



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.5255 of 2021

and Crl.M.P. (MD) .No.3041 of 2021

WEB COPY

Dr.Senthil Selvan

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City Police,
Madurai.

2.The Inspector of Police,
Anti Land Grabbing Cell,
Madurai City.

3.Mr.V.Shanmugavel

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the 2nd respondent to register his complaint as per the Order of the Judicial Magistrate No.I, Madurai, dated 16.09.2020 in Crl.M.P.No.1545 of 2020 and investigate the same in accordance with law and to initiate appropriate action against the 3rd respondent for non registration of FIR based on the orders of the learned Judicial Magistrate No.I, Madurai, dated 16.09.2020 in Crl.M.P.No.1545 of 2020 within a time frame to be fixed by this Court.

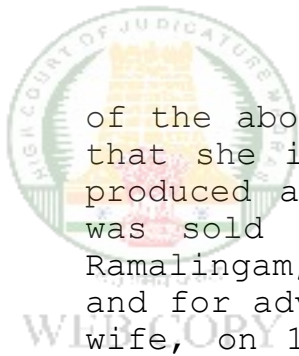
For Petitioner	: Mrs.D.Geetha
For Respondents	: Mr.R.Meenakshi Sundaram
1 & 2	Additional Public Prosecutor

O R D E R

This petition has been filed seeking order to set aside the closure report and directing the second respondent to register the complaint as per the order of the learned Judicial Magistrate No.I, Madurai, in Crl.M.P.No.1545 of 2020, dated 16.09.2020 and for directing action against the third respondent for not having register the FIR.

2.The case of the petitioner in brief:

The petitioner is a Teacher by profession. His wife namely Salai Selvi was looking for buying a plot for putting up construction. On knowing about the needs of the petitioner and his wife, one Mariappan, who claims to be a Real Estate Broker, approached him and promised to bring a land owner and in pursuance

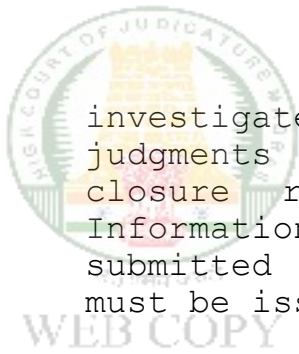


of the above said promise, he also brought one Chitraselvi, stating that she is the owner of the plot in S.No.381/2A1B1. She has also produced a sale deed, wherein, it was mentioned that the property was sold to her by one Rama Rao. So they approached one Muthu Ramalingam, who is the Document Writer for preparing the document and for advise. The property was also purchased by the petitioner's wife, on 14.11.2005. Patta was also later transferred in her name and also made arrangements for putting up the construction. During the course of the above said steps, it came to her knowledge that the above said plot was gifted by one H.Rama Rao to the Kesava Seva Kendiram Trust, Madurai as long back as on 23.03.1990 itself. So only thereafter, she came to know that she has been cheated by the above said Chitraselvi and the Document Writer. So the petitioner lodged a complaint to the Anti Land Grabbing Cell, Madurai, on 16.03.2020. No FIR was registered even though C.No.5305 of 2020 was given. So the petitioner approached the learned Judicial Magistrate No.I, Madurai, by filing Crl.M.P.No.1545 of 2020 under Section 153 (3) Cr.P.C., seeking registration of FIR that was also pleased to allow and order was also passed. But even after that no case has been registered. Hence, this petition.

3.Heard both sides.

4.It is the case of land dispute. It appears that the petitioner purchased the disputed land from one Chitraselvi, which was found to be not valid under law, because the said Chitraselvi was not the legal owner, but one Kesava Seva Kendiram Trust, Madurai, is the real owner as per the gift deed, dated 23.02.1990. It is also seen that Chitraselvi appears to have purchased the property from one Rama Rao. But it is also found to be bogus in nature, because the above said vendor of Chitraselvi was not the real owner, but, whereas, one Dr.H.Rama Rao was the real owner. An order has also been passed by the learned Judicial Magistrate No.I, Madurai, in Crl.M.P.No.1545 of 2020, for registering the case and investigate the matter. Now the grievance of the petitioner is that sine there is a specific direction issued by the learned Judicial Magistrate No.I, Madurai, to register the case and investigate the matter, the third respondent without following the same has undertaken a preliminary enquiry and has also submitted a closure report before the concerned Court and the closure report copy has also been submitted by the petitioner in the typed set of papers.

5.A short question, which arises for consideration is whether the course of procedure that has been adopted by the third respondent is legally valid one. Straight away the counsel for the petitioner would rely upon the judgment of this Court passed in ***Crl.R.C. (MD) .No.249 of 2017 in Pandiarajan Vs. Perumal and others, dated 27.06.2017***, wherein, it has been stated that when a direction is issued by the learned Judicial Magistrate, under Section 153 (3) Cr.P.C., it is the duty of the Officer to register the FIR and



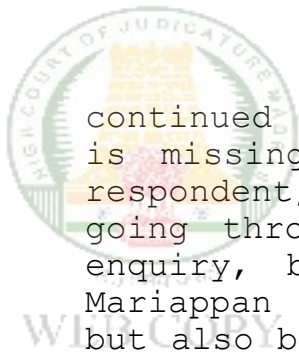
investigate the matter. This Court has also relied upon various judgments that has been cited on this aspect. In that case also closure report was submitted without registering the First Information Report. So the learned counsel for the petitioner submitted that since it is a settled position of law, a direction must be issued to the third respondent.

6. But, however, the power of the Investigating Officer to hold a preliminary enquiry even without registering the FIR is well recognized. The Constitution Bench of the Honourable Supreme Court in ***Lalithakumari's case***, has observed that in some of the circumstances, preliminary enquiry can be undertaken by the Investigating Officer, such as matrimonial matters, civil disputes, commercial disputes, etc., The Honourable Supreme Court has also pointed out that the list that has been mentioned in the Judgment is not exhaustive in nature. It depends upon the facts and circumstances of the case. So the contention on the part of the petitioner that the third respondent ought to have registered the FIR even without taking the preliminary enquiry is not valid under law and cannot be accepted.

7. Now the question which remains to be answered is whether in the facts and circumstances of the case, the preliminary enquiry that has been undertaken by the third respondent is proper. In the background of the above said facts and circumstances, it is the case of the petitioner that his wife has been cheated by the above said Chitraselvi and Document Writer. So according to him, a clear case of cognizable offence has been made out.

8. Reading of the report of third respondent shows that one Mariappan was the mediator in respect of the sale which is of the year 2005, but the complaint has been filed in the year 2020, that means after a lapse of 15 years. But, according to the petitioner, the real fact came to his notice only recently, when he making steps to put up the construction. It is seen that at that time only, he obtained the Encumbrance Certificate. So it is also seen that without properly perusing the earlier title documents, purchase has been made. Chitraselvi, who is the vendor of the petitioner has also stated that the above said Mariappan was also the Mediator in the above said transaction and she purchased the property through the above said Mediator and for selling the same, she again approached the above said Mariappan, who also helped her. It also appears that Chitraselvi did not obtain any Encumbrance Certificate from the Sub Registrar Office, to know the real title holder. Mariappan has also expired in the year 2007.

9. A compromise talk was undertaken between the parties. But this petitioner did not accept for any terms. He has also stated that neither Chitraselvi nor the petitioner were having the previous title documents. But, in the Encumbrance Certificate, the gift that has been made by the above said H.Rama Rao has been mentioned and



continued to be found. The seller of Chitraselvi namely S.Rama Rao is missing and he cannot be traced. So according to the third respondent, the petitioner ought to have purchased the property by going through the title documents and without making any proper enquiry, believing the words of the above said Mediator namely Mariappan the property has been purchased not only by Chitradevi, but also by this petitioner. So finding that there was no intention on the part of the above Chitraselvi to cheat this petitioner, it was closed with an advise to the petitioner to workout his remedy through proper proceedings to recover the money paid.

10. So going through the closure report, totally evidences the fact and this Court is of the view that this is a fit case, which requires proper preliminary enquiry, since it is a land dispute, which has been raised after a lapse of 15 years and it is also due to the mistake on the part of the vendor as well as the petitioner in perusing the earlier title documents and the alleged Mediator also expired, vendor of Chitraselvi has also missing.

11. I find that absolutely the closure report filed by the petitioner does not suffer from any illegality. If the petitioner is still aggrieved by the contents of the same, he can very well approach the concerned Court and workout his remedy. So this petition deserves to be dismissed and of course with a liberty to the petitioner to workout his remedy before appropriate Court through proper proceedings.

12. Accordingly, this criminal original petition is dismissed with the above liberty. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

TM

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

1.The Commissioner of Police,
Madurai City Police,
Madurai.

2.The Inspector of Police,
Anti Land Grabbing Cell,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.GEETHA, Advocate (SR-32687[F] dated 26/10/2021)

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RS/PM (02.11.2021) 5P 5C