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Crl.O.P.No.6346 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.6346 of 2021

&

C.M.P.Nos. 4230 & 4231 of 2021

Kaliya Perumal

... Petitioner

Vs.

1.State rep. by
Inspector of Police,
District Crime Branch,
Nagapattinam

2.Hemraj

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned Charge Sheet in C.C.No.21 of 2018 pending on the file of the learned Judicial Magistrate – I, Nagapattinam District in connection with Crime No.6 of 2011 for the offences under Section 420, 447 and 506 (i) of IPC on the file of the 1st respondent Police.



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For Petitioner : Mr. M.Govindaraju
For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor
For Respondent 2 : Mr. I.Periasamy

ORDER

The petition is filed to quash the final report for the alleged offences under Section 420, 447 & 506 (i) IPC.

2. It is alleged in the final report that the 2nd respondent / defacto complaint and the petitioner had entered into a sale agreement on 11.01.2005 in respect of the property in T.S.No.425 of 2016 and pursuant to the said sale agreement, the 2nd respondent had paid an advance of Rs.5,25,000/- to the petitioner; that the 2nd respondent who was initially put in possession of the disputed property had handed over the possession back to the petitioner on 25.08.2011, thereafter the petitioner had neither returned the advance money received by him nor executed the sale deed in favour of the 2nd respondent and thus committed an offence.



3. The learned counsel for the petitioner would submit that admittedly a sale agreement was entered into between the petitioner and the 2nd respondent on 11.01.2005. The learned counsel would submit that the allegation is that the petitioner took possession after initially handing over possession to the 2nd respondent and neither returned the advance nor paid the balance sale consideration and got the sale deed executed. Even if the allegation is accepted to be true no offence is made out. The 2nd respondent ought to have either filed a suit for recovery of money or a suit for specific performance of the agreement. The impugned prosecution initiated after the period of limitation had expired for seeking civil remedy is an abuse of process. He therefore submitted that the impugned prosecution is liable to be quashed.

4. The learned counsel for the 2nd respondent / defacto complainant would submit that the 2nd respondent had paid a sum of Rs.5,25,000/- as an advance. This has been illegally retained by the petitioner and the offences alleged are made out. Therefore, the learned counsel submitted that the matter has to be adjudicated only before the Trial Court and prayed for dismissal of the petition.



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5. Heard the learned counsels for the petitioner and the 2nd respondent and the learned Additional Public Prosecutor for the respondent Police.

6. Admittedly, the sale agreement was entered into between the petitioner and the 2nd respondent on 11.01.2005. The possession of the property admittedly was with the 2nd respondent till 25.08.2011. Strangely the 2nd respondent did not take any steps either for recovery of money or for specific performance of the agreement till 2011. The FIR which culminated in the impugned final report was lodged in the year 2011. Thereafter, the impugned final report was taken on file in the year 2018. The allegations are purely civil in nature. It only amounts to a breach of promise. The allegation does not suggest that there was deception at the inception. The other offences are also not made out. These allegations does not attract the offence of trespass. Admittedly the possession was handed over to the petitioner. Further, there is no real threat to attract the offence of criminal intimidation. The 2nd respondent without resorting to the civil remedy available for recovery of money or for specific performance of the agreement cannot be allowed to maintain this prosecution initiated belatedly in the



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absence of ingredients to attract the offence. The civil remedy was barred by limitation when the FIR was lodged. The 2nd respondent cannot indirectly revive such a claim by way of initiating the criminal proceedings.

7. In view of the above, the impugned final report is liable to be quashed. Accordingly, the petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

27.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To

1.The Judicial Magistrate – I,
Nagapattinam District.

2.The Inspector of Police,
District Crime Branch,
Nagapattinam.

SUNDER MOHAN. J.



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