



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.4412 of 2019

WEB COPY

Mohammed Ibrahim : Petitioner/
Revision Petitioner/
De-facto complainant

Vs.

1.Mohammed Yakupkan
2.S.Sasidharan
3.A.Merry : Respondents/Respondents/
Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed by the District and Sessions Judge, Kanyakumari District @ Nagercoil in his R.P.No.26/2015, dated 31/10/2017 and confirmed the order of the Judicial Magistrate No.1, Nagercoil, Kanyakumari District in Crl.M.P No.3410 of 2015, dated 05/10/2015.

For Petitioner : Mr.V.Kathirvelu
for Mr.K.Prabhu

For R1 and R2 : Mr.K.Rajeswaran

For 3rd Respondent : Mr.R.Murugan

O R D E R

This criminal original petition is filed seeking in order to set aside the order passed by the District and Sessions Judge, Kanyakumari District @ Nagercoil in his Crl.R.P.No.26/2015, dated 31/10/2017 and confirmed the order of the Judicial Magistrate No.1, Nagercoil, Kanyakumari District in Crl.M.P No.3410 of 2015, dated 05/10/2015.

2.The case of the prosecution in brief:-

The petitioner by way of filing Crl.M.P No.3410 of 2015 before the Judicial Magistrate No.1, Kanyakumari District with the following allegations:- He purchased the property to an extent of 16.5 Acres, on 07/08/2008 from its original owner. Since he was residing in Murisi, he executed a power of attorney deed in favour of the first respondent. He also handed over the original document

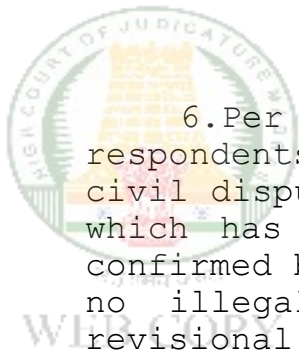


for the purpose of maintaining the property. In August 2009, the first accused informed that if the properties parted out, it can be sold out for more than Rs.10,00,000/-. That was accepted by the complainant. So, he requested A1 to execute a sale deed on his behalf. So utilising the power of attorney deed, the first accused has created several deeds and the present market value of the property is Rs.10,00,000/-. But, he has purposely mentioned the low value to the sale agreement in order to cheat him. He also misappropriated the sale consideration. The first accused has also obtained loan to the tune of Rs.4.20 lakhs from the complainant through their bank transaction from 2008 to 2010. When that was ordered to be returned, misunderstanding arose between them. So petition was sent on 12/01/2012 with false allegations. The first accused sent a reply. On 05/01/2015, he sent a notice to A1 to inform the original sale consideration, which was purchased by A2 and A3. Originally, he filed a petition under section 156(3) Cr.P.C before the concerned Judicial Magistrate and it was referred to the District Crime Branch and a case was registered in Crime No.33 of 2015. Subsequently, that was closed as 'Action Dropped'. Against which, protest petition was filed. But the Magistrate has directed him to file a private complaint. So challenging the above said order, this petition is filed seeking a direction to set aside the order, that was passed by the Judicial Magistrate No.1, Nagercoil. He filed revision before the District and Sessions Judge, Kanyakumari, in CR.R.P No.26 of 2015. That was dismissed. Against which, this petition came to be filed.

3.Heard both sides.

4.As mentioned in the preamble portion, it is the complaint of the petitioner that the respondent herein misappropriated the amount, for which the property was sold on the basis of the power of attorney, that was executed by him in his favour and he has also cheated the amount. So according to him, the real value is more than Rs.10 lakhs per plot. Even though, that was sold for the above said amount, full amount was not paid to him and thereby, the 1st respondent has cheated the misappropriated amount. The trial court has considered the sworn statement of the complainant and the factual issue and came to the conclusion that it is a civil dispute between the principal and the agent. If there is any dispute with regard to the account, only civil liability will arise and the complainant must work out his remedy through civil process.

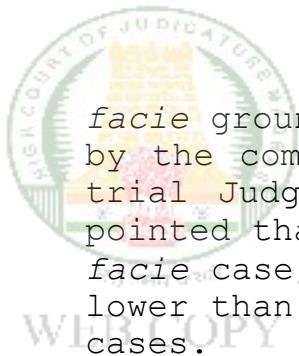
5.But the learned Senior counsel appearing for the petitioner would submit that absolutely, the finding that has been rendered by the trial court at the preliminary stage is not at all legal and on going through the sworn statement and the complaint, when prima facie of cognizable offence has been made out, the trial court ought to have taken cognizance of the offence, without going into the merits of the allegation, that has been made in the complaint.



6.Per contra, the learned counsels appearing for the respondents would submit that as mentioned earlier, it is purely a civil dispute between the parties. A criminal colour has been given, which has been found correct by the trial court, which was also confirmed by the revisional court. So according to them, absolutely, no illegality has been committed by the trial court and the revisional court and the second revision in the form of petition under section 482 Cr.P.C is not at all maintainable.

7.On going through the entire records, it is seen that already the complaint, which was given by the petitioner was closed by the District Crime Branch, Nagercoil, finding that it is a civil dispute. Closure report was filed before the court and protect petition was filed by the petitioner and he was permitted to file a private complaint. Along with the complaint, no proper document or evidence has been produced by the complainant to show that the real sale value of the property in respect of which, he executed a power of attorney in favour of the 1st respondent is more than Rs.10,0,000/-. Except producing the copy of the sale deed as well as the copy of the power of attorney, no other document has been produced before the trial court and no witness has also been examined on his side to *prima facie* show that the case of offences under sections 406 and 420 IPC are made out. In the absence of any *prima facie* evidence, the trial court has rightly come to the conclusion that it is a civil dispute between the principal and the agent and to show the criminal liability, absolutely, no *prima facie* evidence is available to take the cognizance of the evidence.

8.So I am unable to agree with the argument advanced by the learned Senior Counsel that the trial court ought not to have gone into the merits of this case before taking the cognizance. The power is available under section 203 Cr.P.C to the trial court to decide whether cognizance shall be taken or summons must be issued to the accused persons. In the judgment of the Hon'ble Supreme Court in the case of **Kewal Krishan Vs. Suraj Bhan and another (AIR 1989 SC 1780)**, the issue was entirely different one. It was a case and counter case. One case was instituted on the basis of the police complaint and the another case was instituted by way of private complaint. The complainant suffered gunshot injury and the accused side also received gunshot injury. The trial Judge, while making enquiry under section 202 Cr.P.C upo the private complaint filed by the complaint went into the merits of the case to find out, whether any *prima facie* case is made out to take the cognizance, dismissed the complaint. Against which, the matter was taken upto the Hon'ble Supreme court and an argument was advanced on the side of the complainant to the effect that the trial Judge has exceeded the jurisdiction, which was conferred upon him under section 203 Cr.P.C. Another ground, which was urged is that the case was exclusively triable by the Sessions court and such a finding should not have been recorded by the trial court. So pointing out that when *prima*



facie ground is made out that it is a case to be exclusively triable by the competent Sessions Court, a error has been committed by the trial Judge in evaluating the evidence. The Hon'ble Supreme court pointed that the standard, which requires for ascertaining the *prima facie* case, which is exclusively triable by the court of Sessions is lower than the standard prescribed for framing of charges in warrant cases.

9. Here, we are absolutely not dealing with the above said issue. Here, the offences are triable by the Magistrate. So the question of standard, which was adopted by the trial court cannot be found fault. So from the judgment, the petitioner cannot be permitted to draw analogy that no power is conferred upon the trial court under section 203 Cr.P.C to dismiss the complaint by going into the evidence that has been produced to show, whether *prima facie* case is made out or not to take cognizance.

10. So I am of considered view that the contention on the part of the petitioner cannot be accepted. As rightly held by the trial court and the revisional court, it is purely a civil dispute with regard to the accounts between the principal and the agent. The petitioner can work out his remedy through proper civil proceedings. The dispute cannot be given a criminal colour and the respondents cannot proceed the criminally. So, I find no merit in the petition.

11. In the result, this criminal original petition is **dismissed**.

Sd/-

Assistant Registrar (Admin I)

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/ /2022

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 District and Sessions Judge,
Kanyakumari District @ Nagercoil.



2.The Judicial Magistrate No.1,
Nagercoil.

+1 CC to M/s.R.MURUGAN, Advocate (SR-15941[F] dated 01/04/2022)

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-15962[F] dated
01/04/2022)

+1 CC to M/s.K.PRABHU, Advocate (SR-16230[F] dated 01/04/2022)

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MGJ(24.05.2022) 5P 6C