



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.09.2021**

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P(MD)No.8014 of 2021

1.P.R.Kumar

2.Devaki

3.P.R.Babu

4.P.R.Subramanian

5.P.R.Kesavan

..: Petitioners

Vs.

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

2.The Inspector of Police,
Central Crime Branch,
Madurai City.
(Crime No.54 of 2019)

3.Pandi

: Respondents /Complainants

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the second respondent police Officials to not to harass the petitioners and their family members against the law in the nature.

For Petitioners : Mr.I.Abrar MD Abdullah

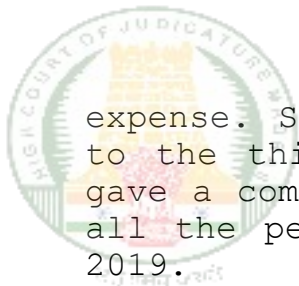
For Respondents : Mr.R.M.Anbunithi for R1 & R2
Additional Public Prosecutor

Mr.K.Govindarajan for R3

O R D E R

This Criminal Original Petition has been filed to direct the 2nd respondent police not to harass the petitioners and their family members under the guise of enquiry.

2.The case of the petitioners is that the 3rd respondent lodged a complaint with the 2nd respondent herein stating that he entered into a sale agreement with the first petitioner, on 08.03.2012. Based on the agreement, the first petitioner has received a sum of Rs.10,50,00,000/- from the third respondent in the presence of all the petitioners. But the first petitioner sold only 5,578 sq.ft to the third respondent. Further, the first petitioner has borrowed a sum of Rs.2 Corers from the third respondent for his personal



expense. Subsequently, first petitioner repaid a sum of Rs.2 Cores to the third respondent. In the mean time, the third respondent gave a complaint before the second respondent on 04.12.2019 against all the petitioners and the same was registered in Crime No.54 of 2019.

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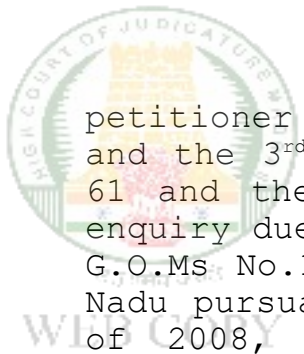
3.In the complaint, the third respondent stated that the petitioners did not keep their promise and they did not act upon as per the agreement and thereby, they cheated him. Later, the petitioners filed anticipatory bail petition before this Court in Crl.O.P(MD)Nos.18408 and 18540 of 2019. This Court, referred the cases before the mediation for amicable settlement between the parties and a Retired Hon'ble Judge Mr. Justice K.Kannan was appointed as Mediator. On 26.02.2020, settlement was arrived between the parties and the Memorandum of Settlement was also filed before this Court. Based on which, Crl.O.P(MD)No.18540 of 2019 was allowed and Crl.O.P(MD).No.18408 of 2019 was dismissed in respect of first petitioner alone stating that he has failed to settle the amount, which was agreed before the mediation. Against the dismissal order, the first petitioner has filed SLA(Crl).No.3578 of 2021, before the Hon'ble Supreme Court and six months time was granted to the first petitioner to pay the remaining amount to the third respondent.

4.The learned counsel for the petitioners would submit that on 17.05.2021, the second respondent called the first petitioner by issuing notice under Section 41(A) Cr.P.C, for which, a reply was sent by the first petitioner. But however, once again, summons has been issued to the petitioner directing him to attend enquiry on 14.06.2021. He would further submit that the first petitioner is ready to settle the amount to the third respondent. He would further submit that the first petitioner is living in Chennai and the investigation is going on in Madurai and due to travel distance and pandemic situation, he did not attend the enquiry.

5.The learned Additional Public Prosecutor would submit that if the first petitioner is ready to settle the amount, there will be no use for further adjudication in the present petition.

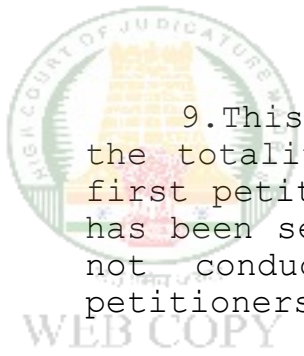
6.Heard both sides.

7.When the matter was moved urgently, this Court raised a specific question to the learned counsel for the petitioners as to how this petition is maintainable, since no order with regard to the stay of investigation has been passed by the Hon'ble Supreme Court in SLA (Crl) No.3578 of 2021. On 07.05.2021, the Hon'ble Supreme Court has granted 6 months time to the first petitioner to settle the amount to the third respondent. The time expired on 30.08.2021. Even though the first petitioner has not repaid the remaining amount. But however, the learned counsel for the petitioners would submit that he is ready to settle the issue and only for the purpose of getting back his money, he seeks time. He also submitted that the 2nd



petitioner is aged about 79 years and she cannot travel to Madurai and the 3rd petitioner and the 4th petitioner are aged about 63 and 61 and they cannot travel from Chennai to Madurai to attend the enquiry due to Pandemic situation. Moreover, he also relied upon the G.O.Ms No.1580, dated 24.11.2008 issued by the Government of Tamil Nadu pursuant to the order passed by this court in Crl.OP No.12170 of 2008, dated 11.06.2008 and Crl.OP No.11569 of 2008, dated 25.06.2008. In the above petitions, guidelines have been issued to the Police Department with regard to dealing of the matters in respect of civil dispute. According the learned counsel, there is a money transaction between the parties. The 2nd respondent may not have any right to make any enquiry. But this is not a petition for quashment. The petition has been filed only for limited remedy not to harass under the guise of enquiry. This petition has also been filed only based upon the summons issued by the first respondent, since no stay order has been passed by the Hon'ble Supreme Court with regard to the investigation of the crime, the proceedings initiated by the second respondent for further investigation cannot be found fault. Whether it is purely civil transaction or not, cannot be a matter for discussion or consideration in this petition and that has been elaborately discussed by this court, when this petitioners moved the petitions in Crl.OP(MD)Nos.18408 and 18540 of 2019 filed by the petitioners. So once again, the same consideration or discussion cannot be reopened by this court in this petition. It is also seen that much efforts have been taken by this court to settle the issue by referring the matter to the Mediation, which was also conducted by Hon'ble Mr.Justice K.Kannan, Retired Judge of this court. So the argument advanced on the side of the petitioners that there was an arbitration clause, when the agreement between the parties cannot a matter also for consideration in this petition. For the the reasons above with regard to the conduct of the first petitioner also, an observation has been made by this court in the above said anticipatory bail petitions to the effect that the first petitioner was in the habit of appearing before the court and seeking time by citing one or other reasons. So later, the first petitioner moved before the Hon'ble Supreme Court by filing petition in SLA(Crl.) No.3578 of 2021. In the appeal, an interim protection has been ordered and time was granted to make payment. When this matter was heard and reserved for orders, considering the fact that the matter has been listed before Hon'ble Supreme Court and is pending in SLA(Crl.) No.3578 of 2021 and to know the out come of the orders, the matter was re-opened for getting clarification and on 14.09.2021, the learned counsel for the petitioners submitted that the Hon'ble Supreme Court is extended the time till November 2021.

8.The learned counsel for the 3rd respondent would submit that there is no stay order passed by the Hon'ble Supreme court with regard to the investigation.



9.This matter does not deserve any consideration. Considering the totality of circumstances of the case and the conduct of the first petitioner, I am of the considered view that since the matter has been seized by the Hon'ble Supreme Court, the 2nd respondent has not conducted any illegality in sending the summon to the petitioners, the petition is liable to be dismissed.

10.Accordingly, this Criminal Original Petition is **dismissed**. But however, a direction is issued to the 2nd respondent herein to issue fresh summon to the petitioners, depending upon the out come of the order to be passed in SLA (Crl.)No.3578/2021 for conducting investigation. The 3rd respondent as well as the petitioners must inform the outcome of the SLA to the 2nd respondent immediately.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tta/er

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,
Madurai.

2.The Inspector of Police,
Central Crime Branch,
Madurai City.

+1 CC to M/s.J.SENTHIL KUMARIAH, Advocate (SR-30818[F] dated 30/09/2021)

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-30816[F] dated 30/09/2021)

Crl.O.P(MD)No.8014 of 2021
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_RD/PM (23.11.2021) 4P 5C