



CrI.O.P No.3692 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.3692 of 2021
and CrI.M.P. No.2206 of 2021

1. M.Kuppan
2. K.Lakshmi

... Petitioners

Vs.

1. The State represented by
The Inspector of Police,
Aminjikarai Police Station.
Cr. No.144 of 2020

2. D.Paranthaman

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for all the records and quash all the proceedings in Cr. No.144 of 2020 now pending investigation on the file of the first respondent.

For Petitioners : Mr. P.Kumaresan

For Respondent-1 : Mr.A.Damodaran
2 : Mr.S.Vivekananthan



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ORDER

This Criminal Original Petition is filed to call for all the records and quash all the proceedings in Cr. No.144 of 2020 now pending investigation on the file of the first respondent.

2. The subject matter of the disputed property was originally owned by one Muthu. The first petitioner / second accused purchased the same from Muthu by virtue of a sale deed dated 06.06.1990 and also executed the Power of Attorney in favour of one Munusamy by a registered Power of Attorney dated 14.11.2003. On 24.06.2004 the said Power of Attorney was also cancelled. On 13.08.2004 the first petitioner settled the property in favour of his wife, the second petitioner. The second petitioner / third accused had sold away the property in favour of first accused Kumaresan. However, the power agent Munusamy had executed the sale deed in favour of the *de facto* complainant and his brothers Dasarathan and Duraisamy. The said Kumarasean, who had purchased the property from the second petitioner, had filed a civil suit in O.S. No.66 / 2012 on the file of District Munsif cum Judicial Magistrate, Sriperumbudur, to cancel the sale deed executed in favour of Munusamy, *de facto* complainant and his brothers. Based on the



compromise entered into between the parties, the sale deeds executed in favour of the *de facto* complainant and his brothers was cancelled by virtue of a cancellation deed dated 12.07.2017. Subsequently, the suit filed by the third accused in O.S. No.66 of 2012 was also dismissed as withdrawn. Now the *de facto* complainant submits that the suit was withdrawn on the basis of compromise entered to cancel the sale deeds executed by the power agent.

3. The learned counsel for the petitioners submitted that even according to the allegations of the *de facto* complainant, a cheque was issued by the first accused and the petitioners / accused 2 and 3 are no way connected to the transactions as alleged in the complaint. He further submitted that since no materials are available against the petitioners, the FIR registered against the petitioners should be quashed.

4. On a perusal of the materials available on record, it is seen that the sale deeds which have been executed by the power agent subsequent to the cancellation of the power in favour of the *de facto* complainant and his brothers were cancelled on 12.07.2017. Though it may be possible that the action of cancelling the sale deeds was due to the compromise entered into



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between the parties, no terms of compromise have been produced to show that any of the accused had agreed to pay a sum of Rs.15,00,000/- in favour of the *de facto* complainant for cancelling the sale deeds executed in his favour by the power agent. Even though the learned counsel for the second respondent submitted that there is no written agreement to substantiate the above said terms of compromise. In the absence of any such materials, there cannot be any *prima facie* case against the petitioners for stopping the payment made by the first accused for the alleged cheque issued by him.

5. It is reliably learnt that the second respondent did not file any complaint against first accused under Section 138 of Negotiable Instruments Act. However, it is up to the investigation agency to investigate about the the alleged cheque issued by the first accused in favour of the *de facto* complainant and its veracity and all other facts connected therein. So far as the second and the third accused are concerned, they are only the lawful owners of the property who have also conveyed their interest in favour of the first accused.

6. Without any *prima facie* material to make out a case of cheating



against the petitioners, they cannot be arrayed as accused in the case given by the *de facto* complainant on the allegations that the cheque issued by the first accused was dishonoured for stopping the payment. In this context it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***. In this regard, it is relevant to extract the special portions of the above judgment:

“

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R 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;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) 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;

(e) where the allegations made in the FIR or complaint are so



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absurd and inherently improbable on the basis of which no prudent person can every reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) 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;

(g) where a criminal proceeding is manifestly attended with mala fide 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”.

7. Since no useful purpose will be served if the investigation is continued against 2 and 3rd accused, I feel that it is an appropriate case where the powers of the Court under Section 482 Cr.P.C. should be invoked to quash the FIR as against the petitioners.

8. Accordingly, the Criminal Original Petition is allowed and the FIR in Cr. No.144 of 2020 is quashed as against the petitioners alone. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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1. The Inspector of Police,
Aminjikarai Police Station.
2. The Public Prosecutor
High Court of Madras.



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R.N.MANJULA, J.,

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