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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2021

Coram:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.No.29166 of 2017
and
Crl.M.P.No.16484 of 2017

Mohamed F.Ashik

.. Petitioner/Accused-2

/versus/

1. The State by
the Inspector of Police,
J-3, Guindy Police Station,
Chennai.
(Crime No.2401 of 2017)

.. Respondent/Complainant

2. B.Uma

.. Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the FIR registered in Crime No.2401 of 2017 from the file of the 1st respondent and quash the same.

For Petitioner : Mr.S.Anburaja

For Respondent : Mr.R.Kishore Kumar,
Government Advocate(crl.side)

for R1

Mr.Ma.P.Thangavel for R2

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.2401 of 2017 on the file of the 1st respondent.

2.The case of the prosecution is that the petitioner/accused along with other accused joint together and



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created a forged lease agreement in order to cheat the real owner of the property. It is the case of the de-facto complainant that, she owns the house property. Whereas, both the accused created the lease deed as if the present petitioner has lawfully entered into the lease agreement, thereby committed offence under Section 420 of I.P.C

3.The learned counsel appearing for the petitioner submitted that there are two civil suit filed by the both the parties viz., a suit in O.S.No.3408 of 2018 has been filed by the de-facto complainant against the petitioner seeking permanent injunction and recovery of possession and another suit in O.S.No.5196 of 2015 has been filed by the petitioner against the de-facto complainant seeking the relief of permanent injunction and not to evict him from the suit property. The de-facto complainant herself stated in the written statement with regard to existence of the agreement. Therefore, there is no evidence to show that the petitioner has committed the offence under Section 420 of IPC. The trial Court has dismissed the suit in O.S.No.5196 of 2015 filed by the accused/petitioner and partly allowed the suit in O.S.No.3408 of 2018 filed by the defacto complainant.

4.This Court heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5.On perusal of the records, it is seen that the suit in O.S.No.5196 of 2015 was filed by the accused/petitioner not to evict the petitioner/accused from the suit property without due process of law. The said suit was dismissed by the trial Court. Similarly, the suit in O.S.No.3408 of 2018 filed by the owner/de-facto complainant for eviction against the accused/petitioner was decreed.

6.The bone of contention in the above suit in O.S.N.5196 of 2015 filed by the accused/petitioner is in respect of the lease agreement, which is the subject matter of the First Information Report. In paragraph No.6.4 in O.S.No.5196/2015, the trial Court, after appreciation of the evidence, has held that one R.Petchimuhtu holding the property in trust for the real owner viz., the plaintiff and his family members has entered into lease agreement. In the ultimatum, it reveals that R.Petchimuthu has inducted the accused/petitioner as a tenant in respect of the property in which he was constructing on a contract. Therefore, it is very clear from the document that the lease agreement was entered between A1 and A2. Such contract entered between the parties, at no stretch of imagination, amounts to cheating of the petitioner/accused.



7. It is also to be noted that the defendants filed a written statement in O.S.No.5196 of 2015 in which at para 3, it has been clearly pleaded that the present petitioner has already inducted in the property and the agreement was also executed on 20.10.2013 between the petitioner and one Petchimuthu and the said agreement was executed between them prior to purchase of the property by the de-facto complainant and he paid the amount of lease agreement. Therefore, the lease agreement entered between A1 and A2 does not attract offence under Section 420 of IPC.

8. Such view of the matter, this Court is of the view that by no stretch of imagination, the offence under Section 420 IPC is made out and the case registered as against the petitioner is a clear abuse of process of law. Therefore, the First Information Report in Cr.No.2401 of 2017 is hereby quashed. Accordingly, this Criminal Original petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
J-3, Guindy Police Station,
Chennai.
(Crime No.2401 of 2017)

2. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Anbu Raja, Advocate, S.R.No.65528

Cr1.O.P.No.29166 of 2017
and
Cr1.M.P.No.16484 of 2017

KG(CO)
SU(27/12/2021)