



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 03.02.2022

Pronounced on : 25.04.2022

CORAM

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.3469 of 2019
in
Crl.M.P(MD)No.1969 of 2019

1.Kannan
2.Nalini Devi : Petitioners/Accused A1 & A2

Vs.

State represented by

1.The Sub-Inspector of Police,

Central Crime Branch, Madurai City.

: 1st Respondent/Complainant

2.S.Pugazhenth

: 2nd Respondent/

(Powr agent for Srini Gowthaman)

Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.7 of 2019 registered by the first respondent Police and quash the same.

For Petitioners : Mr.J.Barathan,

For Respondents : Mr.R.Sivakumar,

Government Advocate (Criminal Side)
for R.1

: Mr.C.M.Arumugam, for R2.

ORDER

The Criminal Original Petition has been filed invoking Section 482 Cr.P.C, seeking orders to call for the records relating to the First Information Report in Crime No.7 of 2019, pending on the file of the first respondent Police and quash the same.

2.The petitioners are the accused 1 and 2 in Crime No.7 of 2019 on the file of the City Crime Branch, Madurai City.

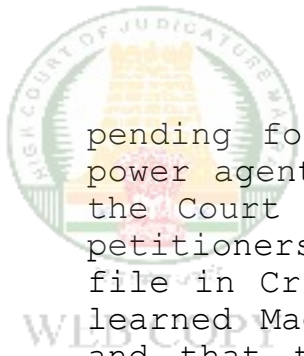


3. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.7 of 2019, dated 28.02.2019 against the petitioners herein for the offence punishable under Sections 120 B, 406 and 420 IPC.

4. The facts not in dispute are that the first petitioner's sister Thilagam Gowthaman is the wife of the defacto complainant Srini Gowthaman and that the property in dispute, an extent of 4.03 acres of land situated in S.No.188/A, 187/3, 186/4 and 172/1 of Konapatti Village, Vadipatti Taluk, Madurai District, was owned by the first petitioner and his brother.

5. The case of the complainant is that the first petitioner has decided to sell his undivided half share in the said property, that since the defacto complainant and the first petitioner are the close relatives and as per the request of the first petitioner, the defacto complainant consented to purchase the said property, that they have mutually decided to enter into an oral agreement, that the first petitioner requested the complainant to adjust his previous receipts of money from the complainant towards the sale agreement, that though the first petitioner has received a sum of Rs.13,29,312/- on various dates, they have decided to treat Rs.13,00,000/- as part payment towards the sale agreement, that as per the sale agreement, sale consideration was fixed at Rs.16,12,000/- at the rate of Rs.8,000/- per cent, that though no time limit was fixed, the first petitioner had agreed to execute the sale deed in favour of the complainant as soon as he comes to India, that when the complainant was ready and willing to pay the balance sale price and to get the sale deed executed in December 2011, the first petitioner has been postponing the same on some pretext or the other, that the complainant after verifying with the registration of the records, came to know that the first petitioner had already executed a sale deed on 05.01.2012 in favour of his sister Nalinadevi, the second accused herein, who in turn had executed another sale deed in favour of one Manoharavel Pandian/third party, that when the complainant's side had demanded the first petitioner to return the amount received by him, the petitioners have agreed to repay the amount and that when the amount was demanded by the complainant, after returning to India, the petitioners have refused to pay the amount and also caused criminal intimidation.

6. The main contention of the petitioners is that the complainant has already filed a civil suit claiming the relief of specific performance and also challenging the sale deeds in O.S.No.69 of 2012 on the file of the I Additional District Court, Madurai, that the first petitioner has filed his written statement on 18.12.2013 and additional written statement in November 2017, that the trial was commenced and the power agent of the complainant was examined on 15.12.2017 and was cross examined, that subsequently, the defacto complainant had been examined as P.W.2 on 14.08.2018 and he was also cross examined, that when the suit was



pending for further evidence, the defacto complainant through his power agent has filed a petition under Section 156(3) Cr.P.C before the Court of Judicial Magistrate No.I, Madurai, claiming that the petitioners had cheated him, that the said petition was taken on file in Cr.M.P.No.617 of 2018 and as per the orders passed by the learned Magistrate therein, the present FIR came to be registered and that the defacto complainant in the complaint has completely suppressed the filing of the suit and the pending of the civil proceedings.

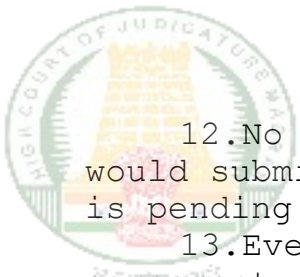
7.As rightly pointed out by the learned counsel for the petitioners, the defacto complainant in his compliant has nowhere whispered about the civil proceedings. It is not in dispute that the defacto complainant has filed the suit through one M.Srinivasan, who is his father and his power agent and that since his father Srinivasan had died, he had appointed his brother Pugalendhi as his power agent and through him, the present complaint came to be lodged.

8.It is evident from the records that the defacto complainant has filed the suit in O.S.No.69 of 2012 on the basis of the alleged oral sale agreement, claiming the reliefs of specific performance and for declaration that the sale deed dated 05.01.2012 executed by the first petitioner in favour of the second petitioner and the sale deed dated 02.02.20.12 executed by the second petitioner in favour of third party are null and void and for permanent injunction restraining the defendants therein from in any way alienating or encumbering the property till the disposal of the suit.

9.As already pointed out, the civil suit in O.S.No.69 of 2012 was pending at the time of lodging of the present complaint. As rightly contended by the learned counsel for the petitioners, the second respondent has not offered any acceptable reason or explanation for non-disclosure of the civil proceedings that was pending at that time.

10.It is not in dispute that during the pendency of the above petition, after completion of the trial, the learned Ist Additional District Judge, Madurai, has passed a judgment, dated 04.01.2021, dismissing the suit in O.S.No.69 of 2012.

11.As rightly contended by the learned counsel for the petitioners, the learned District Judge has specifically held that there can be no oral sale agreement in respect of the property between the defacto complainant and the first petitioner and negatived all the reliefs claimed by the complainant. As rightly contended by the learned counsel for the petitioners, the learned District Judge, by holding that since there existed money transactions between them, the defacto complainant was also not entitled for return of money, refused the relief for refund of advance amount.



12.No doubt, the learned counsel for the second respondent would submit that they have already preferred an appeal and the same is pending.

13.Even assuming that there is a written and registered sale agreement, even then the seller is entitled to refuse to execute the sale deed by assigning some reasons and whether those reasons or grounds are legally acceptable or not is a matter that can be only considered and decided by the competent Civil Court.

14.In the case on hand, as already pointed out, in the complaint, it has been alleged that there was an oral sale agreement, but as already pointed out, that was not accepted by the trial Court.

15.It is pertinent to note that the complainant has filed the civil suit as early as in the year 2012, but, the present complaint was lodged on 20.11.2018 and on the basis of the orders passed by the learned Magistrate, FIR came to be registered on 28.02.2019.

16.At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in **Mithesh Kumar J.Sha, Vs. State of Karnataka and others** reported in **AIR 2021 SC 5298**, wherein, the Hon'ble Supreme Court has referred its earlier judgments and the relevant passages are extracted hereunder :

"41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted Mitesh Kumar J Sha vs The State Of Karnataka on 26 October, 2021 Indian Kanoon - <http://indiankanoon.org/doc/118326933/> 10 and his remedy lies only in civil law, should him self be made accountable, at the end of such 7. (2006) 6 SCC 736 misconceived criminal proceedings, in accordance with law.

42. It was also observed:-

13. While on this issue, it is necessary to take



notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

43. On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-

8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

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46. Recently, this Court in case of Randheer Singh Vs. The State of U.P. & Ors.10, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

33.There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra



47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."

17.The above decision is squarely applicable to the case on hand. In the present case also, the defacto complainant after exhausting his civil remedy, with the sole intention to give criminal color to the civil dispute and thereby to harass the petitioners, has lodged the above complaint, after the lapse of more than 6 years, since the filing of the civil proceedings.

18.Considering the above, this Court has no hesitation to hold that the above proceeding is nothing but an abuse of process of law and as such, it is a fit case to quash the proceeding.

19.It the result, the Criminal Original Petition is allowed and the proceedings in FIR in Crime No.7 of 2019 pending on the file of the first respondent Police is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sub-Inspector of Police,
Central Crime Branch, Madurai City.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.M. ARUMUGAM, Advocate (SR-21648[F] dated 27/04/2022)

+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-21249[F] dated 26/04/2022)

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in

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Date : 25/04/2022