



Crl.O.P.(MD) No.12369 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	08.07.2022
Delivered on	27.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.12369 of 2022

and

Crl.M.P(MDNo.7824 of 2022

1.Rajaraja Cholan

2.Sudha

... Petitioners/A1 and A2

Vs.

1.State through

The Inspector of Police,
D.1 Tallakulam Police Station,
Madurai District
(Crime No.1320/2015)

2.G.Thirumurugan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.845 of 2022 on the file of the Judicial Magistrate No.II, Madurai and to quash the same insofar as the petitioners are concerned.



Crl.O.P.(MD) No.12369 of 2022

For Petitioners : Mr.C.Saravanakumar
For Respondent : Mr.E.Antony Sahaya Prabhakar
Addl. Public Prosecutor (for R1)

ORDER

This petitioners/A1 and A2 filed this Criminal Original Petition seeking to quash the proceedings in C.C.No.845 of 2022 pending on the file of the Judicial Magistrate No.II, Madurai.

2.Fact:- The petitioners and the defacto complainant are neighbours. The petitioners mortgaged their house at a Bank. Due to non-payment of the loan, the bank initiated auction for realizing the loan amount of Rs.15,00,000/- with interest. Hence, the petitioners approached the de-facto complainant and requested to pay Rs. 15,00,000/-, in turn, the petitioners agreed to sell 1800 square feet for a total consideration of 43.34 lakhs. Based on that agreement, the second respondent/defacto complainant gave Rs.15,00,000/- to the petitioners. The petitioners received that amount and repaid the bank loan. Thereafter, on 01.10.2013, the petitioners demanded balance



Crl.O.P.(MD) No.12369 of 2022

consideration and the defacto complainant paid Rs.10,00,000/- through cheque. On 15.08.2013, the defacto complainant demanded the petitioners to execute the sale deed, but he avoided. Thereafter, the defacto complainant sent a legal notice on 23.08.2013 along with a cheque for balance consideration, but the petitioners were not ready for executing the sale deed. Thereafter, on 22.10.2013, second agreement were entered between the parties agreeing to sale three houses for total consideration of Rs.92,38,000/-. Based on which, the petitioners received a sum of Rs.4,50,000/-. Thereafter also, the petitioners have not come forward to execute the sale deed. When the second respondent/defacto complainant asked the petitioners, they informed that a civil case is pending. When the defacto complainant saw the court records, the case is filed on 23.10.2013 i.e., after one day from the second agreement. Hence, the defacto complainant filed the complaint. The respondent police after investigation, filed the charge sheet and the same was taken on file as C.C.No.845 of 2022 by the learned Judicial Magistrate No.II, Madurai.



Crl.O.P.(MD) No.12369 of 2022

WEB COPY

3.The learned counsel appearing for the petitioners submitted that the petitioners are the accused Nos.1 and 2 in C.C.No.845 of 2022 on the file of the Judicial Magistrate No.II, Madurai. The respondent police prosecuted the petitioners for the offence punishable under Sections 406, 420 and 120(b) IPC. He further submitted the offences are not made out against the petitioners as the dispute between the petitioners and the second respondent/complainant is of purely civil in nature. The respondent police has given criminal color for the dispute of non performance of sale agreement. The learned Judicial Magistrate failed to consider the nature of transaction between the parties and wrongly taken cognizance of the case, which is an abuse of process of the Court. Hence, the learned counsel seeks to quash the said proceedings.

4. The learned Additional Public Prosecutor appearing for the first respondent police submitted that based on the complaint given by the second respondent/defacto complainant with regard to the cheating committed by the petitioners/accused to the tune of Rs.29,50,000/- on the



Crl.O.P.(MD) No.12369 of 2022

ground of execution of selling their houses, a case has been registered in Crime No.1320 of 2015 for the above mentioned offences. Since the criminal offences were committed by the petitioners/accused, the respondent police, after investigation, filed the final report and the same was taken on file. He further submitted that there is no merit in this petition and pleaded to dismiss this petition.

5. The learned counsel appearing for the second respondent/defacto complainant submitted that the petitioners, after receiving the amount from the complainant to the tune of Rs.29,50,000/-, with an intention to cheat her, has executed the power of attorney to one Selvam for the purpose of selling the disputed property and after entering into the second sale agreement, on the next date, immediately, they filed the civil against the defacto complainant/the second respondent herein for the relief of permanent injunction, hence, the criminal proceedings has been initiated and it cannot be quashed. Hence, he prays for dismissal of this petition.



Crl.O.P.(MD) No.12369 of 2022

WEB COPY

6. I have considered the matters in the light of the submissions of the learned counsel appearing on either side and perused the materials available on records.

7. A perusal of the records shows that the petitioners and the second respondent are neighbours. The allegation of receiving Rs. 15,00,000/- from the complainant for the purpose of repaying bank loan amount by the petitioners, is not disputed. The further allegation of sale agreement for selling 1800 square feet to the second respondent/defacto complainant for sale consideration of Rs.43,34,000/-, is also not disputed. The fact that the second respondent/defacto complainant gave a notice to the petitioners and informed her readiness for paying the balance consideration and requested the petitioners to execute the sale deed, is also not disputed. The fact that on 22.10.2013, the second sale agreement was executed by the petitioners to the second respondent/defacto complainant, is also not disputed. The fact that the petitioners filed the suit in O.S.No.11 of 2014 before the Principal



Crl.O.P.(MD) No.12369 of 2022

District Court, Madurai against the second respondent/defacto complainant, is also not disputed. Further, the petitioner executed a power of attorney on 28.11.2014 with regard to the suit property to one Selvam is also not disputed.

8. Now, the disputed facts are whether the defacto complainant gave Rs.29,50,000/- to the petitioners/accused as a sale consideration and after receiving that amount, in order to cheat the second respondent/defacto complainant, whether the petitioners were entered into the sale transactions by executing power of attorney to one Selvam who is resident of Chennai on 28.11.2014.

9. Further, it should be noted that several disputes of civil nature may also attain ingredient of criminal offence and if so, will have to be treated as criminal offence, even if they also amount to civil disputes. In this case, the petitioners on giving promise to execute the sale deed to the extent of 1800 square feet to the second respondent/defacto complainant, had received advance amount and subsequently, received sale



Crl.O.P.(MD) No.12369 of 2022

consideration on various dates and also executed another sale agreement on 22.10.2013. In such circumstances, by filing the civil suit in O.S.No. 11 of 2014 against the defact complainant and executing the power of attorney to one Selvam on 28.11.2014 with regard to the disputed property for sale, exposes intentions of the petitioners. Therefore, on perusal of the charge sheet and the statement of witnesses shows that *prima facie* criminal allegations are made therein and it will have take on the face of value.

10. Further, on perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.



Crl.O.P.(MD) No.12369 of 2022

WEB COPY

11. In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is also dismissed.

27.07.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order
skn

To

1.The Judicial Magistrate No.II,
Madurai.

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



CrI.O.P.(MD) No.12369 of 2022

V.SIVAGNANAM, J.

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CrI.O.P.(MD) No.12369 of 2022
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