



Crl.O.P.(MD) No.11226 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.06.2022
Delivered on	13.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.11226 of 2022

G.Rathakrishnan

...Petitioner

Vs.

1.J.Giri

2.G.Kavitha

3.The Inspector of Police,
District Crime Branch,
Virudhunagar District.

4.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Cr.M.P.No.2477 of 2021 dated 14.03.2022 on the file of the Judicial Magistrate No.II, Virudhunagar by allowing this Criminal Original Petition and consequently, directing the third respondent to register the First Information Report upon his complaint dated 17.01.2020.



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For Petitioners : Mr.S.Ramasamy
For Respondent : Mr.R.Sureshkumar
(for R3 & R4)

ORDER

This Criminal Original Petition is filed to set aside the order passed in Cr.M.P.No.2477 of 2021 dated 14.03.2022 on the file of the Judicial Magistrate No.II, Virudhunagar directing the third respondent police to register the First Information Report based upon the petitioner's complaint dated 17.01.2020.

2.Fact:-

(i) The respondents 1 and 2 are the owners of a Fire Works Factory, by name, V.P.S. Fire Works Industries situated at Pornayakkanpatti village, Sivakasi Taluk. They offered to the petitioner to sell their Fire Works Industry and adjacent land for a total consideration of Rs.1,65,00,000/-. The petitioner has also agreed to purchase the said properties and entered into an agreement on 24.06.2019 and paid a sum of Rs.6,00,000/- as advance. Both the parties agreed to conclude the contract on or before 23.09.2019. Since they are not able to



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conclude the contract before 23.09.2019, the respondents 1 and 2 sold the properties to the third party by way of a registered sale deeds dated 22.11.2019 and 02.12.2019 respectively.

(ii) According to the petitioner, he paid Rs.50,00,000/- on various dates towards sale consideration. Knowing the fact that the respondents 1 and 2 executed the sale deed, the petitioner approached them to repay the advance amount totally a sum of Rs.56,00,000/-. Since the respondents 1 and 2 refused and threatened, he gave the complaint before the Judicial Magistrate No.II, Virudhunagar, which was taken on file in Cr.M.P.No.2477 of 2021 and the same was forwarded to the third respondent police for investigation. The respondent police investigated the matter and found that there was no evidence for the allegation of criminal intimidation made by the first and second respondents. Further, the agreement made between the petitioner and the respondents 1 and 2 is true, but the petitioner paid only Rs.6,00,000/- as advance amount and not Rs.50,00,000/- and there is no evidence for payment of Rs. 50,00,000/-.



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(iii) According to the respondents 1 and 2, the petitioner demanded Rs.50,00,000/- than the advance amount of Rs.6,00,000/-. Hence, he gave a false complaint. Apart from that, a civil suit in O.s.No.220 of 2019 is also filed before the District Munsif Court, Sivakasi. For the above said reason, the respondent police submitted a report to the Judicial Magistrate stating that there is no criminal offence is involved and the dispute is purely in civil nature and a civil suit is also pending. Taking into consideration of the investigation report, the Judicial Magistrate, dismissed the complaint. Aggrieved over the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that after conducting enquiry, the third respondent police, instead of registering the case, filed a final report, which is illegal. The learned Judicial Magistrate has also simply accepted the enquiry report on the reason that the civil suit is pending before the District Munsif Court, Sivakasi in respect of the disputed properties. Even though a civil case is pending, if any criminal offence is made out, the petitioner has right to



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prosecute the criminal case. The trial Court without following the legal principles, dismissed the petition. Hence, the learned counsel prays to set aside the order passed by the trial Court and seeks a direction to proceed the criminal case.

4. The learned Government Advocate (criminal side) appearing for the respondents 3 and 4 submitted that the third respondent police, after receiving the complaint from the Judicial Magistrate Court, conducted preliminary enquiry by following the guidelines issued by the Hon'ble Supreme Court in the case of **Lalithakumari vs. State of U.P** [AIR 2014 SC 187]. During enquiry, they found that agreement has been entered between the petitioner and the respondents 1 and 2 in connection with the sale of Fire Works Industry and adjacent land for the sale consideration of Rs.1,65,00,000/-, but the petitioner paid only Rs. 6,00,000/- as advance. Since the petitioner has not come forward to conclude the contract by paying balance sale consideration within the stipulated date of 23.09.2019, the respondents 1 and 2 sold the property to some other third party. In this connection, the civil suit in O.S.No.220



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of 2019 is pending before the District Munsif Court, Sivakasi. Since the dispute between the parties is of a pure civil nature, the respondent police closed the criminal proceedings and sent a report to the Judicial Magistrate. The learned Judicial Magistrate has also accepted the report and dismissed the petition. There is no illegality or irregularity in the order passed by the learned Judicial Magistrate. Hence, he prays for dismissal of this petition.

5.I have considered the matter in the light of the submission of the learned counsel for the petitioner and the learned Government Advocate (criminal side) appearing for the respondent police.

6.It is seen from the records that the first and second respondents are the owners of the Fire Works Industry and adjacent land situated at Pornayakkanpatti village, Sivakasi Taluk and they offered to sell the above said properties to the petitioner for the sale consideration of Rs. 1,65,00,000/-. To this effect, they entered into unregistered sale agreement on 24.06.2019 and the petitioner paid Rs.6,00,000/- as



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advance and agreed to conclude the sale on or before 23.09.2019, but the petitioner has not come forward to conclude the sale within the stipulated period of before 23.09.2019. Hence, the respondents 1 and 2 sold the property to the third party on 22.11.2019 and 02.12.2019 by way of registered sale deeds. Knowing this fact, the petitioner approached the respondents 1 and 2 for returning the amount. Under such circumstances, the problem has been started.

7.Now, the allegation is that according to the petitioner, he paid Rs.50,00,000/-, after initial payment of Rs.6,00,000/-, hence, he claimed Rs.56,00,000/-. On investigation, the respondent police found that there is no proof produced by the petitioner for payment of Rs.50,00,000/- as additional advance amount as he claimed. Further, the respondent police, on investigation, found that there was no criminal threat by the respondents 1 and 2 while asking the repayment of the advance amount by the petitioner. Apart from this, the civil suit in O.S.No.220 of 2019 is also pending before the District Munsif Court, Sivakasi.



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8.The above said fact indicates that the dispute is of the pure civil nature. If the petitioner paid a total sum of Rs.50,00,000/- as advance amount, he will produce the proof before the civil court and will get the decree for repayment of entire advance amount. There will be no loss to the petitioner.

9.With regard to the criminal intimidation, the investigation found that no such incident has been occurred. In the considered opinion of this Court, the trial Court has rightly accepted the investigation report and dismissed the petition filed by the petitioner. I find no reason to interfere with the order passed by the trial Court.

10.In light of the above, this Criminal Original Petition is dismissed.

13.07.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
skn

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To

- 1.The Inspector of Police,
District Crime Branch,
Virudhunagar District.
- 2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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