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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.27071 of 2017
and CrI.M.P.Nos.12807 of 2021, 15530&15531 of 2017

R.Jayavel

...Petitioner

Vs.

State by
The Inspector of Police
Valajapath Police Station,
Kancheepuram.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.300 of 2015 pending on the file of Judicial Magistrate-II, Kancheepuram and quash the same.

For Petitioner : Mr.N.Elayaraja

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (CrI.side)

ORDER

This petition has been filed to call for the records in C.C.No.300 of 2015 pending on the file of Judicial Magistrate-II, Kancheepuram and quash the same.

2. The crux of the allegation is that the Petitioner/accused entered into an agreement of sale on 05.03.2005 with one Andrew and agreed to sell two plots bearing Nos.31 and 32. Thereafter, by suppressing the above agreement and in order to make an unlawful enrichment, the petitioner had sold the property to the witnesses Sudhakar and Sukumar. Thereafter, Andrew/plaintiff has filed a suit in O.S.No.35 of 2008 before the Sub-Court, Kancheepuram, for Specific Performance wherein, the petitioner had remained exparte in order to avoid the sale deed executed in favour of the defacto complainant and other witnesses. The said suit has been decreed exparte in favour of Andrew. Thereby, he committed an offence by cheating.



3. Learned counsel for the petitioner mainly contented that it is only a civil transaction and the civil suit is also pending. Therefore, prosecution has to be quashed.

4. At the outset, this Court is not able to countenance the contention of the learned counsel for the petitioner. The very charge made against the petitioner is that the petitioner having entered into an agreement for sale, and by suppressing the same, he had sold the property to the third party. Not stopping with that he has also colluded with the third party and remained ex parte to defeat the sale deed. Whether these actions would fall within the ambit of definition of Section 415 of I.P.C is a matter of evidence and it should be tested only before the Trial Court since the illustration under Section 415 of I.P.C is starring at him.

5. In such view of the matter, I do not find any merits in this case and it is premature to conclude the proceedings at this stage since there is a civil suit pending between the parties. Hence, the entire criminal case is liable to be quashed. Accordingly, this Criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nr/msv

To

1.The Judicial Magistrate-II,
Kancheepuram.

2.The Inspector of Police
Valajapath Police Station,
Kancheepuram.

3.The Public Prosecutor
High Court, Madras.

Crl. O.P. No.27071 of 2017
and Crl.M.P.Nos.12807 of 2021,15530 &15531 of 2017

GP (CO)
PR (03/01/2022)