IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1016 of 2021

Ahamadu Ali ...Petitioner

Vs.

1.The Superintendent of Police,
O/o, The Superintendent of Police,
Thiruppathur District,
Thiruppathur.

2.The Deputy Superintendent of Police,
District Crime Branch,
Thiruppathur District,
Thiruppathur.

3.The Inspector of Police,
Ambur Town Police Station,
Ambur,
Thiruppathur District. ...Respondents

PRAYER: The Criminal Revision Case is filed under Section 397(1) & 439 of the Code of Criminal Procedure, pleased to set aside dismissal order passed in C.M.P.No.2595 of 2021 dated 06.08.2021 by learned Additional District Munsif cum Judicial Magistrate, Ambur and direct the second respondent to take appropriate action on the complaint dated 17.09.2020 made by the petitioner by registering a FIR.

For Petitioner : Mr.A.Venkatessan
For Respondents : Mr.S.Sugendran
Government Advocate(Crl.Side)

O R D E R

(This case has been heard through Video Conferencing)

The Criminal Revision has been filed against the dismissal of the petition filed under Section 156(3) of Cr.P.C, seeking to direct the Ambur Town Police Station for registration of FIR and to investigate the same.

2. The brief facts of the case is as under:-

(a) The petitioner had preferred a complaint to R3 on 03.09.2020. As per the complaint, the petitioner had been running a hardware shop for the past ten years. He along with his friends one Ambash had approached Sivaprakasam son of Subramanian, Ambur for purchase of land and they have entered into the sale agreement on 30.11.2011. As per the agreement, the price of the property was fixed at Rs.7,75,00,000/- and that on 30.11.2011, the petitioner had paid an advance of Rs.75,00,000/- and that he had agreed to pay a sum of Rs.1,00,00,000/- within 30 days and the balance amount of Rs.6,00,00,000/-, to be paid after the clearance of the mortgage deed in Bank of Baroda, Chennai, by the owner of the property and had agreed to pay the amount at the Sub Registrar Office, at the time of execution of sale deed.

(b) The petitioner had paid 1,50,00,000/- through bank transaction, within three months and the said Sivaprakasam had confirmed it by another agreement for sale on 27.09.2014, thereafter, the said Sivaprakasam was delaying the execution of sale and thereby, the petitioner had applied for Encumbrance Certificate on 01.04.2013 and had found that the property had been attached by the Income Tax Department on 13.04.2009 for non payment of Income tax. It is the further case of the petitioner that supressing the attachment, the said Sivaprakasam had attempted to sell the property to him and thereafter, the petitioner had asked to return back the money and the said Sivaprakasam on 19.01.2019 executed and gave an undertaking affidavit, agreeing to repay the amount of 1,50,00,000/- to the petitioner. Since, the said Sivaprakasam had cheated the petitioner, the petitioner had gone to his house during August 2020 seeking for return of money and at that time , the said Sivaprakasam had threatened that if he demands money he will do away him with the help of hench men.

(c) Further, the petitioner had found that the property was attached by the Bank of Baroda and it had been brought for sale through Bank auction. Thereby, he had filed a complaint to the respondent/police. The respondent had taken the complaint in C.S.R.No.522 of 2020 and thereafter, since, no further action was taken, the petitioner had sent a complaint to the Superintendent of Police, Thirupathur on 19.07.2021. The petitioner was asked to appear on 27.07.2021 at 11.30 a.m. and he had appeared before the respondent along with the documents. Further, the respondent had not registered a case and thereby, the petitioner had filed the complaint before the Additional District Munsif cum Judicial Magistrate, Ambur under Section 156 (3) Cr.P.C. and the learned Magistrate by an order dated 06.08.2021 finding that the matter pertaining to a civil dispute had been attempted to be given a criminal colour, had dismissed the same. Against which the present Criminal Revision has been filed.

3. Learned Counsel appearing for the petitioner would submit that the proposed accused/Sivaprakasam supressing the fact that the property had been attached by the Income Tax department had induced the petitioner to buy the property and had entered into an agreement of sale with the petitioner and obtained an advance of Rs. Rs.75,00,000/- on 30.11.2011. Subsequently, the petitioner had also paid additional amounts totalling to Rs.1,50,00,000/- and had agreed to pay the balance amount, at the time of registeration, after clearing the mortgage with Bank of Baroda. Since, the proposed accused did not come forward to execute the sale deed, the petitioner had applied for EC and he was shocked to find out that the property had already been attached by the Income Tax Department. The proposed accused with an intention to cheat the petitioner had suppressed about the attachment.

4. Learned Government Advocte (Crl.Side) appearing for the respondents would submit that the complaint of the petitioner was taken for enquiry in C.S.R.No.522 of 2020 by the third respondent. As per the complaint, the parties have entered into a sale agreement as early as on 30.11.2011 and thereafter, the petitioner had further paid additional amount of Rs.1,50,00,000/- and the parties had entered into a subsequent agreement on 27.09.2014, thereafter, the seller of the property had also given an affidavit of undertaking, agreeing to refund the advance amount with compensation amount of Rs.50,00,000/- totalling to Rs.2,00,00,000/-. The third respondent finding that the dispute between the petitioner and the seller is a civil dispute and that the petitioner had attempted to recover the money by police action had not proceeded. The learned Magistrate, rightly finding that the petitioner had attempted to convert a civil dispute as criminal dispute, had dismissed the petition.

5. Heard the counsel and perused the materials on record.

6. The petitioner had entered into an agreement of sale on 30.11.2011, thereafter, he had paid further amount on 27.09.2014 and had also entered a second sale agreement

subsequently and the seller had also executed an affidavit of undertaking on 19.01.2019 agreeing to repay the advance amount with compensation. The petitioner in order to circumvent the process and to avoid filing civil suit has preferred the criminal complaint. As rightly pointed out by the learned Magistrate, the petitioner had attempted to give a criminal colour to a civil litigation.

7. In the decision of G Sagar Suri vs The State of U.P reported in 2000 2 SCC 636, the Apex Court has held that "It is to be seen if a matter, which is essentially of civil nature has been given a cloak of crime offence, Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal Court, has to excercise a great delay of caution."

8. The learned Magistrate finding that a case of civil dispute had been given a cloak of criminal nature had dismissed the petition. This Court, finds no illegality or infirmity in the order passed by the learned Magistrate. Accordingly, the Criminal Revision stands dismissed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Munsif cum Judicial Magistrate,
Ambur.

2.The Superintendent of Police,
O/o, The Superintendent of Police,
Thiruppathur District,
Thiruppathur.

3.The Deputy Superintendent of Police,
District Crime Branch,
Thiruppathur District,
Thiruppathur.

4. The Inspector of Police,
   Ambur Town Police Station,
   Ambur,
   Thiruppathur District.
5. The Public Prosecutor,
   High Court, Madras.

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.A.Venkatessan, Advocate sr 3226.

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BP(CO)
SP(11/02/2022)