



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.12422 of 2020

&

Crl.M.P(MD)No.5605 of 2020

1.G.Xavier Thatheyus Selvaraj

2. R.S.Maharajan

... Petitioners/

Accused Nos.1 & 2

Vs.

1. The State represented by
The Inspector of Police,
DCB, Tirunelveli.
(In Crime No.10 of 2020)

... 1st Respondent/ Complainant

2. C.Muthipandian

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in connection with the First Information Report in Crime No.10 of 2020 registered on the file of the first respondent police, quash the same.

For Petitioners

: Mr.Niranjana S.Kumar

For Respondents

: Mr.R.M.Anbunithi

Additional Public Prosecutor
(Criminal Side)

for R.1

Mr.S.S.Madhavan for R.2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.10 of 2020 registered on the file of the first respondent police.

2. The case of the prosecution is that the petitioners enter into a sale agreement for an extent of 15 acres comprised in Survey Nos.1844, 1844/1, 1846 situated at North Valliyur, 1st Bit Village, for a sum of Rs.6,50,00,000/- (Rupees Six Crores and Fifty Lakhs only), on 20.02.2018. The sale agreement was not registered. However, the petitioners and the second respondent have agreed to honour their commitments given to each other. On the same day, a



token advance of Rs.5,00,000/- (Rupees Five Lakhs only) was paid to the second respondent. On receipt of the said amount, entire land was developed into house plots. Application for layout approval has been presented under the Town and Country Planning Act and accordingly, the entire land was developed into house plots. Earlier agreement for sale, dated 20.02.2018 was once again modified on 04.06.2018, for total sale consideration of Rs.7,50,00,000/- (Rupees Seven Crores Fifty Lakhs only). Due to time constraints, one another sale agreement was executed on 19.02.2019, modifying the earlier two agreements and hiked the amount to Rs.8,25,00,000/- (Rupees Eight Crores Twenty Five Lakhs only). Once again on 18.07.2019, another agreement for sale was executed for a sum of Rs.8,75,00,000/- (Rupees Eight Crores Seventy Five Lakhs only). While being so, the Local Planning Authority granted Layout Plan Approval in the second respondent's name vide proceedings, dated 20.09.2018. Accordingly, 244 house plots were developed and almost all the house plots were sold in the year 2018-2020. Accordingly, the second respondent duly executed sale deed in favour of the purchasers. While being so, again the second respondent on 03.01.2019, executed a Power of Attorney in favour of the one, Gopala Shanmuga Sigamani, for the very same property. There were some disputes with regard to the payment and as such, the second respondent lodged a complaint. The first respondent issued a notice under Section 41(A) Cr.P.C for enquiry. The petitioners have appeared for the enquiry and submitted that the dispute is regarding the calculation of the amount and it would not amount to any cheating. Recording the said submission, the said complaint was closed. In spite of explanation and documents submitted by the petitioners, the first respondent called upon the petitioners for an enquiry. Therefore, the petitioners issued a legal notice, dated 12.12.2019 to the second respondent, thereby, calling upon the second respondent to accept the balance amount of Rs.6,00,000/- (Rupees Six Lakhs only) and handed over the cheques. The said notice was duly received by the second respondent and reply was also sent on 24.12.2019.

3. While being so, the petitioners have also filed a petition to direct the first respondent Police not to harass the petitioners in Crl.O.P(MD)No.560 of 2020 before this Court. This Court vide order dated 13.01.2020 issued guidelines to the first respondent. Even then the first respondent registered a case as against the petitioner in Crime No.10 of 2020, for the offence under Section 120 (b), 406 and 420 IPC.

4. The learned counsel for the petitioner would submit that admittedly there was business transaction between the petitioners and the second respondent. During the course of business, they have entered into agreement for sale. However, no agreement of sale was registered and no power has been given to the petitioners for the sale deed registered in favour of the third parties. The second



respondent executed the sale deed on receipt of the entire sale consideration.

5. In support of this contention, he relied upon the judgment reported in 2021 6 Supreme Court 529, in which, the Hon'ble Supreme Court held as follows:-

"28.It is beyond dispute that a sale deed is required to be registered i.e. a document required by law to be reduced to the form of a document. Therefore, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding or subtracting from its terms. The proviso (1) of Section 92 of the Evidence Act on which reliance was placed is a proof of such fact which would invalidate any document such as fraud, intimidation, illegality, want of the execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. Section 92 of the Evidence Act reads as under:

92. Exclusion of evidence or oral agreement - when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

29. The respondents were free to prove fraud in execution of the sale deed. However, factually, the respondents have not alleged any fraud in their suit or in the written statement in the suit filed by appellant No.1. The feigned ignorance about the nature of



document cannot be said to be an instance of fraud. In the absence of any plea or proof of fraud, respondent No.1 is bound by the written document on which he admitted his signatures and of his wife. There is no oral evidence which could prove fraud, intimidation, illegality or failure of consideration to permit the respondents to lead oral evidence to dispute the sale deed dated 14.09.1970. Thereafter, the judgments referred to by Mr.Mehta are of no help to support his arguments. Thus, the findings recorded by the First Appellate Court as affirmed by the High Court are clearly erroneous in law and are, thus, set aside."

6. The Hon'ble Supreme Court of India held that proviso in documents such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law.

7. Admittedly, after execution of sale deed, the respondents claims there is a balance of sale consideration payable by the petitioners. Insofar as the evidence under Section 406 and 420 IPC are concerned, where the averments of complaint constitute the ingredients necessary for the offence alleged under the penal code. It has to be verified whether it is relevant to proviso 406 and 420 IPC. In support of this contention he relied upon the judgment reported in **[2018] 0 Supreme (SC) 1244**, in which, the Hon'ble Supreme Court held is as follows:-

"6. Having heard the appellant as party in person and the learned Advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the Appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the Accused will be an abuse of process of law and, therefore, the High Court had rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have



paid the amount in lieu of one month Notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC as alleged. We are in complete agreement with the view taken by the High Court."

8. The averments in the complaint read on its fact do not disclose ingredients necessary to constitute the evidence under Penal Code. The attempt has been made by the second respondent to approach the civil suit.

9. When despite the absence of the ingredients necessary to constitute the criminal offence, therefore, the present FIR registered as against the petitioners constitute an abuse of process of law and it is liable to be quashed.

10. Moreover, already the second respondent had lodged a complaint and the same was enquired and closed. Therefore, the present FIR is nothing but a civil dispute and it is tried to be converted into a criminal dispute. As stated supra, the entire allegation and averments made in the FIR cannot constitute the ingredients of Section 406 and 402 IPC are satisfied.

11. In view of the above, the impugned FIR cannot be sustained and it is liable to be quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

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 Inspector of Police,
DCB, Tirunelveli.



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

+1 CC to M/s.SS.MADHAVAN, Advocate (SR-13358[F] dated 22/03/2022)

+1 CC to M/s.NIRANJAN S KUMAR, Advocate (SR-13589[F] dated
22/03/2022)

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NSN (CO)
KB (22.04.2022) 6P 5C