

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**CRL.O.P(MD)Nos.14980 of 2017 and 1765 of 2018
and
CRL.M.P(MD)Nos. 9974 and 9975 of 2017**

CRL.O.P(MD)No.14980 of 2017:

1.M.Murugan

2.Latha

3.Harinarayanan

.. Petitioners/Accused Nos.1 to 3

Vs.

M.Senthil Vel

.. Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.154/2017 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same.

For Petitioners : Mr.S.Deenadhayalan

For Respondent : Mr.B.Jeyakumar

CRL.O.P(MD)No.1765 of 2018:

M.Murugan

.. Petitioner/Accused No.1

Vs.

M.Senthil Vel

.. Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.206/2017 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as against the petitioner.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.B.Jeyakumar

COMMON ORDER

The issue involved in both these petitions arise between same parties and they are connected to each other and hence, both the petitions are taken up together, heard and disposed of through this common order.

2. The defacto complainant filed a private complaint against the petitioners and two others on the allegation that the property measuring

2.42 acres, which is an agricultural land was inherited by the respondent along with his mother on the demise of his father and that with the help of A4, who is a real estate broker, the respondent was misled and was made to execute a sale deed, dated 23.6.2008 for a total sale consideration of Rs.22,13,600/- and only Rs.2,00,000/- was paid out of the total sale consideration and Rs.20,00,000/- was retained on the ground that the original deed of the property must be handed over to the first petitioner. As agreed, the original deed was shown to the first petitioner and inspite of the same, the accused persons went back on their promise and refused to pay the balance amount and the respondent was also abused and threatened. That apart, the respondent and his brother were thrown away from the property. The police complaint given in this regard was registered in Crime No.105/2014 and a closure report was filed as 'mistake of fact'. The protest petition was also dismissed with a liberty to the respondent to file a private complaint. Accordingly, private complaint was filed and it was taken cognizance against five accused persons for various offences. Aggrieved by the same, the petitioners have filed Crl.O.P.(MD)No.14980 of 2017.

3. The respondent filed yet another private complaint before the Court below by narrating the very same facts and in this complaint, the additional allegation that was made was that an old lorry, which was stationed in the property, was stolen. The police complaint ended up with a closure report and hence, private complaint was filed and the same was taken cognizance. Aggrieved by the same, Crl.O.P.(MD)No.1765 of 2018 has been filed before this Court.

4. Heard Mr.S.Deenadhayalan, learned counsel for the petitioners in both petitions and Mr.B.Jeyakumar, learned counsel for the respondent in both petitions.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. In the present case, it is admitted that the sale deed was executed in favour of the first petitioner through a registered sale deed dated 23.06.2008. On carefully going through this document, it is seen that the possession was handed over by the respondent and it reads as if

the entire sale consideration of Rs.22,13,600/- was received by the respondent. According to the respondent, a sum of Rs.20,00,000/- was retained for the production of the original title document and inspite of furnishing the same, the balance amount was not paid.

7. There is already civil litigation instituted by both sides in O.S.No.22 of 2014 and O.S.No.40 of 2015 and the same is pending before the competent Civil Court. Till date, the sale deed executed in favour of the first petitioner has not been put to challenge. That apart, the revenue records also stand mutated in the name of the first petitioner and that also remains intact till date.

8. The learned counsel for the respondent has relied upon a document named as a promise deed wherein the first petitioner has agreed to pay the balance amount of Rs.20,00,000/-. According to the respondent, since the first petitioner did not keep up the promise, the respondent has been cheated. It is as a consequence of the same, the other allegations of abuse, attack and threat follows suit.

9. When a transaction has been reduced to writing, no evidence shall be given to prove the transaction, except the document itself. This rule is based on the principle that the best evidence of which the case in its nature is susceptible, should always be presented. The same is clear on a bare reading of Section 91 of the Evidence Act.

10. In addition to the above, Section 92 of the Act is supplementary to Section 91 and this provision makes it very clear that when the terms of a disposition of property have been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such document or their representatives for the purpose of contradicting, varying, adding or subtracting from the terms of the document. The said provision also provides six exceptions.

11. The learned counsel for the respondent is relying upon a promise deed and is attempting to question the terms of the registered sale deed executed in favour of the first petitioner. This is an exercise which can be done only before a competent Civil Court by seeking for

appropriate relief and the Criminal Court is not the appropriate forum for the same. The Court below failed to take note of this vital fact.

12. If really the balance sale consideration has not been paid by the first petitioner, giving a police complaint or filing a private complaint is not the appropriate remedy. The matter has to be necessarily agitated only before the Civil Court. That apart, the allegation that a vehicle kept inside the property and which goes missing, sounds very unnatural since the sale deed was executed in the year 2008 and the revenue documents get mutated in the name of the first petitioner subsequently and the complaint in this regard came to be filed in the year 2015 before the police which was investigated and closed as mistake of fact.

13. It is very clear from the above that the respondent is attempting to get a relief before a wrong forum instead of knocking the doors of a Civil Court. Even the civil suit filed by the respondent seeks for the relief of permanent injunction and the sale deed has not been put to challenge and the respondent has not sought for the recovery of the balance sale consideration. In short, a dispute which is purely civil in

nature is sought to be given a criminal colour.

14. There is yet another important ground which impels this Court to interfere with the private complaints entertained by the Court below. In the present case, initially, FIR was registered on both the complaints given by the respondent and it ended in a closure report. The protest petition filed by the respondent was also closed by giving liberty to prosecute the private complaint. However, while taking cognizance of the private complaint, the Court below did not take note of the closure report filed by the police and has independently taken cognizance of the private complaint based on the very same set of facts. This issue was dealt with by this Court in ***Ganesan & Others v. Ganapathy*** reported in **2019 Supreme (Mad) 2662** and the relevant portion in the judgment is extracted hereunder:

“10. In the present case, the respondent has parallelly initiated a second complaint on the same set of facts. The facts as projected in the complaint has already been investigated by the Police and a closure report has been filed. In spite of notice being served on the respondent, he did

not file a protest petition and therefore, the closure report was taken on file and the case was closed. The respondent is now agitating the very same issue in the second complaint. Atleast, the notice of the Court below could have been drawn by the respondent regarding the closure report filed by the Police. At that point of time, the Court below could have taken note of the said fact and treated this complaint as a protest petition. Even this was not done in the present case. The Court below has completely discarded the closure report filed by the Police and has independently taken cognizance of the private complaint based on the same set of facts. In the considered view of this Court, the cognizance taken by the Court below is unsustainable in law.”

15. In view of the above discussion, this Court has absolutely no hesitation to interfere with the private complaint entertained by the Court below and accordingly, the complaints pending in C.C.No.154 of 2017 and C.C.No.206 of 2017 are hereby quashed. It is made clear that the quashing of the criminal proceedings will not stand in the way of the respondent in prosecuting the claim before the competent Civil Court.

16. Both the Criminal Original Petitions are accordingly allowed in the above terms. Consequently, connected miscellaneous petitions are closed.

13.09.2022

Index : Yes / No
Internet : Yes / No
PJJ

To
The Judicial Magistrate No.II,
Madurai.

CRL.O.P(MD)Nos.14980 of 2017 and 1765 of 2018

N.ANAND VENKATESH,J.

PJL

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