



Crl.OP.No.16145 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.16145 of 2020

and

Crl.MP.No.6197 of 2020

1.K.Kathiresan
2.K.Geetharani

... Petitioners

Vs.

1.The State rep by
The Inspector of Police,
City Crime Branch,
Crime No.23 of 2020
Coimbatore District.

2. R.Muthukani

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the crime No.23 of 2020 on the file of the 1st respondent police and quash the same.

For Petitioner : Ms.Preethi for Mr.Manojin
For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)
for R1
: M.Santhanarraman for R2



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ORDER

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This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C seeking orders to call for the records pertaining to Cr.No.23 of 2020 pending on the file of the first respondent and to quash the same.

2. Totally, there are four accused persons in this case, in which, the petitioners herein are arrayed as A1 and A2 in Cr.No.23 of 2020 on the file of the first respondent police for the offences punishable under Sections 120-B, 406 and 420 of IPC based on the complaint given by the second respondent.

3. The case of the prosecution is that one Madheswaran contacted the second respondent after knowing the fact that the second respondent was searching for a place to start a grocery shop and he took second respondent and her husband to the subject property measuring 14½ cents at Kovilpalayam. It is further alleged that the land owners Ganesan and his wife Chitra (A3 and A4) have given a power of attorney deed dated 30.09.2018 vide Doc.No.14848 of 2018 to the first petitioner (A1). It is



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further alleged that the second respondent and her husband have had negotiation with the land owners and finally they have agreed to purchase the said properties for Rs.86,87,615/- under an unregistered sale agreement dated 29.12.2018. According to the second respondent, they have made part payment of Rs.61,87,615/- on various dates to the petitioners under due acknowledgement , but, after some time, the petitioners have not chosen to execute the sale deeds. Since the power of attorney deed in the name of the first petitioner was cancelled. Hence, the complaint was given to the Commissioner of Police, Coimbatore who entrusted the same to the first respondent. Thus, the impugned FIR was registered on 31.08.2020.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side) for the first respondent police and the learned counsel for the second respondent.

5. The learned counsel for the petitioner submitted that they have already handed over the entire bundle along with change of vakalat to the



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petitioners. Till today, the petitioners have not engaged any counsel to appear on their behalf. However, Ms.Preethi for Mr.Manojin represented that they have received bundle and also yet to file a change of vakalat.

6. The learned Government Advocate (CrI.Side) submitted that the respondent paid a sum of Rs.61,87,615/- as advance to purchase the subject property belonged to A3 for the total sale consideration of Rs.86,87,615/- and entered into the un-registered sale agreement on 29.12.2018 between A1 and A2/the petitioners herein and the second respondent. A1 and A2 entered into an agreement of sale on the strength of the power of attorney executed by the original owner of the property namely A3 and A4 in favour of the first petitioner herein and on the strength of the agreement for sale already entered between A3 and A4 with the second petitioner herein. Thereafter, the second respondent came to understand that that the second petitioner herein on the strength of the agreement of sale entered between her and A3,. filed a suit for specific performance and it is pending. Pending the agreement for sale, A3 and A4 cancelled the power of attorney executed in favour of the first



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accused and also colluded with the petitioners herein and cheated the amount which was received as advance to purchase the subject property. Therefore, there are specific allegations made against the petitioners and there are specific averments to attract the offences under Sections 120b, 406 and 420 of IPC.

7. Considering the facts and circumstances of the case and the submissions made by both counsel, this Court is not inclined to quash the complaint lodged by the second respondent and this petition is liable to be dismissed.

8. In this regard it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, wherein, it has been held as under:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is



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settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. 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



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conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has 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. Criminal complaints cannot be quashed only on the ground that the



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allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2020, the respondent police is directed to complete the investigation in Crime No.23 of 2020 and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

Vv



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To
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1. The Inspector of Police,
City Crime Branch,
Coimbatore District.
2. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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