



WEB COPY

IN THE HIGH COURT JUDICATURE OF MADRAS HIGH COURT

DATED: 13.06.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P. No.1880 of 2019

and

Crl.M.P.Nos.1164 and 4078 of 2019

Krishnappa @ Bangaru Krishnappa

...Petitioner

Vs.

1. State by Sub Inspector of Police,
District Crime Branch,
Krishnagiri,
Crime No.1/2019

2. Krishna Reddy

...Respondents

PRAYER:Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.1 of 2019 on the file of the first respondent herein and quash the same.

For Petitioners : Mr.V.V.Sairam

For Respondents : Mr.N.S.Suganthan for R1
Government Advocate (crl side)
M/s.R.Poornima for R2

ORDER

This Criminal Original Petition is filed to quash Crime No.1 of 2019 on the file of the first respondent herein.

2.Heard the learned counsel for the petitioner and the respondents.

3.On 24.11.2017, one Krishna Reddy has lodged a complaint before the District Superintendent of Police, Krishnagiri, alleging that one S.M.Krishnappa @ Bangaru Krishnappa has received a total sum of Rs.2,66,84,400/- on various dates from him on promise to sell 8 acres of land owned by him. Believing his promise, money was paid through RTGS, DD, cheque and by cash on various occasion to Krishnappa, his sons Chandrasekara Reddy and Sudhagar Reddy and Nandhini. In the complaint, the dates, amount and the person to whom and the manner in which the money

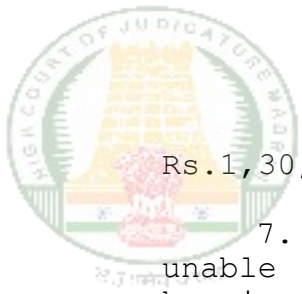


paid were also enlisted. In the complaint, it has been specifically stated that when the defacto complainant demanded Krishnappa to execute the sale deed in respect of the property, he evaded the same stating excuses and when he insisted for due execution of the sale deed, Krishnappa demanded Rs.35 lakhs per acre more and also threatened him that he will engage hooligan and kill him.

4.The said Krishnappa is before this Court seeking to quash the said complaint on the ground that he and the defacto complainant are friends and he as a land broker, facilitated several transactions for the defacto complainant. When the defacto complainant was in need of money for his heart surgery, he assisted him financially by lending Rs.50 lakhs and the defacto complainant agreed to sell his land in Survey No.280/2 at the rate of Rs.1.20 lakh per cent. Thereafter, contrary to the understanding, the defacto complainant has lodged the complaint, taking advantage of various payments made through bank for the other transactions between him and the defacto complainant. He has also quoting various amounts received by his sons for different transactions, were also enlisted in the complaint as if those money was paid as part consideration for 8 acres of land agreed by him to sell.

5.Learned counsel appearing for the petitioner would submit that the complaint dated 24.11.2017 indicates some payments made through bank transaction and few payments alleged to have been paid by cash. Those transactions commences from 05.05.2015 to 06.03.2017. The recipients of money through bank transaction is not only the petitioner herein but the other third parties. Just to show as if the defacto complainant has advanced huge money for the alleged sale transaction, the complaint with embellishment and falsehood has been filed to substantiate his allegation that there was an agreement to sell the property of the petitioner. There is not a piece of document, except around sum of Rs. 70 lakhs which was received by the petitioner herein between 11.07.2015 and 06.03.2017, in respect of the sale of 60 cents of land covered under Document No.5633/2015 dated 09.04.2015 and towards the brokerage for the service rendered by the petitioner herein.

6.Per contra, the learned counsel for the defacto complainant referring a draft sale deed dated 24.08.2016, which form part of the typedset, prepared in the name of S.M.Krishnappa, son of Munisamy as vendor and Sudhakara Reddy, Nandhini and Chandrasekara Reddy as purchasers would state that the petitioner herein agreed to sell 1 ½ acres of land situated at Sonnepuram Village of Shoolagiri Taluk for a price of RS.52,67,500/- and another draft sale deed on the same day for 3 acres 9 cents in the same village for a sum of



Rs.1,30,50,000/-.

7. This Court, on perusing the unsigned draft documents, is unable to make out any criminality as against the petitioner herein, who is not signatory to the document. Self serving document in the name of draft sale deed has been projected by the defacto complainant to make out case of criminal intention of cheating.

8. Learned counsel for the second respondent/defacto complainant would submit that since the petitioner herein fixed the date for executing the sale deed, believing his word, he has also purchased the stamp papers worth around Rs.5,00,000/- to prepare the sale deed, which show the bonafide of the defacto complainant regarding the content of the complaint.

9. This Court finds that on the face of the record relied by the petitioner, there is no iota of criminality made against the petitioner herein. Merely because there are some evidence to show that around Rs.70 lakhs was transferred into the account of the petitioner herein, it cannot be an inference to hold that the said amount was received to sell an immovable property which description is not even found in the complaint and no piece of evidence to substantiate the claim that the petitioner herein owe 8 acres of land and the same was agreed to be sold for the consideration agreed.

10. Learned counsel for the second respondent relying upon the judgment of the Hon'ble Supreme Court rendered in Kamal Shivaji Pokarnekar vs State of Maharashtra in 2019 AIR SC 847, would submit that even in a case where there is element of civil dispute, FIR can be registered and taken up for investigation. Perusal of the said judgment reveals the fact that in that case, upon a criminal complaint, summons was issued by the Magistrate and the same was challenged before the High Court. The High Court of Bombay quashed the process holding that the dispute is of the civil nature and the criminal proceedings against the respondent would be an abuse of the process of law.

11. When this came to be challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court has held that quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. The Hon'ble Supreme Court further stated that the perusal of the complaint



discloses that prima facie offence made out. The correctness or otherwise of the said allegation is to be decided only in the trial. At the initial stage of issuance of process, it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.

12.A reading of the judgment cited clearly indicates that based on the facts of that particular case, in which the Magistrate, on perusing the complaint, prima facie satisfied, has issued process and therefore, the order of the High Court quashing the proceedings been interfered by the Supreme Court saying that there is prima facie material in that case and therefore, the accused has to face the trial. Contrarily, in this case on hand, even the complaint, which is the basis for the F.I.R. registered by the respondent police, does not disclose any particulars regarding the land which the petitioner offered to sell when the complaint itself is vague, even assuming that based on this complaint and the material now placed before this Court to substantiate the complaint are taken as true, there cannot be a criminal prosecution based on an unsigned document and that too, initiated by a third party to the document.

13.Learned counsel for the defacto complaint would submit that the proposed purchasers shown in the draft sale deed are the sons and daughter of the second respondent and therefore, he has locus to initiate the complaint. The very transaction itself alleged to be arising out of an agreement to sale and to make out mens rea and criminal intention, there must be some material evidence. In the absence of material evidence, the investigation will only be abuse of law.

14.The Hon'ble Supreme Court in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335, at paragraph 102 has illustrated when and where the High Court can exercise the power under Section 482 to quash the F.I.R. They are :-

- (1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2)Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in



WEB COPY

support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly, attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The facts of this case come under illustration (5).

15. In view of the above discussion, the Criminal Original Petition is allowed. The criminal complaint in Crime No.1 of 2019 on the file of the first respondent is quashed. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vri

To

1. The Judicial Magistrate No.II
Krishnagiri.



2. The Sub Inspector of Police,
District Crime Branch,
Krishnagiri,
Crime No.1/2019

WEB COPY

3. The Public Prosecutor,
Madras High Court.

+1cc to M/s.R.Poornima, Advocate, S.R.No.34361

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.34393

Crl.O.P. No.1880 of 2019
and
Crl.M.P.Nos.1164 and 4078 of 2019

PL(CO)
RGA(22/06/2022)