



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2021

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WEB COPY

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C (MD)No.110 of 2021

P.Rajan : Petitioner/Complainant

Vs.

A.Kannan : Respondent/Proposed Accused

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order passed in Crl.M.P No.1382 of 2020, dated 07.11.2020 on the file of the Judicial Magistrate No1, Nagercoil.

For Petitioner : Mr.K.Vamanan

For Respondent : Mr.Niranjan S Kumar

J U D G M E N T

This Criminal Revision is directed against the order passed in Crl.M.P No.1382 of 2020, dated 07.11.2020 on the file of the Judicial Magistrate No1, Nagercoil.

2.The respondent herein had agreed to sell a vacant house plot property to the petitioner for a sum of Rs.15,85,000/- and also executed a sale agreement with the petitioner on 11.02.2017 and received a sum of Rs.1,00,000/- as advance from the petitioner. Thereafter, on 08.04.2017, the petitioner paid a sum of Rs.1,50,000/- and on 18.08.2017, a sum of Rs.2,50,000/- has been paid. Thereafter, the respondent has not come forward to execute the sale deed in favour of the petitioner, even the petitioner is ready to pay the full sale consideration. When the petitioner approached the respondent repeatedly to execute the sale deed, but the respondent had evaded to execute the sale deed and refused to return the money. The petitioner lodged a complaint before the District Crime Branch at Nagercoil. The Sub Inspector of Police called for enquiry and both the parties appeared before the District Crime Branch, on 05.11.2019 and thereafter, the police has not taken any appropriate action on the



complaint of the petitioner. Hence, the petitioner filed a petition under section 156(3) of Cr.P.C in Crl.M.P No.1382 of 2020 before the Judicial Magistrate No.1, Nagercoil. The learned Magistrate, without considering the facts and circumstances of the case has erroneously dismissed the petitioner's complaint on 07.11.2020. Hence, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The learned counsel appearing for the petitioner submitted that the intention of the respondent is to cheat the petitioner, after obtaining the money from the petitioner and it is a case of cheating and criminal breach of trust and hence, the complaint of the petitioner is liable to be investigated by the competent authority and the averments in the complaint clearly spell out a criminal offence as the fact remains accused with the dishonest intention had defrauded the petitioner and the respondent gave statement before the Crime Branch Police on 05.06.2019 stating that he settled the amount to the petitioner without any corroborating evidence to substantiate his statement about the alleged repayment and the statement shows the intention of the respondent and there is a prima facie case is construed against the respondent and prays that the Criminal Revision has to be allowed.

5.On the other hand, the learned counsel appearing for the respondent/proposed accused submitted that no sale agreement was entered into between the respondent and the petitioner and if the agreement was entered between the petitioner and the respondent as alleged by the petitioner, the petitioner would have taken action against the respondent under the Specific Relief Act and the petitioner ought to have approached the civil court to prove his case, but after a lapse of three years, the petitioner filed the criminal complaint against the respondent that there is no relief before the civil form and the police, after enquiring the matter did not chose to register the FIR, since the case is purely civil in nature and the Apex Court was pleased to give guidelines as mere allegation of forgery is not enough for passing order under section 156(3) of Cr.P.C and prays for dismissal of the Criminal Revision.

6.The petitioner/complainant stated that there was sale agreement between him and the respondent. But the respondent denied it. It is open to the petitioner/complainant to take action against the respondent under the Specific Relief Act and the petitioner/complainant ought to have approach the civil court to prove the case.



7.The learned counsel appearing for the respondent/proposed accused submitted a ruling reported in **2015(3) Crimes (SC) 354 (Ramdev Food Products Vs. State of Gujarat)** to the effect that mere allegation of forgery is not enough for passing order under section 156(3) of the Criminal Procedure Code. In that case, it has been held in para 11 as follows:-

"The Magistrate has discretion either to district registration of a case under Section 156 (3) or to conduct inquiry himself as the situation may warrant. The discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. Direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that prima facie a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass the order under Section 156(3).

8.It is settled law that the Court will not entertain 156 (3) of Cr.P.C petition, if the dispute is civil in nature. If any transaction was taken place between the petitioner and the respondent, the petitioner should work out his remedy under the Specific Relief Act. Hence, for the above reasons, the petitioner is not entitled to get any relief.

9.In the result, this Criminal Revision is **dismissed**.

Sd/-

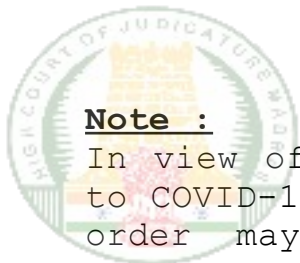
Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate No.1,
Nagercoil.

+1 CC to MR.NIRANJAN S.KUMAR, Advocate (SR-21094[F] dated
02/07/2021)

Judgment made in
Crl.R.C (MD) No.110 of 2021
01.07.2021

KM(08.07.2021) 4P 3C