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Crl OP Nos. 3373 of 2021 & 10260 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition Nos. 3373 of 2021 & 10260 of 2019
and

Crl.M.P. Nos. 1956 of 2021 & 5315 of 2019

Dharmi Chand ... Petitioner in Crl.O.P. No. 3373 of 2021

Vijayakumar ... Petitioner in Crl.O.P. No. 10260 of 2019

Versus

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

2.M.S. Kumaresan ... Respondent in both the petitions

COMMON PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. Nos. 249 of 2019 & 1 of 2019 on the file of the learned Judicial Magistrate No.II, Vellore and the learned District Munsif cum Judicial Magistrate, Arcot, Vellore District respectively and quash the same.

For Petitioners : Mr. E. Kannadasan in
Crl.O.P. No. 3373 of 2021.

Mr. G. Ravikumar in
Crl.O.P. No. 10260 of 2019.

For Respondents : Mr. A. Damodaran,



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Additional Public Prosecutor for R1.

Mr. V. Manoharan for R2.

COMMON ORDER

These petitions are to quash the final report in C.C. No. 1 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Arcot, Vellore which was subsequently transferred to Judicial Magistrate No.II, Vellore and re-numbered as C.C. No.249 of 2019 for the alleged offence under Sections 406, 420, 294(b) and 506(i) of the Indian Penal Code.

2.The petitioners are arrayed as A1 and A2 in the final report. It is alleged in the final report that the defacto complainant had owned properties measuring to an extent of 2958 sq.ft., in S.No.258/1A1 and 1209 & 2418 sq.ft., in Plot Nos. 2, 3 and 4 in S.No.5/3C/1, totaling 6585 sq.ft., which are valued to the tune of Rs.1,11,94,500/-; that the defacto complainant had mortgaged the property and that the petitioners offered Rs.10,00,000/- and got the mortgage discharged and promised to pay the balance sale consideration of Rs.1,01,94,500/- later; that thereafter the defacto complainant executed four sale deeds bearing Document Nos. 1908 to 1911 of 2016 on the file of the Sub-Registrar Office, Arcot in favour of A1; that the petitioners did not pay the sale consideration as agreed upon by them; and that when the defacto complainant had



questioned the petitioners, they had abused him in filthy language.

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3.The learned counsel for the petitioners submitted that the FIR which has resulted in the impugned final report was lodged eighteen months after the execution of the sale deeds. The reading of the sale deeds would show that the defacto complainant had received sale consideration for executing each of the sale deeds. There is no document produced by the defacto complainant to show that the sale consideration was fixed as Rs.1,11,94,000/-. If the defacto complainant was aggrieved by non-payment of sale consideration, the defacto complainant ought to have filed Civil Suit to declare the sale deeds as null and void. However, the defacto complainant had not chosen to do so. Instead he had chosen to file this complaint eighteen months after the execution of sale deed without any basis alleging that the sale consideration was not paid which is contrary to the recitals of the registered documents.

4.Per contra, the learned counsel for the defacto complainant and the learned Additional Public Prosecutor submitted that the matter has to be adjudicated only before the trial Court as the petitioners had made a false promise that they would pay the sale consideration later since there was an election notification and got the sale deeds executed; that the



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defacto complainant believed the words of the petitioners and waited for the petitioners to make payment and hence there was a delay in lodging the FIR; and that the offences are made out against the petitioners and in any case, the case has to be adjudicated before the Court.

5. Admittedly, this Court finds that the petitioners had executed four sale deeds. In the registered documents, it is shown that the defacto complainant had received the consideration. It is not a case of forgery of the defacto complainant's signature. If the defacto complainant was aggrieved by any non-payment of sale consideration as promised, he ought to have filed a Civil Suit either for recovery of money or for declaring the registered sale deeds as null and void. The impugned complaint which is contrary to the recitals of the registered sale deeds cannot be the subject matter of investigation and trial by a criminal Court. Further, it is seen that the sale deeds were executed as early as on 28.03.2016 whereas the First Information Report was registered in the end of 2017. It is also seen that the Sub-Registrar who had registered the document had also confirmed during investigation, the fact that the sale consideration was paid as per the recitals in the sale deed. Therefore, this Court is of the view that the allegations do not attract either the



offence of Section 406 or 420 of the Indian Penal Code.

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6.As regards the offence under Section 294(b) of the Indian Penal Code, it is alleged that certain filthy words were uttered by the petitioners. The Hon'ble Supreme Court in the Judgement reported in **2022 LiveLaw (SC) 844 – N.S.Madhanagopal and another Vs. K.Lalitha**, has held as follows:

“It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient



but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.”

Hence in the absence of any obscene words uttered in a public place to the annoyance of others, the offence under Section 294(b) of the Indian Penal Code would not be made out. As regards the offence under Section 506(i) of the Indian Penal Code, this Court has repeatedly held that the words spoken must cause real threat to constitute the offence of criminal intimidation. However, on a reading of the Final Report, there is nothing to suggest that there was any real threat so as to attract the offence of criminal intimidation. Useful reference can be made to the judgment of this Court in **Noble Mohandass Vs. State**, reported in **Manu/TN/0026/1988**, wherein this court has held as follows:

“7.....Further for being an offence under [Section 506\(2\)](#) which is rather an important offence punishable



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with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually...”

7. For the above reasons, these Criminal Original Petitions are allowed and the impugned proceedings in C.C. No. 249 of 2019 on the file of the Judicial Magistrate No.II, Vellore is quashed. Consequently, the connected miscellaneous petitions are closed.

28.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
District Crime Branch,
Vellore, Vellore District.

2. The Judicial Magistrate No.II,



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Vellore.

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3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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