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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL.O.P.NOS.11583 & 16257 OF 2017 AND
CRL.M.P.NOS.7596, 7597, 10031 AND 10032 OF 2017

Cr1.O.P.No.11583 of 2017

K.Shanmugsundaram
S/o.S.Kandasamy

...Petitioner / Accused

Versus

1.State Rep. by Sub-Inspector of Police
District Crime Branch
Coimbatore District

...First Respondent / Complainant

2.S.Maragatham

... 2nd Respondent / De facto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the charge sheet dated 05.08.2016 in C.C.No.436 of 2016 on the file of Judicial Magistrate's Court, Mettupalayam and quash the same.

For Petitioner : Mr.C.R.Prasanan

For Respondents : Mr.S.Vinoth Kumar
Govt. Advocate (Cr1.side) for R1
Mr.K.V.Kayalvizhi for R2

Cr1.O.P.No.16257 of 2017

Arun Kumar
S/o. Shanmugam

...Petitioner / A5

Vs.

1.The Inspector of Police
District Crime Branch
Coimbatore District

... Respondent / Complainant

2.S.Maragadam
W/o.G.K.Sadasivam

...Respondent / De facto
Complainant



PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the charge sheet dated 05.08.2016 in C.C.No.436 of 2016 on the file of Judicial Magistrate's Court, Mettupalayam and quash the same.

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For Petitioner : Mr.A.Saravanan
For Respondents : Mr.S.Vinoth Kumar
Govt. Advocate (Crl.side) for R1
Mr.K.V.Kayalvizhi for R2

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the final report filed against these petitioners in C.C.No.436 of 2016 on the file of Judicial Magistrate's Court, Mettupalayam for the offences under Sections 294(b), 323, 506(1), 406, 468, 471, 420 and 120B of IPC.

2. The crux of the charge against these petitioners/accused is that they conspired together and induced the de facto complainant to purchase the property measuring to an extent of 73 cents owned by the first accused for a sum of Rs.80 lakhs and received a sum of Rs.50,000/- as advance without executing any agreement. Thereafter, on 31.07.2013, the first accused executed an unregistered sale agreement and received a sum of Rs.11,00,000/- and agreed to execute the sale within a period of three months by receiving the balance amount, but the amount received as advance was not mentioned in the agreement. Thereafter, on 02.09.2013, again the first accused received a sum of Rs. 54,00,000/- and executed another sale agreement wherein Accused 2 and 3 have also signed as witnesses and second accused has already entered into an agreement on 25.11.2011 with the first accused for the said 20 cents of land in S.No.662/1, but the same was not informed either by the first accused or by the second accused to the de facto complainant. After having received Rs.65, 50,000/- from the de facto complainant, the first accused entered into an agreement for sale with the second accused and using the said agreement the first accused filed a suit for specific performance in O.S.No.85 of 2014 before the Additional Subordinate Judge, Coimbatore suppressing all the earlier agreements. Thereafter, when the de facto complainant insisted for execution of sale deed, the accused executed a sale deed only in respect of 53 cents and promised to execute the sale deed for remaining 20 cents within a period of two weeks. The de facto complainant applied for a bank loan and a sum of Rs.44 lakhs was sanctioned. The first accused received the said amount and promised to execute the sale deed for remaining 20 cents within a period of two weeks. Thereafter, suit filed for specific performance against A2 was



withdrawn by A1. Hence, the crux of the allegation is that all the accused joined together and hatched a conspiracy in order to cheat the de facto complainant and received a sum of Rs.1,09,50,000/- and executed a sale deed only for 53 cents and in respect of remaining 20 cents, the first accused entered into an agreement with A2 thereby cheated the de facto complainant.

3. The main contention of Mr. C.R.Prasanan, learned counsel for petitioner in CrI.O.P.No.11583 of 2017 is that even while seeking a direction to register the First Information Report before this Court, this Court held that the allegations are purely contractual in nature and refused to give direction, however, liberty was given to the petitioner to work out her remedy in the manner known to law. It is his contention that unregistered agreements have been executed only for the purpose of loan and actual payment has not been received at all as mentioned in the unregistered agreements. Now taking advantage of the unregistered sale agreement, this complaint has been filed, which culminated in filing of the final report. It is submitted that the entire dispute is civil in nature, which has been given a criminal colour and hence, learned counsel seeks for quashing of the entire proceedings.

4. The learned counsel for the petitioner/5th accused in CrI.O.P.No.16257 of 2017 submits that he is only 5th accused and the only allegation against this petitioner is that he went along with other accused while visiting the properties and except the same, there is no other allegation made against him and hence, he seeks to quash the final report as against the fifth accused.

5. Per contra, learned counsel appearing for the respondent filed a detailed counter and submitted that Accused 1 to 5 are running real estate business, they hatched a conspiracy and cheated the de facto complainant, who is a lady. He further submitted that having received Rs.1,09,50,000/-, they also executed a pro-note for Rs.10,00,000/- and not set out the true value of the property and cheated the de facto complainant and hence, learned counsel opposed for quashing the final report.

6. I perused the entire materials placed before this Court.

7. Though on the face of it, the dispute appears to be civil in nature, the specific allegations show as if accused have received a sum of Rs.1,09,50,000/- towards sale of a property belonging to the first accused measuring to an extent of 73 cents and conveyed only 53 cents showing lesser value and thereby cheated the de facto complainant. There is also allegation to the effect that knowing very well that there were agreements in favour of the de facto complainant, similar



agreements have also been created between A1 and A2 in respect of which a civil suit has also been filed and subsequently withdrawn. As the allegation of cheating is apparent on the materials collected by the Investigation Agency, this Court at this stage cannot make any roving enquiry or look into the veracity of the statements. Therefore, when the prima facie material available in final report, such allegations have to be proved on the basis of the oral and documentary evidence, the same has to be decided only by the trial Court. In such view of the matter, considering the nature of the allegations, this Court is not willing to quash the entire proceedings. The trial Court shall take note of the civil suits said to have been decreed in favour of A1 and also take into account all the relevant materials and come to the conclusion whether the charges have been proved or not. The petitioners are given liberty to raise all their defence before the trial Court.

8. In such view of the matter, as far as the contention of A5 who filed CrI.O.P.No.16257 of 2017 is concerned, though it is stated that the only allegation against this petitioner is that he accompanied other accused at the time of visiting the property as the charge of conspiracy is also slapped, it has to be decided before the trial Court. For the proof of alleged conspiracy, the direct evidence is always remote and only from the circumstances, it can be seen during the trial. In such view of the matter, this Court is not willing to quash the proceedings against fifth accused also.

9. Accordingly, both the Criminal Original Petitions are dismissed and the personal appearance of the petitioners before the trial Court is dispensed with except for receiving copies and answering charges and questioning under Section 313 Cr.P.C or any other date that may be fixed by the trial Court.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

gpa/gba

To

- 1.The Judicial Magistrate's Court
Mettupalayam.
- 2.The Chief Judicial Magistrate,
Coimbatore.



3.The Sub Inspector of Police
District Crime Branch
Coimbatore District

4.The Public Prosecutor,
Madras High Court, Chennai

+lcc to Mr.C.R.Prasanan, Advocate Sr.No.4634

+lcc to Mr.A.Saravanan, Advocate Sr.No.4582

Crl.O.P.Nos.11583 &16257 of 2017 and
Crl.M.P.Nos.7596, 7597, 10031 and
10032 of 2017

BS (CO)
RVM(18/03/2022)