



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Pronounced on : 07.03.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.10750 of 2019

and

Crl.M.P.(MD)No.6758 of 2019

1.W.P.A.S.B.Pandiyanatha Baskaran,

2.Kamalesh

3.Kamaraj : Petitioners/Accused

Vs.

1.The State rep. by

The Inspector of Police,

Pattiveeranpatti Police Station,

Pattiveeranpatti, Dindigul District.

(Crime No.58 of 2013) : Respondent/Complainant

2.J.Selvaraj

3.K.Prabhakaran

: Respondents/

Defacto -Complainants

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the proceedings in C.C.No.9 of 2019 on the file of the Judicial Magistrate, Nilakottai and quash the same.

For Petitioner : Mrs.Lita Srinivasan

For Respondents : Mr.R.Sivakumar,

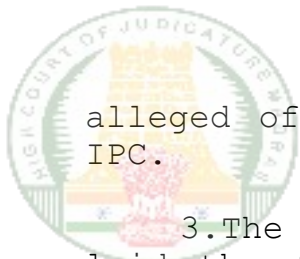
Government Advocate (Criminal Side)for R1.

: Mr.K.Suresh Babu, for R2 & R3.

O R D E R

The Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C., seeking orders to call for the records pertaining to the final report filed in C.C.No.9 of 2019 pending on the file of the Judicial Magistrate Court, Nilakkottai and quash the same.

2.The petitioners are the accused Nos.1 to 3 in C.C.No.9 of 2019 pending on the file of the Judicial Magistrate Court, Nilakkottai. On the basis of the complaint lodged by the respondents 2 and 3, FIR came to be registered in Crime No.58 of 2013 on the file of the first respondent police against the petitioners, for the

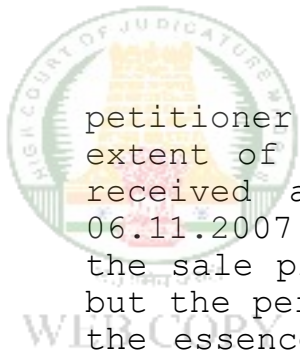


alleged offence under Sections 420, 471, 468, 506(ii) and 120 (b) IPC.

3.The first respondent after completing the investigation, has laid the final report under Section 173 Cr.P.C, dated 24.06.2013 against the petitioners herein for the alleged offence under Sections 420, 471, 468, 506(ii) and 120 (b) IPC as against the first accused and under Sections 420, 471, 468 and 120 (b) IPC as against the accused 2 and 3 and the case was taken on file in C.C.No.9 of 2019 and the same is pending on the file of the Judicial Magistrate Court , Nilakkottai.

4. The case of the prosecution is that the third respondent/2nd defacto complainant was doing real estate business, that he entered into a sale agreement with the first petitioner on 30.07.2007 in respect of Pullavelli estate with an extent of 339 acres owned by the first petitioner, that the first petitioner has received an advance amount of Rs.10,00,000/- and both of them agreed to complete the sale transactions within six months, that since the second defacto complainant had no sufficient means to purchase the said property within the time agreed, he approached one U.M.Soundara Pandian and during the relevant period, the second respondent had money out of his sale proceeds by selling his own land and went to the Office of Advocate B.K.Ashokan, that the third respondent has given assurance to the second respondent that if the sale was completed, 75% profit will be given to him and accordingly, they have entered into an agreement on 18.10.2007 between the third respondent on one part and the second respondent and the said B.K.Ashokan and one Manimaran on the other part and the third respondent had received Rs.12 lakhs from the second respondent, that since the said U.M.Soundara Pandian has also failed to purchase the property, the defacto complainants 2 and 3 along with B.K.Ashokan had entered into another sale agreement with the first petitioner by fixing the sale price at Rs.1,00,000/- per acre and paid further advance amount of Rs.5,00,000/-, that during the agreement period, when the defacto complainants were attempting to find out the purchasers, the first petitioner without the knowledge of the defacto complainants had sold the estate to one Mujubur Rahman and two others, that when the defacto complainants had demanded to return the advance amount from the second petitioner, who is the son of the first petitioner, he informed that he was ready to give another land, which belongs to his father and to adjust the advance amount along with interest for total sum of Rs.56,00,000/-, that the defacto complainants had purchased the property from the first petitioner, that subsequently they came to know that the value of the property sold is very low and the property already shown to them was not the property sold and that thereby they had cheated the complainants. Hence the complaint.

5.The case of the petitioners is that originally an
<https://hcservices.judges.gov.in/hcservices> sale agreement was entered into between the first



petitioner and the third respondent for Pullavelli estate for an extent of 339 acres on 29.07.2007, that the first petitioner has received advance amount of Rs.15,00,000/- only on 18.10.2007, 06.11.2007 and 23.11.2007, that both the parties have agreed that the sale price has to be fixed at the time of registration of sale, but the period of time was fixed as five months and time was made as the essence of contract, that since the proposed purchaser was not ready and willing to perform his contract, dated 21.07.2007, failed to complete the contract, that the third respondent along with the second respondent and one B.K.Ashokan had approached the first petitioner and entered into unregistered agreement to sell with regard to the very same property and the sale was to be completed on or before 30.06.2008, and the said time was also made as the essence of contract, that the proposed purchasers were not ready and willing to perform their contract within the time agreed, that after the lapse of nine months from the agreement period, the first petitioner bonafidely sold the properties to some third parties on 09.03.2009, that the respondents 2 and 3 along with said B.K.Ashokan executed a receipt in favour of the first petitioner on 24.11.2011 in the presence of Notary Public and thereby terminated the two earlier agreements and agreed to purchase the some other land belongs to the first petitioner for adjusting the earnest money and that thereafter, the respondents 2 and 3 had purchased the properties from the first petitioner and also mutated the revenue records in their favour.

6.The learned counsel for the petitioners would submit that a purely contractual case between the petitioners and the Advocate B.K.Ashokan and his junior Advocate and his Clerk, is sought to be converted into a criminal complaint for personal gain, that since the time was made the essence of contract, the proposed purchasers are liable to pay the balance sale price and to get sale deed executed within the time agreed and that the defacto complainants with evil motive have been harassing the petitioners to get monitory benefits and have been repeatedly attempting to foist a criminal case misusing a civil cause of action.

7.It is evident from the records that the respondents 2 and 3 have preferred a lengthy complaint, seeking action against the first petitioner for selling the estate to some third parties, even after receiving Rs.10 lakhs from the defacto complainants as advance for selling the said estate and thereafter, for selling a land with less value than the one that was shown to the complaints. But as rightly pointed out by the learned counsel for the petitioners, the first respondent has laid the charge sheet as if, the first petitioner after receiving the advance amount of Rs.10 lakhs agreed to execute the sale within six months and before the expiry of the said period by suppressing the earlier sale agreement had sold the property to some other third parties and for that purpose, he had fabricated a document with intention to use the same as a genuine and thereby



8. In the charge sheet, it has also been alleged that the accused 2 & 3 showing a valuable property, after receiving Rs.20 lakhs, had executed a sale deed with respect to different property having less value. The petitioners have produced the copy of the sale agreement entered into between the first petitioner and the third respondent, dated 21.07.2007, and another sale agreement dated 22.03.2008, alleged to have been entered into between the first petitioner and the respondents 2 and 3 and one B.K.Ashokan.

9. It is evident from the typed set of papers produced by the petitioners that the respondents 2 and 3 and the said B.K.Ashokan had executed a receipt in favour of the first petitioner, dated 24.11.2011, agreeing to terminate the earlier two agreements and also agreed to purchase the other property owned by the first petitioner and to adjust the advancement due to them.

10. As rightly pointed out by the learned counsel for the petitioners, in the said receipt the respondents 2 and 3 and the said B.K.Ashokan by affixing their photographs, have subscribed their signatures in the presence of Notary Public and according to the petitioners, the respondents 2 and 3 have not specifically disputed the execution of the said receipt.

11. The learned counsel for the petitioners would submit that there is a specific clause in the agreement, which provides that if the vendor fails or neglects to complete the sale, the purchaser will be at liberty to enforce the specific performance of agreement by instituting legal proceedings or at his option may sue the vendor for recovery of earnest money with interest, costs and other reliefs, that another clause contemplates that in case if the purchaser fails to complete the transaction within the time agreed, the earnest money shall be forfeited to the vendor or the vendor may at his option enforce specific performance of the agreement by the purchaser and the purchaser will also be liable to pay the costs and expenses of proceedings for specific performance, and that since the time was made the essence of contract and the intending purchasers have failed to pay the balance sale price and get the sale deed within the time agreed, the first petitioner was having every right to sell the property to third parties and that the petitioners as per the terms of the agreement cannot question the same.

12. As rightly pointed out by the learned counsel for the petitioners, admittedly the respondents 2 and 3 and the said B.K.Ashokan have not chosen to pay the balance sale price and to get the sale deed executed within the time agreed. Moreover, the respondents 2 and 3 in their complaint have themselves admitted that the second petitioner had agreed to sell some other lands belonging to the first petitioner for the amount due by them and accordingly, the second petitioner's properties were sold to the complainants. But the



allegation of complainants is that they have executed a sale in respect of some other properties.

13. As rightly pointed out by the petitioners' counsel, the property to be sold, has been specifically mentioned in the receipt executed by the respondents 2 and 3 and the said B.K.Ashokan on 24.11.2011.

14. On considering the entire facts and circumstances and the rival contentions of both the parties, it is clearly evident that there existed civil disputes between the parties. According to both the parties, the said B.K.Ashokan, is an Advocate by profession and in the meanwhile had died. Admittedly, the respondents 2 and 3 have not filed any civil suit either for specific performance of the agreement of the contract or for any other relief against the petitioners.

15. Even a cursory perusal of the complaint lodged by the respondents 2 and 3 would reveal that there existed dispute between the parties, which are purely civil in nature and the respondents have only been attempting to give civil case a criminal color or flavour and to convert the civil case into a criminal case, lodged the above complaint.

16. As rightly pointed out by the learned counsel for the petitioners, the first respondent without understanding the transactions that existed between the parties and the clear cut admission made by the complainants in their complaint itself, has laid the final report and thereby helped the respondents 2 and 3 to convert the civil dispute as a criminal dispute.

17. Considering the above, this Court has no hesitation to hold that permitting the prosecution to proceed against the petitioners would only amount to abuse of process of law and hence, this Court concludes that the impugned proceedings in C.C.No.9 of 2019 on the file of the learned Judicial Magistrate, Nilakottai, is liable to be quashed.

18. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.9 of 2019 on the file of the learned Judicial Magistrate, Nilakottai, is quashed. Consequently, connected Miscellaneous Petition is closed.

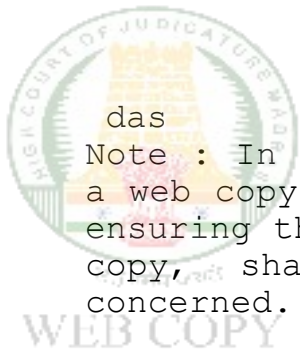
Sd/-

Assistant Registrar (Records)

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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 Judicial Magistrate,
Nilakottai.
- 2.The Inspector of Police,
Pattiveeranpatti Police Station,
Pattiveeranpatti,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.CENIL, Advocate (SR-10778[F] dated 09/03/2022)
Crl.O.P.(MD)No.10750 of 2019
and
Crl.M.P.(MD)No.6758 of 2019
07.03.2022

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