



Crl.O.P.No.6315 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.6315 of 2021

and

Crl.M.P.Nos.4189 & 4191 of 2021

1.Ameer Abbas
2.Samsudeen
3.Faruda Begam

... Petitioners

Vs.

Hajiman Sherif

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to CC.No.320 of 2019 on the file of the Judicial Magistrate-I, Villupuram and pleaded to quash the complaint in respect of the petitioner 1 to 3 on the file of the Chief Judicial Magistrate-I, Villupuram in the interest of justice, equity.

For Petitioners : M/s.Kalayappan

For Respondent : M/s.Revathi.G.Mohan for P.Kavitha
Balakrishnan for sole Respondent.

ORDER



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This petition is to quash the complaint in CC.No.320/2019 for the alleged offences under Section 147, 420, 464, 468, 471, 342, 363 and 506(1) of Indian Penal Code.

2. It is alleged in the complaint that the respondent/complainant approached the accused 1 and 2 for the sale of their property for a total consideration of Rs.1,40,00,000/-; that A.1 and A.2 had paid Rs.3,00,000/- as an advanced and on 15.04.2007, they had paid a further sum of Rs.50,00,000/-; that they promised to pay the balance sum at the earliest; that thereafter they had paid small sums of money towards sale consideration; that on 04.10.2007, they had requested the plaintiff to vacate the premises; that on 09.02.2008, they threatened the plaintiff and hence, the respondent/complainant had executed a power of attorney on 09.02.2008, in favour of the accused; that thereafter, the accused have not paid the balance sale consideration; that they did not complain to the police about the threat since, the accused were influential persons; that thereafter, in the year 2011, after the change of Government, they had lodged an FIR in Crime No.6 of 2012, and the said complaint was closed as a mistake of fact. Hence, the impugned complaint.



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3. The learned counsel for the petitioner would submit that the entire transaction is civil in nature. The petitioner had paid the sale consideration and the documents and receipts available with the petitioners would show that the respondent/complainant has initiated this complaint only to harass the petitioners. The FIR lodged by the respondent/complainant was thoroughly investigated by the police in Villupuram and only after the police were satisfied that the petitioner had paid the entire sale consideration, the said complaint was closed as a mistake of fact.

4. The learned counsel for the respondent/complainant submits that the petitioners had threatened him and forcibly obtained the power of attorney. They had approached all the authorities concerned and only because no action was taken, they had ultimately filed the private complaint. He further submitted that the petitioners had not paid the balance sale consideration and hence committed an offence of cheating, besides criminal intimidation and forgery of the receipt.

5. This Court on perusing the impugned complaint finds that the



allegation is that only a portion of the sale consideration agreed between the parties was paid by the petitioners to the respondent/complainant. The respondent/complainant has stated that petitioners had paid Rs.53,00,000/- as on 15.04.2007. In para 3 of the complaint, the respondent/complainant had stated that thereafter on several dates the petitioners paid cash to the respondent/complainant in installments. However, the respondent/complainant has not stated as to what was the amount received by him. That apart, even assuming that only a portion of the sale consideration was paid, the allegations would only amount to a breach of promise.

6. As regards the allegation of threat and forcing the respondent/complainant to execute a power of attorney, it is seen that the alleged threat took place on 09.02.2008, however, no action was taken till 19.04.2012. The complaint was lodged only in 2012 and the FIR in Crime No.6/2012 was registered by the District Crime Branch, Villupuram, the said complaint was closed by the District Crime Branch, Villupuram as mistake of fact on 28.01.2013. Even thereafter, the respondent/complainant has not taken any steps to file the complaint. The impugned complaint has



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been filed belatedly nearly 6 years after the closure of the FIR. As stated earlier, the FIR itself was lodged 4 years after the alleged occurrence. Thus it is seen that the Respondents have come up with this delayed complaint as an afterthought. They have not filed any suit for recovery of the alleged dues.

7. In view of the above, this Court finds the impugned complaint is clearly an abuse of process of law and hence, liable to be quashed, and hence the complaint is quashed.

8. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

28.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To
The Judicial Magistrate-I, Villupuram.

SUNDER MOHAN. J.



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