



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2021

Delivered On: 19.08.2021

CORAM

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

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CrI.O.P.(MD).Nos.7454 & 7785 of 2021

and CrI.M.P.(MD).No.3859 of 2021

CrI.O.P.(MD).No.7454 of 2021

1.Padmavathi

2.Annadurai

... Petitioners/Accused No.1 and 2

Vs.

1.The State Rep. by

The Inspector of Police,

District Crime Branch (DCB),

Madurai District.

(Crime No.5/2021)

... 1st Respondent/Complainant

2.Koperundevi

... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to Crime No.5 of 2021, dated 03.03.2021, on the file of the Inspector of Police, DCB, Madurai District and quash the same against these petitioners.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondents : Mr.R.M.Anbunithi for R1

Additional Public Prosecutor

Mr.S.Ramasamy for R2

CrI.O.P.(MD).No.7785 of 2021

Kopperundevi

... Petitioner/Complainant

Vs.

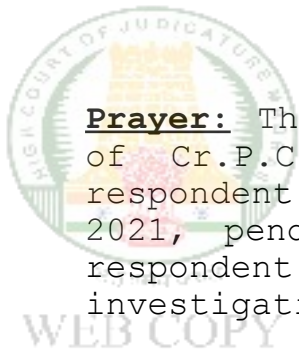
1.The superintendent of Police (CBCID),
Chennai.

2.The Deputy Superintendent of Police,
District Crime Branch,
Madurai.

3.The State, represented by
The Inspector of Police,
District Crime Branch,
Madurai District.

4.The Inspector of Police (CBCID),
Madurai.

... Respondents/Respondents



Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to change the investigation agency from the 3rd respondent to 4th respondent herein in respect of the Crime No.5 of 2021, pending before the 3rd respondent and also direct the 1st respondent to appoint competent investigating officer to do the investigation of the case and file a final report.

For Petitioner : Mr.S.Ramasamy
For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor

COMMON ORDER

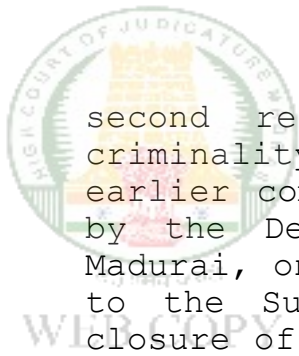
Petition in Crl.O.P.(MD).No.7454 of 2021 has been filed seeking quashment of FIR in Cr.No.5 of 2021, dated 03.03.2021 and petition in Crl.O.P.(MD).No.7785 of 2021 has been filed to change the investigation agency from the third respondent to fourth respondent in the above said Cr.No.5 of 2021.

2.Since the issues involved in both petitions are one and the same, both petitions were heard together and passed the following common order.

3.The brief facts are as follows:

The accused No.1 and 2 in Cr.No.5 of 2021 and the defacto complainant, who is the second respondent in Crl.O.P.(MD).No.7454 of 2021 (Petitioner in Crl.O.P.(MD).No.7785 of 2021) are close relatives. The second respondent/defacto complainant lodged a complaint by filing a petition under Section 156 (3) of Cr.P.C. before the learned Judicial Magistrate No.I, Madurai, in Cr.M.P.No.443 of 2021 with the following averments. The accused persons approached the complainant to sell the house situated in plot No.40 in S.No.52/2, 53/1, to an total extent of 7 cents with house worth about Rs.49 lakhs to her. On that basis, a sale deed was also effected, on 25.02.2020. Later, she came to know that there was some defects in the construction of the house, it started developing cracks. Suspecting some foul play, she lodged a complaint, on the ground that she came to know that in the property, which has been purchased by her, there was a Well and the same was closed before putting up the construction by putting soil. Because of the closed Well, the building was not strong and started developing cracks. According to her, these petitioners intentionally cheated and misappropriated huge amount. So on the basis of the order passed by the concerned Magistrate, a case in Cr.No.5 of 2021 for the offence punishable under Section 294 (b), 406, 420, 418 and 506(i) and 120 (B) IPC has been registered.

4.Challenging the FIR, Crl.O.P.(MD).No.7454 of 2021, has been filed and mainly on the ground that the property was sold to the

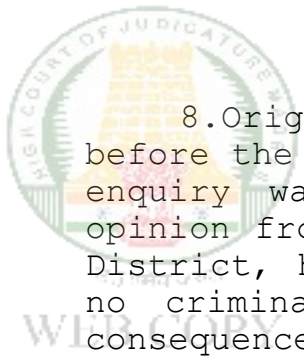


second respondent after due deliberations and effectively no criminality can be attached. It involves only a civil issue. The earlier complaint given by the second respondent came to be closed by the Deputy Superintendent of Police, District Crime Branch, Madurai, on the basis of the legal advise given by the legal advisor to the Superintendent of Police, on 11.11.2020. So after the closure of the same, by suppressing the above said fact, the second respondent has filed a petition before the concerned Court, seeking a direction. The construction was carried on by the petitioner, purchasing the site, in the year 2013, by getting the house building loan and proper permission from the Municipal Corporation. So no criminality involved in it, if at all, only a civil issue can be raised by the second respondent.

5.CrI.O.P.(MD).No.7785 of 2021, has been filed by the defacto complainant, seeking transfer of investigation on the ground that the original complaint given by her to the Superintendent of Police, Madurai in District Ref. No.G5/3453/33118/SP-MD/2020 has been forwarded to the second respondent for an enquiry and thereafter, the second respondent has not taken any action to register a case. So on that ground, investigation must be transferred.

6.Heard both sides.

7.The parties are close relatives. Perusal of documents as well as the hearing of the respective counsels show that originally the petitioners purchased a plot, on 17.03.2014, from Mariammal. The property description was that the total extent in S.No.52/2, covers 3.12 cents and 53/1 comprised 1 acre 57 cents. Both the survey numbers were clubbed together and a layout has been formed named of Thendral Nagar. In the layout, house plots have been divided to various extents. The petitioners purchased a plot in Plot No.40, measuring an extent of 2640 sq. feet. These documents clearly shows that the property has been purchased by this petitioner as a house site plot which is an approved plot on the basis of the lay out. Subsequent to that, they put up construction by obtaining proper approval. The approval is dated 20.04.2019. Those documents shows that after purchasing the property only in the year 2019, house has been constructed. The foundation details has been mentioned. So after putting up the construction, it appears that they lived there for some time and later decided to sell the property to the defacto complainant, on 25.02.2020. It appears that during that transaction, there was no trouble between the parties. Trouble started within two or three months. The allegation of the defacto complainant to the effect is that because of defective construction and foundation, the house started giving cracks and later, on enquiry it came to her knowledge that originally the house site was having a well. Later it has been closed and construction has been put up. So this particular fact has been suppressed at the time of sale transaction. Without knowing the foundation details, she purchased the property. This is the crux of the complaint.



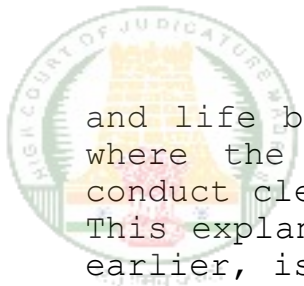
8.Originally as mentioned in the petition, she gave a complaint before the second respondent making the very same allegations and an enquiry was conducted and during the course of enquiry, legal opinion from the legal advisor to Superintendent of Police, Madurai District, has been obtained and in the opinion, he has stated that no criminal liability can be attached, if at all, only civil consequences ensued. On that basis, it came to be closed on 11.11.2020 itself. Thereafter, only the present complaint has been filed by way of a petition before the Judicial Magistrate No.I, Madurai, as mentioned above. So this sequences of events clearly established that the transaction was smooth, when it was completed and later only trouble arose. The petitioner would says that the trouble was not because of the defenite construction, but because of the defacto complainant's inability to pay the Bank loan, which was obtained for purchasing the property. But those facts cannot be gone in this petition to the facts of the issues. Since the earlier complaint has been closed by the second respondent, the defacto complainant says that a fair investigation is not possible in his hands and so it must be transferred to some other Officer.

9.So now, a simple question which arises for consideration, is even if we take the allegation mentioned in the petition, on its face value to be true, whether any criminality is attached. We can go to the Section 55 of Transfer of Property Act.

55. (1). The seller is bound

a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

10.So this provision makes it obligatory on the part of the seller to disclose the defects in the property. Now according to the defacto complainant, the latent defect that was in existence in the form of closed well was not disclosed to him if it was a patent defect then only he can be blamed and not the seller. But here the defect is a latent one, which is also evident from the FMB that has been enclosed in the typed-set of papers, which shows the existence of a well. According to her, the failure on the part of the petitioner, having fully known about the latent defect, is clearly a fraudulent mis-representation which attracts the penal provisions as mentioned in the First Information Report. But, a simple and common sense, acceptable explanation is offered by the petitioner, is that even before the property was purchased as a house site by them, layout has been formed. House site approval have been obtained only at the time when they purchased the property. Had they have known about the latent defect, certainly they would not have purchased the trouble. More particularly, they would not have risked their money



and life by putting up the construction of a house in such a land where the well originally existed. So according to her, their conduct clearly shows that they were not aware of the latent defect. This explanation on the part of the petitioner seems as I mentioned earlier, is acceptable.

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11.The contention on the above of the defacto complainant that the house is started cracking within two months from the date of their purchase is also without any material. Moreover, it is seen that as mentioned earlier, they are closely relatives. There is no reason for the petitioner to make a misrepresentation and cheat the defacto complainant. A common sense approach to the problem will show that no criminality can be attached to the conduct of the petitioners in the absence of any materials.

12.For the purpose of making a legal claim on the basis of the latent defect, the following ingredients must be established even under the Civil Law. First the defect must be a latent that renders the property unfit for construction. Secondly, the seller might have the knowledge of the defect. Thirdly, the seller contend the disclosed defect concealed the same or otherwise misrepresented the nature of the defect.

13.From the analysis made above, I am of the considered view that even for sustaining a civil claim, the above said ingredients must be established and proved. For the purpose of establishing a criminality, a fraudulent misrepresentation must be brought on record in the form of materials. Even on the face of the dispute and in the background of the facts clearly show that absolutely there was no fraudulent misrepresentation on the part of the petitioners. A reasonable, a prosible and common sense, acceptable explanation has been offered by the petitioners. So I am of the considered view that no criminality is attached and FIR filed is nothing but an abuse of process of Court and Law and it is liable to be quashed and accordingly quashed. Consequently, connected miscellaneous petition is closed.

14.Since the FIR has been quashed, the prayer sought for in the criminal original petition in Crl.O.P.(MD).No.7785 of 2021 has become infructuous and so it is dismissed as infructuous.

Sd/-

Assistant Registrar (CS-II)

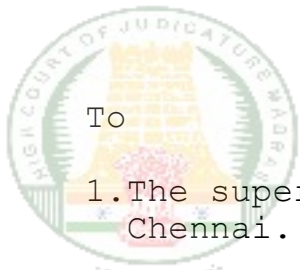
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

- 1.The superintendent of Police (CBCID),
Chennai.
- 2.The Deputy Superintendent of Police,
District Crime Branch,
Madurai.
- 3.The Inspector of Police,
District Crime Branch,
Madurai District.
- 4.The Inspector of Police (CBCID),
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) .Nos.7454 & 7785 of 2021
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GC(01.09.2021)/6P/6C