz., Chitra, so many cases are pending before the very same police station for the alleged commission of crime of cheating in the real estate. In one such incident the Mahalingam has given back Rs.5,50,000/- as narrated in the statement and hence, I find that it is only an interim custody given to the recovered amount, which was deposited in the Court for interim custody. It is too early to find out whether the said sum of Rs.5,50,000/- is the amount given by the defacto complainant to the accused or not and hence, for the reasons stated supra and also perusing the statement of Mahalingam, who had deposited Rs.5,50,000/-, I find that the interim custody as to the private complainant cannot be granted at this juncture.

11. With these observations this Criminal Revision Case stands dismissed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
No.IV, Salem.
2. The Inspector of Police,
Kannankurichi Police Station.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.54768

Pre-delivery order made in
Crl.RC.No.848 of 2018

GPL (CO)
SU(15/12/2021)