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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL. O.P. NO.25391 OF 2017

1. G. Nirmala

2. E. Gurudoss

...Petitioners

Vs.

1. State represented by
Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai - 600 041.

2. A. Sivakumar

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the FIR in Crime No.561 of 2016 on the file of the J-6, Inspector of Police Station, Chennai - 600 041.

For Petitioners : Mr. S. Arivazhagan

For Respondent-1 : Mr. E. Raj Thilak
(Counsel for Govt. of Tamilnadu)

For Respondent-2 : No Appearance



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O R D E R

(Through Video Conference)

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records and quash the FIR in Crime No.561 of 2016 on the file of the J-6, Inspector of Police Station, Chennai - 600 041.

2. The case of the prosecution is that the 2nd respondent lodged a complaint against the petitioners before the 1st respondent alleged that the petitioners have offered to sell their property for a valuable sale consideration of Rs.35,00,000/- . The 2nd respondent had agreed to purchase the property for a valuable consideration and thereby agreement was reduced into writing on 02.06.2014 between them. In terms of the agreement, the petitioners have received a sum of Rs.10,00,000/- towards advance. After receipt of the advance amount, the petitioners have evaded to reply and tried to alienate the property to the 3rd parties without refund the advance amount. Based on the allegation, the case has been registered against the petitioners.

3. The learned counsel for the petitioners would submit that as a matter of fact, the petitioners neither received amount nor executed any agreement as alleged by the 2nd respondent. The 2nd respondent has given a criminal colour of the alleged transaction which is purely civil in nature. The 2nd respondent has to work out the remedy through Civil Court, since the agreement is relating to the suit for specific performance. But the 1st respondent registered the case without any material to proceed against the petitioners in criminal case. While there is no specific allegation against the 2nd petitioner in the complaint, the 2nd petitioner was roped in the FIR with an intention to harassing him. Hence, the petitioners have filed the present Criminal Original Petition invoking Section 482 of Code of Criminal Procedure.

4. The learned Government Advocate (Crl. Side) would on instruction, submit that during the investigation the complaint given by 2nd respondent is now no more and further, the property is belonged to the 1st petitioner herein and 2nd respondent who is



the brother of the 1st petitioner acted upon as an broker to sell the said property on the basis of Power of Attorney executed by the 1st petitioner in favour of the 2nd respondent and the 1st petitioner has given original document of sale agreement to the 2nd respondent. As this matter is related to Civil nature and the 2nd respondent is no more, the FIR may be closed.

5. Heard, the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. Side) appearing for the 1st respondent.

6. On a perusal of the records, it is seen that apparently, the complaint is civil in nature, since according to the defacto-complainant, the petitioners have not performed the sale deed as per the terms of sale agreement. In this regard, this Court by its order dated 22.11.2017 has passed interim stay of all further proceedings in Crime No.561 of 2016 on the file of the 1st respondent till 21.12.2017. Then, the stay order was extended till 29.01.2018. Thereafter, it was extended until further orders. As the matter is being civil nature, whether the case is made out or not, it would come to know only after further investigation. While the complainant/2nd respondent herein is now no more, how the complaint made by the complainant would survive without impleading his legal heirs of the complainant. Further, no steps have been taken to implead the legal heirs of the complainant/2nd respondent herein.

7. Further, it has been stated that power of attorney and sale agreement have been executed in favour of the 2nd respondent by the 1st petitioner herein. However, neither any document relating to the contract nor evidence have been placed before this Court.

8. Having considered the aforesaid facts and circumstances of the case, it makes clear that the complaint is apparently civil nature with regard to the non-performance of contract and there is no specific allegation for commission of any offence against the petitioners. Hence, this Court directs the 1st respondent police to close the FIR in Crime No.561 of 2016 pending from the year 2016 as it is pertaining to the Civil nature.



9. In the result, this Criminal Original Petition stands closed. Consequently, connected miscellaneous petitions is also closed if any.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

Lbm

To:

1. The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai - 600 041.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.S.Arivazhagan, Advocate, S.R.No.39955

Cr1. O.P. No.25391 of 2017

SMI(CO)
RLP(14/09/2021)