



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.(MD)Nos.16397 and 22924 of 2016

and

Cr.M.P(MD)Nos.8022 and 12031 of 2016

(Through video Conference)

CrI.O.P(MD).No.16397 of 2016:

1.Murugesan

2.R.Kamala

.. Petitioners / Accused Nos.1 & 2

Vs.

C.Backiyam

.. Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the Charge Sheet in C.C.No.302 of 2014 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal and abuse of process of law.

CrI.O.P(MD).No.22924 of 2016:

P.Sammiyappan

.. Petitioners / Accused No.3

Vs.

C.Backiyam

.. Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the Charge Sheet in C.C.No.302 of 2014 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal and abuse of process of law.

In both petitions:

For Petitioner : Mr.K.Shanmuga Raja

For Respondent : Mr.M.Solaisamy



COMMON O R D E R

These petitions are filed under Section 482 Cr.P.C., to quash the criminal private complaint instituted by the respondent herein before the learned Judicial Magistrate No.II, Madurai. Since the petitioners/accused in these petitions are shown as accused in the said complaint, these petitions are taken up together and disposed in this common order.

2. The allegation in the complaint against the petitioners herein is that the complainant/respondent acted as a broker in respect of the property nearby her house and received Rs.1,00,000/- (Rupees One lakhs only) as brokerage commission on the premise that the said land belongs to one Jeyaprakash and he will arrange to get the sale deed executed by Jeyaprakash once the entire sale consideration is paid. However, later it was found that the property belongs to one Iyyanar. It appears from the complaint that pursuant to the agreement entered by Backiyam (the complainant) with Kamala (the second petitioner in CrI.O.P(MD).No.16397 of 2016), the said Jeyaprakash, through his power-agent Gokulan has executed a sale deed in favour of the petitioners herein on receipt of the sale consideration to the tune of Rs.32,00,000/-. Later it was found that the property does not belong to Jeyaprakash. Hence, complaint been lodged against the Jeyaprakash in Crime No.105 of 2012. Since the matter became more murky, the petitioners herein, exercising their influence in the police department, had forcibly extracted money from the complainant a cheque for a sum of Rs.32,00,000/- and cash of Rs.2,00,000/-.

3. It is contended by the complainant that the money and cheque was issued under duress since the petitioners herein exerted pressure on him to give the cheque or else they will displaced his entire family. Because of his daughter's marriage, to avoid embarrassing situation, he gave the cheque and thereafter, obtained anticipatory bail and police protection apprehending threat at the hands of the petitioners herein. While so, it is specifically alleged in the complaint that on 13.12.2013, the petitioners barged into his house and assaulted him for giving complaint to the police. Since his complaint to the higher officials of the police department was not taken for investigation, the private complaint alleging offences under Sections 447, 341, 294(b), 385 and 506(i) IPC r/w 34 IPC, been filed under Section 200 Cr.P.C.

4. The learned Judicial Magistrate has taken the complaint on file and caused summons to the accused. Thereafter, the present petition is filed to quash the complaint on the ground that for nearly two years, the complainant had not proceeded with the case and just to harass them, he keeping the petition pending; the allegations made in the complaint are false and imaginary; the sale



consideration for Rs.32,00,000/- was received by the complainant, but with intention to cheat, he has shown Gokulan/power agent of Jeyaprakash, as the person, who has received the sale consideration. After knowing that they have been squarely cheated, the petitioners approached the complainant to pay back the money. As a result, he voluntarily paid Rs.2,00,000/- in cash and gave cheques totally for a sum of Rs.32,00,000/-. However, they realise later that he has given the cheques only to deceive them and the cheques were returned as insufficient on presentation. Further, he has also given the false private complaint with untenable allegations. The said private complaint is liable to be quashed on the following grounds:

1. inordinate delay of commencing the trial for more than two years vest inherent right on the accused persons to seek for quash.

2. the learned Magistrate has failed to follow the procedure contemplated under Section 210 Cr.P.C. When admittedly, there was a complaint preferred before the police and the same under investigation.

3. the third accused Samiappan, the petitioner in Crl.O.P.(MD).No.22924 of 2016 was working as Special Sub Inspector of Police in Narcotics Intelligence Bureau (NIB) on the date of alleged occurrence and there are sufficient record to show that he was not present at the residence of the complainant on 13.12.2013. However, the said fact was not considered by the Judicial Magistrate when the discharge petition was filed by him before the learned Magistrate.

5. This Court, after hearing the learned counsel for the petitioner at length and on perusal of the documents, find that it is a case where the parties have entered into an agreement and also executed sale deeds in respect of a property, to which the title itself is in dispute. From the records, this Court finds that earlier when Kamala preferred Crl.O.P.(MD).No.3687 of 2016 seeking transfer of investigation in respect of Crime No.34 of 2015, Court has observed that the complaint has been taken up for investigation by D1-Thallakulam Crime Police in Crime No.937 of 2019 for offence under Section 406, 420, 468 and 506(i) of IPC on 19.06.2016. After registering the complaint, witnesses were examined including the defacto complainant Kamala and her husband Murugesan and the samples of signatures have sent to Forensic Science Lab for comparison. Therefore, at this stage, nothing warrants transfer of investigation. The said Murugesan and Kamala are before this Court as petitioners in Crl.O.P.(MD)No.16397 of 2016. It appears apart from the above said complaint, which is now under investigation by D1 Thallakulam Police re-registered in Crime No.937 of 2019 same attempt has been made by the petitioners herein to collect money from the complainant Backiyam, which has landed the petitioners as accused in the impugned private complaint.



6. It is the case of the complainant Backiyam that the cheques for Rs.32,00,000/- was obtained by threat and force. The same is denied by the petitioners herein. However, it is admitted that suit has been filed, based on the cheques, by the petitioners herein which only indicates that there was an incident relating to the issuance of cheques and whether it is voluntarily given by the complainant Backiyam or was obtained by force is to be tested in the trial.

7. Therefore, this Court finds that the said private complaint cannot be quashed for the reason of delay of two years or not following Section 210 of Cr.P.C., which does not attract in the given facts and circumstances of the case.

8. It is contended by the learned counsel for the petitioners that the petitioner in Crl.O.P.(MD).No.22927 of 2016, being the police was on duty on the day, when the alleged occurrence took place, hence, discharge petition is filed by him. However, without any progress, it is still pending before the trial Court. If it is so, the learned Magistrate shall consider the petition without being influenced by the order passed by this Court and pass appropriate order. It is needless to say that if the respondent/ complainant fails to get along with the trial, the Magistrate shall exercise his power to stop further proceedings or pass any other appropriate order in accordance with law.

8. With these observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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 Judicial Magistrate No.II,
Madurai.

WEB COPY

+1 CC to M/s.K. SHANMUGA RAJA, Advocate (SR-36464[F] dated
30/11/2021)

+1 CC to M/s.M. SOLAISAMY, Advocate (SR-36216[F] dated 26/11/2021)

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RD(20.12.2021) 5P 4C