BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.11.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN
Crl.O.P.(MD)Nos.17665 and 19196 of 2018
and
Crl.MP(MD)Nos.7841 and 8633 of 2018

(1)Crl.OP(MD)No.17665 of 2018:-

1.Mr.A.S.Philip Sydney
(Wrongly mentioned FIR as Pilipsindnee)
2.Mrs.Thangam : Petitioners/A1 and A2

(2)Crl.OP(MD)No.19196 of 2018:-

Mr.Selvin George : Petitioner/A3
(Wrongly Mentioned FIR as Selvinraj)

Vs.

1.The Inspector of Police,
S.S Colony Police Station,
Madurai City.
(Crime No.554 of 2018) : 1st Respondent / Complainant

2.Mr.Petric : 2nd Respondent / Defact Complainant (in both Cases)

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.554 of 2018, dated 10.08.2018 on the file of the 1st respondent for the offence under sections 406, 407, 420 and 506(i) IPC and quash the same.

For Petitioners : Mr.T.Lajapathi Roy
For 1st Respondent : Mr.M.Muthumanickkam
Counsel for the State
(Criminal side)

COMMON ORDER

These petitions have been filed by the petitioners seeking quashment of the FIR in Crime No.554 of 2018 on the file of the 1st respondent.

2.**The case of the prosecution in brief**:-

The de-facto complainant, who is the 2nd respondent herein lodged a complaint stating that the petitioners promised his father to involve them in a business of Real Estate stating that they have lands in Coimbatore. Promising that if investigation is made in the Real Estate business, huge profit can be earned. So believing the words, the father of the 2nd respondent invested Rs.1.5 Lakhs and 13.5 Lakhs. When the above said amount was paid to the 1st petitioner, the petitioners 2 and 3 were also present. Against the promise that has been given by A1, he failed to execute the sale deed in favour of his father. Later, it also came to the knowledge of his father that the lands did not belong to A1. Because of the mental agony, he died on 19.05.2016. On 22.12.2016, the 2nd respondent made a complaint to the 1st respondent police, but there is no action on the face of the complaint. So, the 2nd respondent filed a petition before the Judicial Magistrate No.5, Madurai under section 156(3) Cr.P.C seeking direction to register a case and investigate the matter. Based upon the direction given by the Magistrate, in Cr.MP No.1508 of 2018, the case has been registered against three persons in Crime No.554 of 2018 for the offence under sections 406, 407, 420 and 506(i) IPC. Pending investigation, A1 and A2 preferred a petition in Crl.OP(MD)No.19196 of 2013 and A3 has also preferred a separate petition in Crl.OP(MD)No.19196 of 2018.

3.Since common questions of law and facts are involved in this matter, this common order is passed.

4.Heard both sides. Even though the 2nd respondent has been served, none appears.

5.The main contention on the part of the petitioners is that it it is an out and out the civil dispute with regard to civil transaction, which was given a criminal colour by the 2nd respondent and a false case has been registered. When the police complaint was given on the earlier occasion by the 2nd respondent, the police after investigation has closed the same and suppressing the above said fact, the 2nd respondent filed a petition under section 156(3) Cr.P.C before the Magistrate Court and based upon the direction, a case has been registered.

6.The further contention on the part of the petitioners is that there was an agreement of sale between the father of the 2nd respondent and one Jeganathan as first party on the one side and the 3rd accused namely Selvin George, who is the petitioner in Crl.OP(MD)No.19196 of 2018, in the connected petition on the other side as second party. A3 entered into a sale agreement with the above said Jeganathan and the father of the 2nd respondent over which has paid Rs.5 Lakhs as advance to A3. Out of the above said sale, Rs.1.5 Lakh was paid by the father of the 2nd respondent and the remaining amount was paid by the above said Jeganathan. So according to the petitioners, it is an out and out sale agreement dispute. But as mentioned in the complaint, the contention on the part of the 2nd respondent is that the property in respect of which, the sale agreement was entered into, did not belong to A1 namely the first petitioner herein. So according to the 2nd respondent, A1 cheated his father. But the 2nd respondent also stated that the first petitioner promised his father to invest in the Real Estate business for earning profit. But the twist, that has been made by the 2nd respondent is apparent on the face of facts and circumstances.

7.As pointed out by the petitioners only for the purpose of giving a criminal colour, the said allegations appears to have been made by the 2nd respondent. This is the major defect in the case of the 2nd respondent.

8.Now coming back to the contention of the petitioners that the sale agreement did enter between the parties as produced in the typed set of papers, which is dated 10.02.2010, on 10.02.2010. As mentioned by the petitioners in the petitions, it is seen that the agreement was entered into between A1 one the one side side as A party and also one Jeganathan and the father of the 2nd respondent as a second party on the other side. It is stated that the first petitioner is the owner of the Survey No.592/D1, 2, 3, 571/B1,2, 3 and 593/1,2, 3 numbering about 235 plots, among which 10 plots were agreed to sell at the rate of Rs.40,000/- per cent and the total advance amount of Rs.5,00,000/- was received and the remaining amount of Rs.10,00,000/- must be paid by the 2nd party to the first party, after receiving the pending document. It is not a sale agreement and it is only an agreement entered into between the parties regarding the sale transaction that is going to be executed between them. This is, dated 10.02.2010. Subsequent to the above said agreement, it is seen that on 05.03.2010 and 25.03.2010, the first petitioner received another Rs.5,00,000/-. So it is seen that Rs.5,00,000/- was paid towards sale agreement transaction. Later, dispute arose between them. The first petitioner/A1 issued a legal notice on 17.08.2012 to the above said Jeganathan and the father of the de-facto complainant stating that as per the agreement that has been reached between the parties, the document which was pending on the date of the above said agreement was received by him and his name has also been mentioned in encumbrance certificate. He contacted them. But they did not give any proper response. So a demand has been made to pay Rs.1.40 Crores and get a document registered.

9.Whether there was any reply on the side of the de-facto complainant or not is not clear on record. Subsequent to the above said notice, based upon the complaint given by the 2nd respondent upon the pressure, a document was executed undertaking between the parties at the time of investigation. It is mentioned in the agreement that because of the investigation process, these petitioners requested the 2nd respondent for a settlement, by which they agreed to return the amount within three months. But this sort of contention cannot be accepted and relied upon at this stage. This is the disputed document and that cannot be taken into account. The document is dated 16.08.2018. Now whatever it may be, it appears that subsequent to the above said execution of the document, these petitions came to be filed for the purpose of avoiding the undertaking given by the petitioners.

10.Now the sequence of events and the facts and circumstances of this case clearly show that there was a sale agreement transaction between the father of the de-facto complainant and the first accused, in which the petitioners 2 and 3 have absolutely no role to play. It has been simply stated that when the transaction was entered and money was paid by the above said father of the 2nd respondent, the accused 2 and 3 were present in that place. Mere presence of the accused 2 and 3 in the place of transaction cannot and will not make any criminal liability.

11.So absolutely, there is mala fide allegation as against the Accused 2 and 3. So it appears that A2 and A3 without any proper materiels have been implicated in this case. In so far as the A1 namely the first petitioner herein is concerned, as mentioned above, out and out sale transaction between the father of the 2nd respondent and A1 and with one Jeganathan. For some or other reasons, it appears that the transaction failed. So naturally the father of the 2nd respondent ought to have taken steps to get the sale agreement cancelled and recover the money paid. Instead of initiating proper civil proceedings, after the death of his father, the 2nd respondent has given a criminal colour and foisted this prosecution. So I am of the considered view that this is the fittest case, which requires interference of this court as continuation of investigation process against these petitioners will amount to abuse of process of court and law.

12.In fine, both criminal original petitions are **allowed.** The impugned FIR in Crime No.554 of 2018 is hereby quashed as against these petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CI

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 Inspector of Police,
S.S Colony Police Station,
Madurai City.

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

+2 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-36532[F] dated 30/11/2021)

Crl.OP(MD)Nos.17665 and 19196 of 2018
29.11.2021

SRK(CO)
SB(10.12.2021) 5P 5C